

DRT's power to add a party in an application under Section 19 of The Recovery of Debts, due to Banks and Financial Institutions Act, 1993?

Chapter V of the Recovery of Debts, due to Banks and Financial Institutions Act, 1993 (for short “**RDDBI Act**”) deals with the Procedure of Tribunals.

Legal Provisions:

Section 19 – Application before the Tribunal

“The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realization or actual payment, on the application as it thinks fit to meet the ends of justice.”

Section 22 - Procedure and Powers of the Tribunal and the Appellate Tribunal

1. *“The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.*
2. *The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:--*
 - a) *summoning and enforcing the attendance of any person and examining him on oath;*
 - b) *requiring the discovery and production of documents;*
 - c) *receiving evidence on affidavits;*
 - d) *issuing commissions for the examination of witnesses or documents;*
 - e) *reviewing its decisions;*
 - f) *dismissing an application for default or deciding it ex parte;*
 - g) *setting aside any order of dismissal of any application for default or any order passed by it ex parte;*
 - h) *any other matter which may be prescribed.”*

Section 34 -Act to have over-riding effect

1. Save as provided under sub- section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Concept

Section 22 of the RDDBI Act provides that neither DRT nor the Appellate Tribunal shall be bound by the procedure laid down by the Civil Procedure Code, 1908(for short “**CPC**”) however it shall be guided by the principle of natural justice in order to regulate its proceeding subject to other provisions of the RDDBI Act and the Rules thereto.

The DRT or the Appellate Tribunal thus can lay down its procedure to regulate the proceeding, keeping in view that the principle of natural justice be adhered to.

The provision however does prescribe that the Tribunal shall have the same power while discharging its function as is vested under the CPC with respect to the matters enumerated in sub clause (a) to (h). This though would not mean that the Tribunal has to strictly follow the provision of the CPC relating to the matter as enumerated under sub-clause (a) to (h) of sub-s. (2) of Section 22.

Had there been any such intention of the Legislature, the DRT with respect to those matter enumerated under clause (a) to (h) could have been empowered to proceed as per the relevant provision of the CPC. It is for the DRT and the Appellate Tribunal to follow the procedure or not to follow the procedure relating to the matter incorporated under clause (a) to (h)

but if the DRT and the Appellate Tribunal resorts to those provisions, it will have same power which has been vested in the civil court under the CPC.¹

Adding a Party

Order 1, Rule 10(2) of CPC provides the judicial discretion to a court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either:

- suo moto, or
- on the application of the plaintiff or the defendant, or
- on an application of a person who is not a party to the suit.

The court can:

- strike out any party who is improperly joined.
- add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party.

Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code the court will of course act according to reason and fair play and not according to whims and caprice.²

Natural Justice - Right to be heard

Natural justice is a concept of common law and represents higher procedural principles developed by the courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision adversely affecting the rights of a private individual. Natural justice implies fairness, equity and equality. In a welfare state like India, the role and jurisdiction of administrative agencies is increasing at a rapid pace. The concept of Rule of Law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging these functions in a fair and just manner.

The principle of natural justice encompasses following two rules:

- **Nemo judex in causa sua** - No one should be made a judge in his own cause or the rule against bias.
- **Audi alteram partem** - Hear the other party or the rule of fair hearing or the rule that no one should be condemned unheard.

The principle of audi alteram partem is the basic concept of principle of natural justice. The expression audi alteram partem implies that a person must be given opportunity to defend himself. This principle is sine qua non of every civilized society. This rule covers various stages through which administrative adjudication passes starting from notice to final determination. Right to fair hearing thus includes:

- Right to notice
- Right to present case and evidence
- Right to rebut adverse evidence (i) Right to cross examination (ii) Right to legal representation
- Disclosure of evidence to party
- Report of enquiry to be shown to the other party
- Reasoned decisions or speaking orders³

In **Setabi Devi vs. Ramadhani Shaw**⁴, it was held that the question of addition of parties is essentially a judicial discretion that shall have to be exercised in the light of the facts and circumstances of each case. The purpose of this provision is to give

¹ Article on "DRT/ DRAT empowered to lay down its procedure to regulate the proceeding" available at <http://www.tcl-india.net/node/241>

² (2010) 7 SCC 417

³ Research Paper on "Principles of Natural Justice" authored by Mr. Ashish Makhija available at <http://www.lawpact.org/uploads/PRINCIPLES%20OF%20NATURAL%20JUSTICE.pdf>

an opportunity to all parties to be heard. Thus, those parties from whom no relief has been claimed may also be added, since they may be affected as a consequence of the decree.

Now if DRT is to follow the procedure under CPC and adds any party it may be assumed that this has been done to give an opportunity of hearing to the party so added.

Precedents

- In **ICICI Ltd vs Grapco Industries Ltd**⁵ the court observed the following:
 - A tribunal while granting ex parte order of stay or injunction must record reasons, may be brief one, and cannot pass a stereo-typed order in terms of the prayer made.
 - *“When Section 22 of the Act says that the tribunal shall not be bound by the procedure laid by the Code of Civil Procedure, it does not mean that it will not have jurisdiction to exercise powers of a court as contained in the Code of Civil procedure. Rather, the tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice.”*
- In **Cofex Exports Ltd. vs. Canara Bank**⁶ the court held that the DRT is not a court and it exercises powers of a civil court only in respect of limited matters.
- In **Standard Chartered Bank vs India Glycols Ltd.**⁷ the court observed that it must be appreciated that while the DRT is not bound by the CPC under this provision, it is empowered to regulate its procedure, subject to compliance with the rules of natural justice, and the provisions of the RDDBFI Act and any subordinate legislation under the Act. This implies that the DRT is empowered to use rules of the CPC as part of the procedure to be followed during proceedings, since the discretion to regulate procedure is conferred on the DRT in Section 22(1).
- In **ICICI Bank Limited v. Debts Recovery Appellate Tribunal, Debts Recovery Tribunal and R. Subramanian** where the question was Can the Debt Recovery Tribunal DRT or the Debt Recovery Appellate Tribunal impound a passport to prevent the defendant from escaping a payment of dues? The Court observed that though the DRT is not a court stricto sensu, it exercises judicial powers that flow from the RDDBFI Act, and its inherent powers are wider than those of a civil court. Thus, the provisions of the Passport Act shall not exclude the inherent powers of the DRT.
- In **Allahabad Bank v. Radha Krishna Maity**⁸, the Supreme Court said that Section 19 of the RDDBFI Act did not limit the generality of the powers of the tribunal, but merely stated the types of injunction or stay orders that the tribunal may pass.

The power of DRT to add someone as a party cannot be challenged as the powers granted to DRT under the RDDBFI Act are very wide as observed above. It is a discretionary power granted to DRT to determine its procedures however the same must be exercised keeping in view the principles of natural justice.

However, the power that has been given to DRT to establish and follow any procedure in its discretion but the same power doesn't extend to passing any injunction order against any party so added in pursuance of such procedure.

⁴ AIR 1996 Guj 107

⁵ 1999 (4) SCC 710

⁶ AIR 1997 Delhi 355

⁷ W.P. (C) 8592/2011

⁸ AIR 1999 SC 3426