

CHAPTER – X

POSITION OF RECOVERY CASES OF BANKS

AND FINANCIAL INSTITUTIONS

Bank and financial institutions play very creative and crucial role in development of the country's economy. After nationalisation the mobilized resources of the bank have to be lent for productive purposes as per the Government directives. Approx. 40% of such amount goes towards priority sector lending. The financial soundness of all banks and banking activity in general depends on timely recovery of amount lent by the bank. The advances given by the bank are in form of cash credit or the loans which are repayable over a period of time.

Financial health of the banks is causing serious concern and hence as per Narsimhan Committee Report, concept of Non Performing Assets (NPA) was introduced. As per this concept an account becomes NPA if the interest on the same or repayment of installment is not received for specified period which is two quarters. Such accounts are also called overdue accounts. The growing volume of number of accounts and amount involved is a cause for constant concern because the amount lent by the banks are ultimately the funds deposited with them by the public. In India Nationalised Banks are treated as State under article 12 of the Constitution. **1 As per the available statistics in the year 1988 there were 11 lacs pending cases of the bank involving total amount of Rs.2300 Crores. **2

By the year 1991 the amount has increased to Rs.3000 Crores and Rs.5056.54 Crores as on 31/03/94.

**1 STATE BANK OF INDIA V/S.KADPAKA TRASPORT AIR 1979 BOM.250

**2 AS PER INFORMATION GIVEN IN PARLIAMENT BY FINANCE MINISTRY.

The reasons for delays and defaults are vast and varying. Nevertheless if case study is made certain significant factors for the delay can be ascertained and the banks can plan their future strategy accordingly.

Hence for the purpose of this research study it was decided to concentrate on the pending cases of banks in Civil Courts at Baroda. Baroda is a growing industrial center of National importance and all the nationalised banks are having their branches in Baroda. Bank of Baroda is having their Head Office at Baroda and it is a leading Nationalised Bank.

Since some of the cases are pending for last more than 15 years and execution proceedings are pending since last 20 years, it was a challenging task to ascertain the exact pendency. For that purpose various records like filing registers, daily boards etc proved of immense help.

I

TOTAL NUMBER OF SUITS AND AMOUNT INVOLVED :

For this purpose all the cases filed by the banks in the year 1998 were studied. As per the filing register 98 cases were filed in Senior Division Courts. The summarised position of such cases for the year 1998 is as under.

TYPE OF COURT	NO.OF COURTS	NO.OF CASES
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SENIOR DIVISION	9	98
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A further analysis of such suits shows that in comparison to total Number of suits filed, the bank cases have significant percentage of almost 11%. As far as this cases are concerned they are based on documentary evidence because all the banks have their printed documents like promissory notes, deed of hypothecation and other standard forms which are uniform for all the branches. Generally such documents are prepared in active consultation with Senior Advocates/Solicitors.

Any study of the recovery cases does not become complete till such time the pending cases before Debt Recovery Tribunal are taken into account. The reason is that after the year 1995 all the cases of banks involving amount of more than Rs.10 lacs have to be filed before Debt Recovery Tribunal. Separate particulars of this have been given in this study. As far as the DRT statistics is concerned it is for entire Gujarat State.

II

CLASSIFICATION OF DIFFERENT PENDING SUITS

(BANKWISE)

For this purpose the filing records and daily boards of various Civil Courts in Baroda were taken as the basis. There are in all 1172 pending cases of various banks in different Civil Courts of which 691 cases are in Senior Division Courts and 481 cases are in Junior Division Courts. These are the cases in which judgement and decree has not been passed and hence the comprehensive picture of overall pendency of bank cases can be worked out when this data is read in conjunction with data of execution applications.

Table 10-A gives exact bankwise classification of the cases filed by various banks in Senior Division Courts. Table 10-AA gives analysis of bank suits filed in Baroda Court during the year 1998. Table 10-AAA gives bankwise classification of 481 cases pending before Junior Division Courts in Baroda.

The aforesaid data suggest that most of the cases (almost 70%) are filed by leading banks like Bank of Baroda, State Bank of India, Central Bank of India, Bank of India and Dena Bank. The reason of these banks having more cases was found to be their having more number of branches in Baroda City and District. As a result they have more advances and number of accounts and consequently more suits. The suits on behalf of the banks are filed by their panel Advocates. The banks maintain panel of senior/eminent Advocates who are well versed with banking transactions and activities. Usually such advocates are having

TABLE 10 - A

STATEMENT SHOWING BANKWISE POSITION

OF SUITS FILED BY VARIOUS BANKS

IN CIVIL COURT, BARODA AND PENDING

FOR LAST 10 YEARS.

<u>NAME OF BANK</u>	<u>NO.OF CASES</u>
BANK OF BARODA	214
STATE BANK OF INDIA	127
BANK OF INDIA	136
CENTRAL BANK OF INDIA	67
DENA BANK	45
BANK OF MAHARASHTRA	27
UNION BANK OF INDIA	25
FEDRAL BANK	23
PUNJAB NATIONAL BANK	26
(INCLUDING NEW BANK OF INDIA)	
CANARA BANK	13
STATE BANK OF SAURASHTRA	33
OTHERS	67
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TOTAL : 691	



TABLE 10 - AA

BANK WISE POSITION OF CIVIL SUITS

FILED IN CIVIL COURT (S.D.) BARODA

DURING THE YEAR 1998

<u>NAME OF BANK</u>	<u>NO.OF SUITS</u>	<u>AMOUNT INVOLVED</u>
1. BANK OF BARODA	19	94.07 LACS
2. DENA BANK	4	28.15 LACS
3. CENTRAL BANK OF INDIA	11	14.36 LACS
4. CORPORATION BANK	3	6.12 LACS
5. STATE BANK OF INDIA	17	64.84 LACS
6. BANK OF BARODA	28	118.29 LACS
7. STATE BANK OF SAURASHTRA	4	14.23 LACS
8. FEDERAL BANK	1	6.57 LACS
9. INDIAN OVERSEAS BANK	1	0.68 LACS
10. BANK OF MADURA	2	3.02 LACS
11. VIJAYA BANK	1	0.71 LACS
12. KARUR VYASYA BANK	1	3.81 LACS
13. PUNJAB NATIONAL BANK	4	3.80 LACS
14. UNION BANK OF INDIA	1	5.83 LACS
15. STATE BANK OF INDORE	1	1.32 LACS
TOTAL:		98 365.80 LACS

TABLE 10 - AAA
STATEMENT SHOWING BANKWISE POSITION
OF SUITS FILED BY VARIOUS BANKS
IN CIVIL COURT JUNIOR DIVISION
BARODA AND PENDING FOR
LAST 10 YEARS.

<u>NAME OF BANK</u>	<u>NO.OF CASES</u>
BANK OF BARODA	123
STATE BANK OF INDIA	70
BANK OF INDIA	77
CENTRAL BANK OF INDIA	29
DENA BANK	19
BANK OF MAHARASHTRA	36
UNION BANK OF INDIA	8
PUNJAB NATIONAL BANK	15
CANARA BANK	3
STATE BANK OF SAURASHTRA	30
OTHERS	70
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TOTAL : 481	

professional standing of more than 10 years. The banks are having their administrative offices called regional offices who exercise supervision and control over all the branches and one of the key area is monitoring of NPAs. In such offices there are specialised legal departments headed by law officer. Such law officers keep liaison with the advocates in respect of filing of suit etc. The data of pending suits collected during the research study has been further tabularised on basis of various important parameters in the subsequent paragraphs of this chapter.

III

CLASSIFICATION BY TIME INVOLVED

(AGEWISE CLASSIFICATION)

The agewise classification of suitfiled cases of banks is given in Table 10-B. Table 10-C gives courtwise classification of bank's matters in Senior Division Courts. Baroda has four permanent and five additional courts of Senior Division. Table 10-CC gives courtwise classification in respect of bank matters in Junior Division Courts. Table 10-D gives yearwise position of pending cases of banks in Junior Division Court Baroda. Table 10-E gives position of suits filed by various banks in Civil Court Baroda during the year 1998.

The analysis of research data on this aspect reveals certain interesting trends and it can be taken as an indicator. The earliest suit filed cases of such banks which were pending can be traced back to 1970 and there were substantial number of cases (23.6%) which were pending for more than 10 years. The percentage of cases pending for more than 5 years are 58%. The data as aforesaid reveal a consistent trend even with all India data and these are the cases where even the judgement is yet not reached. The real problems starts only after decree is passed and execution proceedings are filed. Another interesting aspect of the matter is that the cases for all the banks are pending and no bank is an exception. The emerging positive stand is the settlement attempted through Lok Adalats exclusively conducted for cases of the bank. Recently on 7th March, 1998

TABLE 10 - B
STATEMENT SHOWING AGEWISE BANKWISE
POSITION OF SUITS FILED BY VARIOUS
BANKS IN CIVIL COURT, BARODA AND
PENDING FOR LAST 10 YEARS.

<u>YEAR</u>	<u>NO.OF CASES</u>
1989 & PRIOR TO 1989	196
1990	40
1991	27
1992	43
1993	93
1994	79
1995	75
1996	52
1997	71
1998	15
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TOTAL :	691

TABLE 10 - C**COURT WISE PENDING CASES OF**
BANKS IN SENIOR DIVISION COURTS**BARODA**

<u>COURT</u>	<u>NO. OF SUITS</u>
1. I	226
2. II	27
3. III	67
4. IV	58
5. V	48
6. VI	113
7. VII	79
8. VIII	14
9. IX	59

TOTAL	691

TABLE 10 - CC
COURT WISE PENDING CASES OF
BANKS IN JUNIOR DIVISION COURTS
BARODA

<u>COURT</u>	<u>NO. OF SUITS</u>
1. I	114
2. II	102
3. III	57
4. IV	126
5. V	10
6. VI	26
7. VII	34
8. VIII	12
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TOTAL	481

TABLE 10 – D
STATEMENT SHOWING YEARWISE POSITION
IN CIVIL COURT JUNIOR DIVISION
BARODA OF PENDING CASES OF
BANKS FOR LAST 10 YEARS.

<u>YEAR</u>	<u>NO.OF CASES</u>
1989 & PRIOR TO 1989	180
1990	22
1991	10
1992	3
1993	12
1994	79
1995	59
1996	93
1997	18
1998	5
	<hr/>
TOTAL :	481

TABLE 10 – E
MONTHWISE DETAILS OF SUITS FILED
BY BANKS AND TOTAL NO. OF SUITS
FILED IN CIVIL COURT
BARODA.

<u>MONTH</u>	<u>SUITS</u>	<u>RUPEES</u>
		<u>AMT.IN LACS</u>
January	10	45.39
February	8	20.01
March	12	23.02
April	10	102.02
May	12	30.51
June	6	9.55
July	8	31.42
August	7	21.31
September	6	25.23
October	5	18.46
November	10	24.10
December	4	14.78
TOTAL :		365.80 LACS

TOTAL NUMBER OF SUITS DURING 1998 – 985

NOTES : THE TABLE SHOWS THE VALUATION OF SUITS ON BASIS OF VALUATION GIVEN BY THE PLAINTIFF AT TIME OF FILING OF SUITS.STATE BANK OF INDIA AND BANK OF BARODA ARE DEFENDANT IN 1 CASE EACH.

Dena Bank conducted Lok Adalat for DRT cases and Four Retired Judges of Gujarat High Court were associated with the panel for conciliation (Justice Kapadia, Justice Chauhan) This initiative of the bank has resulted in early settlement of pending cases. The Top Executive for the bank for Gujarat was present and cases for interest waiver were decided on the spot.

IV

CLASSIFICATION OF SUITS BY AMOUNT INVOLVED

A. BANKS

Depending on pecuniary jurisdiction of the courts and as per the provisions of Recovery of Debts due to Banks and Financial Institutions Act 1970, the cases of banks will be decided by various forums on basis of the amount as under :-

<u>AMOUNT</u>	<u>FORUM</u>	<u>CONSTITUTING LAW</u>
BELOW 5000/-	SMALL CAUSES COURT	SMALL CAUSES COURTS ACT.
BELOW 50,000/-	CIVIL COURT(J.D.)	THE BOMBAY CIVIL COURTS ACT
Rs.50,000/- AND ABOVE UPTO Rs.10 lacs	CIVIL COURT (S.D)	THE BOMBAY CIVIL COURTS ACT.
Rs.10 lacs AND ABOVE	DEBT RECOVERY TRIBUNAL	RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT.

Apart from the aforesaid hierarchy of the courts the banks are having additional forums under certain special laws. Thus under Gujarat Public Monies Recovery Act in respect of State sponsored Schemes the banks can file recovery certificate and on basis of the same specially designated Government Officer can

recover the money due to the bank.**3 This remedy is helpful in recovery of dues under agriculture and small advances. The banks having large number of such cases have been provided special recovery officers for this purpose on deputation from Revenue Department. The amountwise classification of cases filed by banks in Senior Division Courts at Baroda is given in Table 10-F.

B. FINANCIAL INSTITUTIONS :

Special provisions have been made under the statutes constituting the financial institutions and hence it is not always necessary for such institutions to approach for the remedies before Civil Courts. Section 29 of State Financial Corporations Act is of vital importance and it is stipulated under the said section that where any industrial concern, which is under a liability to the financial corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the corporation or otherwise fails to comply with the terms of agreement with the financial corporation, the financial corporation shall have right to takeover the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sell or realise the property, pledged, hypothecated, mortgaged to the financial corporation. Any transfer of property made by the financial corporation in exercise of the aforesaid power shall vest in the transferee all rights as if the transfer has been made by owner of the property.

The aforesaid section vests very wide power in the State Financial Corporation to sell the property without intervention of the court.

The constitutional validity of the provision was challenged in various cases and Gujarat High Court has upheld its validity. **4 While exercising the rights corporation is expected to strictly follow the provisions of the section. The Kerala High Court took a view that Section 29 applies only to the industrial concerns

****3 SECTION 3 GUJARAT PUBLIC MONIES RECOVERY ACT.**

****4 ALKA CERAMICS V/S.GSFC. AIR 1990 GUJARAT 105**

TABLE 10 - F

AMOUNTWISE CLASSIFICATION OF THE

SUIT FILED BY BANKS DURING

THE YEAR 1998 IN CIVIL

COURT. BARODA.

<u>AMOUNT</u>	<u>NO. OF SUITS</u>	<u>TOTAL</u>
0 – 50000	-	-
50000-1 LAC	26	18.31 LACS
1 LAC – 2 LAC	23	34.07 LACS
2 LACS – 3 LACS	13	30.97 LACS
3 LACS – 4 LACS	7	25.09 LACS
4 LACS – 5 LACS	4	17.08 LACS
5 LACS – 6 LACS	7	38.90 LACS
6 LACS – 7 LACS	4	26.81 LACS
7 LACS – 8 LACS	4	29.82 LACS
8 LACS – 9 LACS	4	34.44 LACS
9 LACS – 10 LACS	3	28.56 LACS
ABOVE 10 LACS	3	81.75 LACS
	98	365.80 LACS

NOTES : *SUIT ABOVE 10 LACS ARE NOW TO BE FILED IN DEBT
RECOVERY TRIBUNAL

** SUIT BELOW 50000/- ARE NOW FILED BEFORE THE DRT.

which have pledged, mortgaged, hypothecated or charged the rights in the property to the corporation. It does not apply to any other property sought to be transferred by the corporation and it will have to resort to Civil remedy for that purpose. **5 Section 29 envisages a de facto and de jure possession because it involves the right to transfer the things possessed. Section nowhere stipulates that corporation becomes the owner of defaulter concern. Possession has to be a conspicuous possession. **6

Another important interpretation by the Supreme Court is that under Section 29 the Corporation is treated as trustee of the debtor and it saddles the Corporation with in-built duties, responsibilities and obligations in dealing with the property.**7

Whether the Corporation has any right to convert the property in cash was decided by the Supreme Court and it is held that the financial corporation has such right and the amount realised can be adjusted towards the loan dues. By such transfer the property will vest in the transferee as if transfer was made by the owner of the properties.**8 The aforesaid section proves to be of considerable help for the State Financial Corporations (SFC) nevertheless If the figures given below are an indicator, SFC have also their own problems of recoveries.

**5 KAVERI MEAT EXPORT CO. V/S. KERALA FINANCE CORP. II 1996 BC 447 KERALA DB

**6 SDO V/S. GOPALCHANDRA. AIR 1971 1190

**7 MAHESHCHANDRA V/S.U P FINANCE CORP. AIR 1993 SC 935

**8 GSFC V/S. NETSON MFG. CO PVT. LTD. AIR 1978 SC 1785

<u>YEAR</u>	<u>PROVISION MADE</u>
	<u>FOR NPA</u>
	<u>(RS.IN CRORES)</u>

1991-92	-
1992-93	17.86 **9
1992-94	10.64
1992-95	23.49
1992-96	25.87

ACCUMULATED AMT. 75.10**10

V

CLASSIFICATION BY SECURITY INVOLVED

Various forms of security taken by the bank have been discussed at length in chapter XII. The purpose of taking security is to provide cushion to the lender in the contingency of the borrower making default. Usually the banker takes tangible securities in the form of mortgage, hypothecation, pledge etc.

For case study a sample of 30 cases filed by various banks was studied. Out of them in 5 cases the advance was secured by mortgage. In another 20 cases the security available was in the form of hypothecation. In the transactions involving bills, the accepted bills were prime security, supported by collateral like mortgage.

**9 AS PER RBI GUIDELINES.

**10 SOURCE PG.NO.28 OF PROSPECTUS ISSUED BY GSFC.

NATURE OF FACILITY**SECURITY**

- | | |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. CASH CREDIT | GENERALLY DEED OF HYPO.
PROMISSORY NOTE |
| 2. TERM LOAN | <p>IF THE LOAN IS GIVEN FOR LAND AND BUILDING. SUCH PROPERTY IS MORTGAGED</p> <ul style="list-style-type: none"> - IN CASE OF PLANT AND MACHINERY. HYPOTHEATION OF PLANT AND MACHINERY IS TAKEN. - IF THERE IS FIRST CHARGE IN FAVOUR OF TERM LENDING INSTITUTION, SECOND CHARGE IS TAKEN. |
| 3. BILLS LIABILITY | DULY ACCEPTED BILLS ARE TAKEN AS SECURITY. |

In almost 85% of the cases personal guarantee is taken from the director in case of closely held Public Company/Private Limited Companies. Though the partners are jointly and severally liable, some banks obtain additional personal guarantee from the partners.

VI**CLASSIFICATION BY % OF TOTAL ADVANCES**

The figures of total advances of the bank fluctuate and there is no rational basis for comparison of pending cases in Baroda Court with total advances.

After bank nationalisation banks are required to lend atleast 40% of the amount to priority sector. The priority sector comprises of agriculture, self employed persons, small scale Industries rural artsions etc. In terms of number of accounts, this segment is highly vulnerable to default. Out of the suit filed accounts, in terms of number almost 75% of the accounts are from this segment. However the total amount involved in these cases is comparatively small. That apart the banks are to an extent protected by supporting scheme of the Government like NABARD refinance etc.

In 1990 the Government of India introduced debt relief scheme and under the scheme, relief upto Rs.10,000/- per borrower was given. The amount of relief was compensated by the Government to the banks directly. **11 Because of this scheme substantial number of cases pending before Junior Division Court could be withdrawn. However when the amount claimed in the suit was more than the relief amount, the cases still continue. Another interesting feature which has been noticed is that the farmer's association had given call for filing insolvency petitions and thousands of such petitions were filed by the farmers pursuant to such call. This group was indifferent and non- cooperative to the banks in repayment and had the potential of default in repayment.

As far as the SSI are concerned the study of data in civil court and DRT reveals that certain segments of industry were having large sick accounts. The prominent among them are textiles, steel and electronics. In some cases because of strict enforcement of pollution laws, there was forced closure of the unit. This segments were having large number of suit filed cases. A sample of 20 cases was studied from DRT. Out of them 6 were from steel industry, 2 were from colour and chemicals and remaining were from plastics, yarn etc.

**11 DEBT RELIEF SCHEME INTRODUCED BY SHRI V. P. SINGH

VII

STATEWISE CLASSIFICATION

Despite the endeavor of the Government to ensure balanced growth of the industry and encouragement given to the industries who establish their units in industrially backward areas. It was noticed that some States like Maharashtra, Gujarat, Karnataka had substantial industrial growth. In these States the number of bank branches and finance given was also more. Hence there were comparatively larger number of suit filed accounts.

The statistics of Gujarat State in respect of Debt Recovery Tribunals clearly reveals that a huge sum of Rs.7,45,75,39,646.37 was involved in 697 cases as on 21/8/97.

In those states where there are large number of cases, separate Debt Recovery Tribunals function for various states as under :-

<u>STATES</u>	<u>PLACE</u>
RAJASTHAN AND M.P.	JAIPUR
GUJARAT, DAMAN	AHMEDABAD
KARNATAKA	BANGLORE
MAHARASHTRA	BOMBAY
DELHI, PUNJAB, HARYANA	DELHI

As far as the small advances are concerned pursuant to the Talwar Committee Report, Special State Legislations have been enacted to enable the banks to recover money in speedy manner. In State of Gujarat, Gujarat Public Monies Recovery of Dues Act and Gujarat (Agriculture credit) provision of Facilities Act are classic examples of such legislation.

VIII

DECREE ACCOUNTS

The word decree means the formal expression of an adjudication which so far as regards the courts exclusively determines the right of party with regard to all or any matters in controversy or may be either preliminary or final. It shall be deemed to include rejection of plaint and determination of any question under section 144 (Restitution) It does not include,

- a) Any adjudication from which appeal lies as an appeal from an order.
- b) Any order for dismissal or default.**12

The Supreme Court of India has laid down the following three tests for decree—

- (a) The adjudication must be given in a suit.
- (b) Suit must start with a plaint and culminate in a decree.
- (c) The adjudication must be formal and final and must be given by final court.

**13

For the purpose of study the data of pending execution applications in the first court was examined. It was found that there were in all 118 execution applications pending, of which 77 were filed by the banks. Hence if data of this court is to be taken as indicator, almost 70% of the execution proceedings were filed by the banks. The bank wise position of various decreed account table shows that State Bank of India and Bank of Baroda had maximum number of execution

**12 SECTION 2 (2) CPC

**13 GIVEN BROTHERS V/S. CBI AIR 1976 SC 1503.

applications. Keeping in view the number of branches and advances of those banks the data was consistent with larger proportion of cases.

IX

AGEWISE CLASSIFICATION OF ACCOUNTS

Though the very purpose of execution is to bring logical end to the litigation, the data shows that the earliest pending case for execution is of 1975. There were 35% pending cases of more than 10 year duration which shows that even after getting a decree, the actual recovery of moneys takes years. The various reasons for which execution were pending were as under :-

1. Report from the Receiver not produced.
2. Pending for clarification by advocate of plaintiff.
3. Payment of Process Fees.
4. Pending for reply to execution application.
5. For providing details of legal heirs.
6. For service of notice of execution.
7. Hearing of interim application.
8. For providing address of judgement debtors.
9. For hearing.
10. Service of warrant.
11. Service of jangam warrant.
12. Pending for auction proceedings.
13. Pending for proclamation of sale.

The data showing classification of the suits in Junior Division courts at Baroda on the basis of year of filing has been given in Table 10-D at the end of this chapter.

X

CATEGORY WISE CLASSIFICATION

Most of the pending cases were pertaining to agriculture and priority sector. This was in terms of number of accounts and the overall significance of this

segment to entire pendency is less as compared to the industry segment. From the industry's segment in most of the accounts the amount involved was more than Rs.10 lacs and these cases are pending for recovery before Special Recovery Offices in DRT. Complete data of such pending cases before DRT including data of disposal is given at the end of this chapter.

XI

DELAY FACTORS

The delay is involved at various stages including some of the internal formalities to be completed by the bank. Table 10-G gives analysis of various factors due to which 691 cases filed by the banks were pending before Civil Courts (Senior Division), Baroda. Table 10-GG gives similar analysis of 481 cases pending before Junior Division Courts in Baroda.

A. NOTICE

The first stage is of sending demand notice. In banking terms this is known as recalling. An account is recalled when bank apprehends that there is an immediate or contingent risk to recovery of money and interest. The bankers have their in-built mechanism to ascertain such risk from scrutiny of the accounts. In case of loan accounts the instalments have to be paid at regular periodicity. In cash credit, the interest is payable on quarterly basis and if it remains unpaid, or there is no adequate stock to sustain the drawing power the account becomes overdrawn.

The power to recall the advance have been vested with various authorities. Decision to send notice in some cases is taken after several weeks or months.

B. NEGOTIATIONS BEFORE FILING OF SUITS. Litigations is a costly and time consuming process and hence it is an endeavor of the banks to work out a negotiated settlement with the borrowers. For that purpose meeting is arranged with the borrowers. The borrowers sometimes raise the plea of industrial sickness

TABLE 10 - G

STATEMENT SHOWING STAGEWISE POSITION

OF BANKS IN CIVIL COURT (S.D.) BARODA

FOR LAST 10 YEARS.

<u>STAGE</u>	<u>NO. OF PENDING CASES</u>
SERVICE OF SUMMONS	223
JOINING OF LEGAL HEIRS OF DECEASED DEFENDANT	6
FILING OF WRITTEN STATEMENT	122
REPLY OF EXH.5 (INJUNCTION ATTACHMENT ETC.)	42
FRAMING OF ISSUES	128
EVIDENCE OF THE PARTIES	79
ARGUMENTS	63
EX-PARTE JUDGEMENTS	14
NEGOTIABLE FOR SETTLEMENTS	14
TOTAL	691

TABLE 10 - GG

STATEMENT SHOWING STAGEWISE POSITION

OF SUITS FILED BY VARIOUS BANKS

IN CIVIL COURT JUNIOR DIVISION

BARODA AND PENDING FOR

LAST 10 YEARS.

<u>STAGE</u>	<u>NO. OF CASES</u>
NON-PAYMENT OF PROCESS FEES	28
SERVICE OF SUMMONS	179
JOINING OF LEGAL HEIRS	6
REPLY OF EXH.5	14
WRITTEN STATEMENT	15
DECISION ON OTHER APPLICATION	1
FRAMING OF ISSUES	119
EVIDENCE BY PLAINTIFF	76
EVIDENCE BY DEFENDANT	35
ARGUMENTS	5
EX-PARTE JUDGEMENTS	2
AMENDMENT OF PLAINT	1
TOTAL	481

and request the bank for nursing program. The time involved in ascertaining the viability of nursing program and taking a decision whether any nursing should be given in the account or not takes several months. This also provides breathing time to the borrower to utilise plant, machinery and assets.

C. PREPARATION OF PLAINTS

Almost in all the suits of banks there are documentary evidence and statement of accounts, hence while preparing pleadings a careful narration of all the rights of the banks constituting cause of action is required. In the cases involving finance to industry more complications and intricacies are involved because there is every possibility of the borrower contesting the matter. Hence in suits involving large amounts, the banks take the services of competent solicitors, advocates for preparing draft of plaint. Officers of in house dept. of the bank are also involved in the process of finalisation of plaint. In DRT cases there is prescribed format for application which is containing all important aspects of the plaint like limitation, jurisdiction, material facts of the case, relief sought etc. The rules governing pleading stipulate that the pleadings must narrate the facts and not evidence.**14

It is suggested that in consultation with legal dept. of all the banks the model draft of the plaint can be prepared and all the banks can adhere to such drafts with minor and factual changes to meet with facts of particular case which can save the time involved.

D. SERVICE AND RETURN OF SUMMONS

After filing of the suit and initial scrutiny, the first stage is of issue of the summons. When a suit is properly instituted the court will issue summons to appear and answer the plaint. The appearance may be in person or by a pleader duly instructed. The summons has to be signed by the judge and shall bear the seal of the court. The copy of the plaint is to be attached with the summons. If deemed necessary by the court, defendant may be directed to appear personally. The

**14 ORDER 6 RULE OF CPC

court can decide whether the summons can be issued for settlement of issues or final disposal of the issues. The date shall be fixed in such a way that defendant gets sufficient time to appear and answer. The summons may also direct the defendant to produce, all the documents in his possession or power upon which he intends to rely in support of his case. If summons is for final disposal, the defendant is also required to produce his witnesses.

If the defendant resides within the jurisdiction of the court the summons is delivered to court bailiff for service and the summons will be served by tendering the copy of the summons to the defendant or each of the defendants. As far as possible the summons will be on the defendant only and or his duly authorised agent. In case defendant is not available or if the defendant does not reside within local limit but has a manager or agent within such local limits, service of summons on such agents is considered to be good service. If suits pertain to immovable property service may be made on agent of defendant in charge of property. The summons can be served on any adult family member male or female, if defendant can not be found.

Person who is served with the summons has to sign an acknowledgement. If the defendant or his agent refuses to sign acknowledgement or there is no likelihood of his being found the serving officer shall affix the copy of the summons on the entrance door or some conspicuous part of the house and make a report to that effect on the summons along with name, address of the person by whom the house was identified and also narrating the time of the same. The court may examine the serving officer on oath or affidavit and such service will constitute a good service.

To avoid delay in service of summons the plaintiff can apply for simultaneous service that means a summons through a court officer and through Registered Post A D. Postal A D received for this purpose constitute good service of summons. If the A D is lost or mislaid, declaration can be made within 30 days of the date of issue of summons.

The court also has a power to direct substituted service of summons when the defendant for the purpose of avoiding service or for any other reason is not available. In such case the summons may be served by affixing copy on the notice board of the court and also on conspicuous place of house of the defendant. Summons may also be published in newspaper circulating in locality where defendant is last known to have resided.

If the defendant resides within jurisdiction of another court the summons will be sent to the other court and such court will serve the summons.

If defendant is in prison the summons can be sent to the officer in charge of prison.

If defendant resides out of India the summons can be sent by post if postal communication is available and if it is on a person in Bangladesh or Pakistan it can be sent directly to the court in that country.

In the country where the Central Government has a political agent the summons may be sent to such political agent either by post or through concerned ministry of Government. If the defendant is a sailor, airmen, the summons will be sent to commanding officer, If the addressee of the summons is a person of rank entitling him to mark of consideration the court may issue letter as substitute of the summons.

In the suits involving banks the analysis of pending cases shows that almost 1/3rd of the cases are pending because of non service, court process can not activate unless this stage is complied. The consequences of non service of summons are fatal to the case. If the summons can not be served because of the plaintiff to pay process fee the suit may be dismissed. If the summons is unserved and the plaintiff applies for fresh summons within 3 months, than also the court may dismiss the suit.

The delay involved can be reduced by ascertaining the correct address of the borrower in advance and resorting to the provisions of substituted service and simultaneous service of the summons. The cost involved in publishing the summons in newspaper varies from Rs.4,000/- to Rs.15,000/- and for the suits involving small amounts, bankers see it as unproductive expenditure. The cost involved can be considerably saved if various such summons to be issued can be combined and cost of such summons is shared by various plaintiffs.

E. WRITTEN STATEMENT

As can be seen from data of pending cases of banks, several cases (almost 20%) are pending for want of filing of written statement.

The defendant is required to present written statement of his defence at or before first hearing or within such time as the court permits.

The very purpose of using the words "at or before the first hearing" was to compel the defendant to submit his defence at the earliest. In practice however 3-4 adjournments are granted as a routine and only thereafter stage to file reply is closed.

The legal defences that can be raised by the defendant in his pleading are about the suit being not maintainable, or the transaction being void or voidable in point of law and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of plaint, as for instance, fraud, limitation, release, payment, performance or facts showing illegality. **15 Only general denials are not sufficient and the defendant must specifically deny each of the allegations. The denial should not be evasive but it should answer the point of substance.

**15 CIVIL PROCEDURE CODE, ORDER 8, RULE 2

If any averment in the plaint is not denied specifically or by necessary implication or stated to be not admitted in the pleading the same shall be taken to have been admitted except against person under disability.

If the defendant for any reason does not file his written statement there is inbuilt remedy under the law and the court can proceed with the matter in its own way where the defendant has not filed a reply, it shall be lawful for the court to pronounce a judgement on the basis of facts contained in the plaint, except against a person under disability, but the court may in its discretion, require any such fact to be proved. **16

Particulars of setoff or counterclaim has to be separately given. In cases filed by the banks sometimes the defendant raises counterclaim by raising plea of alleged damages suffered and this adds further complication to the case and adds to delay.

Where defendant bases his defence upon a document in his possession or power, he shall produce it in the court when presenting written statement.

When there is inordinate delay in filing written statement banks can certainly seek remedy under Order 8, Rule 10 of Civil Procedure Code. It provides that where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by court, as the case may be the court shall pronounce judgement against him or make such order in relation to the suit as it thinks fit and on pronouncement of such judgement a decree shall be drawn up. **17

**16 CIVIL PROCEDURE CODE, ORDER 5 RULE 2.

**17 CIVIL PROCEDURE CODE, ORDER 8, RULE 10.

The original Civil Procedure Code (prior to 1976) contained the words "may, and if so required by the court" in this provision. The omission of such words in amendment means that the defendant must file his written statement within time allowed by the court, **18 At the same time the court is not obliged necessarily to pronounce a judgement against a defendant merely because he has not filed the written statement and may exercise its other powers including the power to dismiss the suit. **19

The Rajasthan High Court has taken balanced view in the matter. As per its judgement where the defendant fails to file his written statement within the time permitted by the court there are two courses open to the court, namely the court may, under the first part of amended rule, proceed to pronounce the judgement or it may under its second part which gives wide discretion to the court to make such order in relation to suit as it thinks fit, proceed further with the matter. Although the defendant will be debarred from filing his written statement subsequently he can yet be allowed to cross examine the witnesses produced by the plaintiff and adduce evidence in rebuttal of allegations made in the plaint and then can take part in final arguments leading to the decision of the suit. But he can not be allowed to lead any evidence in respect of defences which have not been raised on account of failure to file written statement. **19A

As per the amendment of Civil Procedure Code as applicable to State of Gujarat, additional obligation is cast on the parties to file addresses. Under this provision, every party, whether original, added or substituted, who appears in any suit or other proceeding shall, on or before the date fixed in the summons file in the court a memorandum in writing stating his address for service, and if he fails to do so he shall be liable to have his defence struck out and be placed in same position as if he had not defended.

**18 TAXMAN'S CODE OF CIVIL PROCEDURE CODE, 1992 EDITION, PG.221

**19 MATHEW V/s. NAGPUR RAMON CATHOLIC CORP.LTD. AIR 1978 MP.39.

**19A GANPATCHAND V/s. JETHMAL, AIR 1983 RAJ.146

In light of the aforesaid provisions and the strong/virtually irrebuttable documentary evidence the banks can insist for exparte judgement/proceeding on basis of aforesaid provisions. The discretion to pronounce exparte judgement has to be exercised judiciously. When the day fixed was a gazetted holiday the Delhi High Court held that discretion be exercised by granting adjournment. **20

Certain pronouncements of the High Court however make the power to grant exparte judgements a virtually dead letter. The Patna High Court has held that if in the opinion of the judge defendant is found to be adopting dilatory tactics, in such case, the court should examine the case of plaintiff on merits and passing of an exparte decree should be avoided. **21

The defendants file applications requesting for extension of time, canons of justice require that the request should be dealt on merits. If the request is not reasonable and bonafide, the court will be justified in refusing such a request. No hard and fast rule can be laid down for such purpose. **22

F. FRIVOLOUS COUNTER CLAIMS/DEFENCES

The provisions relating to counterclaims are sometimes distorted by the defendants against the banks and it results in delay. As per the discussion with the bankers/advocates handling substantial cases of the banks, such claims were filed on following grounds :-

- (a) That the banks did not release finance/adequate finance in time and hence project of the borrower suffered, constituting damage claim.
- (b) The rate of interest charged by bank was excessive.
- (c) The bank has not provided nursing programme to the unit.
- (d) Additional finance was not released though all norms were complied.
- (e) The defendant wanted to switchover to other bank but no due certificate and consent was not given by plaintiff bank.

**20 J.P.KAPOOR V/s.BANK OF MAHARASHTRA/86 DELHI LAW TIMES P.130

**21 D.P.BAKSHI V/s. P.P.SINHA AIR 1989 PAT.139.

**22 SMT.SUSHILA JAIN V/s.RAJASTHAN FINANCIAL CORP.AIR 1979 RAJ.215.

- (f) The defendant could not execute its export orders because of the bank not releasing export finance.
- (g) Defence by the guarantors that the bank failed to take possession of hypothecated goods and sell them and it could have substantially reduced the liability.
- (h) Bank is an instrumentality of State and hence can not discriminate in charging rate of interest.
- (i) The rate of interest is excessive/compounding of interest is not permissible.

The time involved in examining the counterclaim and disposing them on merits can be avoided satisfying basic legal requirements of such claim. **23 The Supreme Court has held that a counterclaim can be set up by reason of defendant and while answering the claim itself and not independent of such defence. Unless it can be raised by way of defence to the claim in suit, although being of an independent entitlement counterclaim can not be tried alongwith the claim. Once such relevance is established, entitlement follows notwithstanding that cause of action might have accrued even after the suit was filed.

The banks indeed have to be prompt in replying counterclaim. If plaintiff makes default in putting reply to counterclaim made by defendant, court may pronounce judgement against plaintiff in respect of counterclaim made. **24

F. SETTLEMENT OF ISSUES

The pending data of bank cases analysed for this research study reveals that several matters were pending for framing of issues. Hence a detailed study was made to ascertain how delay can be avoided. It will be more appropriate to find out solutions of the problem in context of the legal provisions.

**23 MAHENDRAKUMAR V/s.STATE OF M.P., AIR 1986 SC 1399

**24 ORDER 8, RULE 6-E OF CIVIL PROCEDURE CODE.

Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Material propositions are those proposition which a plaintiff must allege in order to show a right to sue or defendant must allege in order to constitute his defence.

ISSUES ARE OF 2 KINDS **25

- (a) Issues of fact
- (b) Issues of law

Each material proposition affirmed by one party and denied by other shall form distinct issue.

The court shall at first hearing of the suit after reading the plaint and statements ascertain upon what material propositions of fact or law the parties are at variance and proceed to frame and record the issue on which the right decision of the case appears to depend.

Mere omission to frame issue is not necessarily fatal to trial of the suit unless the omission results in injustice. **26 If court fails to frame proper issues the omission can be cured by appellate court who should lay down proper issues and remit them for proper trial.

The court is required to pronounce judgement on all the issues. If the court is of the opinion that the case or any part thereof may be disposed off on an issue of law only, it may try that issue first if it relates to:

- 1) Jurisdiction of the court.
- 2) Bar to the suit created by any law for the time being in force.

The court may postpone decision on other issues until such issues are decided. Such issues are called preliminary issues. A question of law from which no evidence is to be recorded can be tried as preliminary issue. **27

****25 ORDER 14 RULE 1 CPC**

****26 NEDUNURI V/s. SAMPATTIRAO AIR 1963 SC 884**

****27 RAMKALI V/s. SOHANLAL AIR 1985 PUJ AND HAR.124**

The court is required to frame the issue from following materials.

- (a) Allegations made on oath by the parties or by any person present or by their pleaders.
- (b) Allegations made in the pleading or in answer to interrogatories.
- (c) Contents of documents produced by the parties.
- (d) Allegations collected from the parties or pleaders not discriminatory in nature such allegations and pleadings can be relied upon as relevant material. **28 The court can examine witnesses and documents before framing the issues and passing of decree.

It is open to the parties to agree for question of fact or law to be decided and it may be stated in form of issue and upon entering into that effect. The court may pronounce judgement on such issues.

Upon scrutiny of the issues framed in various courts in bank cases it was observed that almost all issues are common and same are summarized below :-

ISSUES

- (a) Whether the plaintiff proves their suit claim?(Some judges mention the amount and mention suit documents)
- (b) Whether plaintiff proves defendant stood as guarantor.
- (c) Whether the plaintiff proves that defendant has mortgaged the property described in plaint.
- (d) What is due to plaintiff.
- (e) Whether plaintiff is entitled to interest and if so at what rate?
- (f) What order and decree?
- (g) Whether the suit is barred by limitation?

**28 SAHEBJADI BEGUM V/s. MIRZA AHMED 4 BLR 103

Another major factor for delay is the appeal and revisions filed by the parties during pendency of suits. Order 43 deals with appeal from order and stipulates that appeal can be filed against the following orders.:-

1. Order returning the plaint to be presented to proper court. **29
2. Order rejecting application to set aside dismissal of suit. **30
3. Order rejecting an application for setting aside a decree. **31
4. Order on an objection to draft of a document or of an endorsement**32.
5. Order under rule 72 or rule 92 of order 21 of setting aside or refusing to set aside a sale.
6. Order rejecting the application made under order 21 rule 106 (setting aside order passed exparte).
7. Order under rule 9 of order 22 refusing to set aside the abetment or dismissal of suit.
8. Order under rule 10 of order 22 giving or refusing to give leave.
9. Order under rule 2 of order 25 rejecting application to set aside dismissal of suit.
10. Order under rule 5 of order 33 rejecting permission to sue as indigent person.
11. Order in inter pleader suit under rule 3 of order 35.
12. Order under rule 2 of order 38 (Attachment before judgement).
13. Order under rule 1, 2, 2 A, 4, 10 of order 39 (exparte injunction).
14. Order under rule 1, 4 of rule 40 (receiver).
15. Order under rule 19, 21 of order 41 refusing to re-hear an appeal (Appeal from decrees).
16. Order under rule 23 of order 21 remanding the case in appeal.
17. Order under rule 4 of order 7 granting application for review.

**29 ORDER 7 RULE 10 OF CPC

**30 ORDER 9 RULE 9 OF CPC

**31 ORDER 39 RULE 13 OF CPC

**32 ORDER 31 RULE 34 OF CPC

It is quite clear from long list of appellable order that the party have the pendency to file such appeal and delay the matter. In some extreme cases even consent decree was sought to be challenged on ground of contravention of provisions of law and the Bombay High Court held that only remedy is to file an appeal. **33

The litigants have tendency of filing revision applications against the orders of lower court. The Law Commission of India hence, recommended deletion of this provision with following observations..**34

"Experience shows that often the cause of delay in trial of suits is the entertainment of petitions or revisions against interlocutory orders which invariably results in stay of proceedings. In fact in many cases the object of the parties in moving the High Court for revision is to delay the proceedings."

Even at the stage of execution, attempt is made to prevent the bank by seeking interference of court under revisional jurisdiction. The Orissa High Court has held that where executing court directed recovery of the amount from the widow of the judgement debtor by attachment and sale of movable property and rejected her application, it was held that revision was maintainable in High Court. **35 The provision hence still remains on the statute book despite recommendations of the Law Commission to delete it. Under the provision the High Court may call for record of any case which has been decided by any court and in which no appeal lies and if such subordinate court appears:

- (a) To have exercised jurisdiction not vested in it by law.
- (b) To have failed to exercise jurisdiction so vested.
- (c) To have acted in exercise of its jurisdiction illegally or with material irregularity. **36

**33 UNION BANK OF INDIA V/s. BYRAM PESTONJEE GARIWALA AIR 1991 BOM.185

**34 LAW COMMISSION REPORT CITED IN CPC BY TAXMAN/92 EDI. PG. 127

**35 NAMITA CHAUDHARY V/s. BOB AIR 1991 ORISSA 115

**36 SECTION 115 OF CPC.

The jurisdiction under this provision is limited and it is settled position that High Court can not set aside the concurrent finding of the court below by taking evidence. It can interfere only if findings are perverse or there is non-appreciation of material evidence on record. **37

It is therefore necessary that the revisional jurisdiction should be resorted very sparingly. It was observed that the Hon'ble High Court had refused to interfere in almost 70% of the cases (7 out of 11) and even while interfering had imposed conditions.

G. RECORDING EVIDENCE

Examination of witnesses and hearing of the suit are the important stages of the suit where many matters are delayed.

The Civil Procedure Code provides that the parties are required to present the list of witnesses whom they propose to call either evidence or produce documents. Expenses for calling such witnesses have to be paid by the concerned party. The court may issue summons to the witness and if such witness fails to comply without lawful excuse his property may be attached. If he subsequently appears and satisfies the court that the order of attachment may be withdrawn.

Only those witnesses who are resident within jurisdiction of court can be directed to appear in person. The court has a discretion to exempt a witness from appearing but it is not applicable to a party to the suit. In exceptional circumstances the court has a discretion to examine a person including a party on commission. **38

**37 MASJID KACHHA TANK V/s. MOHMMAD AIR 1991 SC 495

**38 INDRAJIT ROY V/s. BOB 1991 ORISSA 45

The plaintiff has a right to begin at the hearing and he has to state his case and produce his evidence in support of the issues which he is bound to prove. **39 If party himself wishes to appear as witness he shall so appear before any other witness. The witness will be examined in open court. In appealable cases the evidence will be reduced to writing. If witness does not understand the language in which the evidence is taken down he will be explained the same. If there is reason to do so any particular question or answer may be taken down. If any question is objected and court allows the same it will be recorded. If the evidence before one judge remains incomplete because of his death, transfer or other cause his successor may deal with it from the stage from which his predecessor left it. The court has power to recall a witness if required.

The stage of evidence in cases filed by the bank involves longer time because the banks witnesses who are generally the banks officers who are transferred and it is difficult to call them on the given day. At times when they come their examination does not take place because of other important assignments with the court for the reasons like strikes etc. To save such time the court can direct proof of certain facts by affidavit.**40 Of course affidavits are not substitute for evidence and plaintiff can not be allowed to fill up the lacuna in the evidence belatedly by filing affidavit.**41

Another important reason for delay was death of the defendant during pendency of the proceedings. In such case it is obligatory on the part of bank to join legal heirs of the deceased as parties. In a case decided by Supreme Court the plaintiff bank had instituted a suit for recovery of certain amount but the defendant died during pendency of the suit. This information was given to the other branch of the bank. It was held that notice to one branch of the bank is no notice even constructive and hence rejection of application for setting aside

**39 ROY V/s. BOB AIR 1991 ORISSA 45

**40 ORDER 19 RULE 1 OF CPC

**41 SRIMATI SUDHADEVI V/s. M. P. NARAYANAN. AIR 1990 SC 1381.

abatement and condemnation of delay was not held proper.**42

H. TRIVIAL DISPUTES

The trial of the bank cases is delay by trivial disputes/baseless objections which are in no way relevant for the purpose of deciding the suit. Some of such objections are as under :-

- a) Demand for producing statement of accounts right from beginning when borrower has in fact admitted his liability by signing letter of acknowledgement.
- b) Demand for producing all circulars regarding charging of interest.
- c) Demand for providing all the entries and supporting vouchers.
- d) Defences regarding rule of dam dupat

The above pleas have been raised in a mechanical way just to ask further time.

I. ARGUMENTS BY BOTH THE SIDES

After the evidence from both the sides is completed the stage of arguments begins. The arguments may be oral or written. It is generally observed that arguments are unreasonably long. Some of the arguments are irrelevant. The parties cite large number of authorities and also read long excerpts and this adds to the delay. As many matters are listed on the board sufficient time to complete argument in one day or short time is not there and such interruption create further delay.

****42 UNITED BANK OF INDIA V/s. SHRIMATI KANAN DEVI AIR 1987 SC 1510.**

J. JUDGEMENT AND ORDERS

After the case has been heard, the court is to pronounce judgement. The CPC does not provide a time limit for the period between hearing of arguments and delivery of judgements. Nevertheless an unreasonable delay and hearing of arguments and delivery of judgement, unless explained by exceptional or extraordinary circumstances is highly undesirable. **43 The Gujarat High Court has described bank officials as custodians of public money. In a suit for recovery of loan granted on commercial terms by a nationalised bank the Lok Adalat not only granted instalment but reduced contractual rate of interest exhorting the bank to be flexible and pragmatic. Bank objected to the same but court described it as compromise decree. It was held that the representatives of the bank were trying to protect the public money. They were custodians of public money and had to safeguard the interest of the society. They could not afford to be flexible and pragmatic as directed by the trial court hence decree was set aside.**44

The court is required to give specific reasons for coming to the conclusion and for that purpose have to refer the record.

The time involved between completion of arguments and judgement varies from several months to more than a year and the major reasons for the same are as given below :-

- (a) Heavy work load of the courts.
- (b) Complexities of the case and volume of evidence.
- (c) Non availability of staff for dictating or typing judgement.
- (d) Interim orders from appellate courts in revision.
- (e) Transfer of judges.

**43 R. C. SHARMA V/s. UNION OF INDIA AIR 1976 SC 2037

**44 UNION BANK OF INDIA V/s. NARENDRA PLASTICS AIR 1991, GUJARAT 67.

There is considerable scope for reducing the time involved if relevant argument is separated from the rest. At times the judgements are found to be unreasonably long and involves mechanical reproduction of plaints and written statement with too little analysis and reasoning for issues involved. The power to grant ex-parte judgement also is sparingly exercised despite the fact that there are justifiable reasons to do so.

K. OTHER CAUSES OF DELAY :-

Some of the other causes of delay are as under :-

- (a) The court is required to draw a decree on basis of the judgement. Such decrees are drawn in chronological order.
- (b) In case of mortgage suits, preliminary and final decrees have to be drawn which involves further time.
- (c) Several adjournments are taken on grounds of sickness by litigants and advocates.

L. EXECUTION PROCEEDING AND OBJECTIONS

After the decree is passed process of execution begins by filing of application for execution. Where a decree is for payment of money the court may order execution thereof by arrest of judgement debtor.

In a written application for execution of decree the following particulars have to be provided :- **45

- 1. Number of suit
- 2. Name of the parties
- 3. Date of the decree
- 4. Whether any appeal has been preferred from the decrees.
- 5. Whether any payment or other adjustment is made subsequent to the decree.

****45 ORDER 21 RULE 11 OF CPC**

6. Whether any previous application has been made for execution and date of execution and result.
7. The amount with interest due upon decree.
8. Amount of cost if awarded.
9. Name of person against whom execution is sought.
10. Mode in which assistance of the court is required for execution.

- (a) By delivery of any property specifically decreed.
- (b) By attachment/sale of any property.
- (c) By arrest and detention in prison.
- (d) By appointment of receiver
- (e) Otherwise as the nature of the thing required

Simultaneous execution against person and property of debtor is permissible.

****46** Objections can be raised during execution about property sought to be attached. The court is required to dispose off application under Order 21 rule 58 of the Civil Procedure Code.

There were cases filed by the banks when the Government was the guarantor. The Gujarat High Court held that where money decree is granted in favour of nationalised bank and State Government is guarantor of private individual, the matter of execution should be guided by public interest. Bank will not be acting in public interest, if it does not press the execution proceeding against private individual it is easier to realise the amount from Government. The Bank has to keep in mind socio-economic interest of entire nation. It can not decide course of action by choosing line of least resistance.****47** There are cases when bank prefers an appeal against the judgement mainly on the point of interest awarded. In such cases unconditional deposit of amount decreed will operate as discharge of decree. ****48**

****46** ORDER 21 RULE 21 OF CPC

****47** STATE OF GUJARAT v/S. CBI AIR 1987 GUJARAT 113

****48** K. SHANKARRAJ V/s. STATE BANK OF INDIA AIR 1989 MAD. 255

At the stage of execution sometimes there are conflicting claims between bank as decree holder and revenue authority. In a case before Delhi High Court, where bank got a decree against husband and wife for debt against house in name of wife and during pendency of application the incometax department sought sale of the property on the ground that huge amount was due from husband and wife was only a benamidar the court held that the bank could recover the amount by sale of property.**49

Under amended order 21 rule 66 the executing court is vested with the power to fix or reduce the sale price of property. **50 It is the mandatory directive of the law that 25% of the purchase amount have to be placed before the court for formal acceptance. Court officer conducting the sale has no authority to extend the time for payment of deposit. Such failure renders the sale proceedings complete nullity and confirmation of sale and issuance of sale certificate has no effect. Consent or any order of the court will not make the sale valid. **51

During the case study it was observed that average time spent at each stage of the suit was as under :-

STAGE	TIME INVOLVED
1. Sending Demand Notice	15 days to 1 month
2. Drafting of plaint & approval	1 month
3. Return of summons	3 weeks to 24 months.
4. Written Statements	15 days to 18 months
5. Framing of issues	3 months to 18 months
6. Hearing	12 months to 24 months
7. Recording of evidence	6 months to 1 year
8. Arguments	1 month to 3 months
9. Judgement and order	3 months to 9 months
10. Drawing of decree	1 month to 3 months

**49 BANK OF INDIA V/s. UNION OF INDIA AIR 1987 DEL.156

**50 NATRAJAN V/s. INDIAN BANK AIR 1981 MAD.151

**51 PROGRESSIVE INDUSTRIAL ENT. V/s. BOB AIR 1989 MP.177

If the suits are compromised or ex parte decisions are given, the time involved is reduced.

XI

SPECIAL POWERS AND FORUMS AVAILABLE TO OTHER INSTITUTIONS

A. STATE FINANCIAL CORPORATIONS :-

Under section 31 of State Financial Corporations Act special and simplified procedure has been provided for speedy assistance to State Financial Institutions. The section stipulates that where an industrial concern in breach of any agreement makes any default in repayment of any loan or advance or instalment thereof or in meeting obligation in relation to any guarantee given by corporation, the financial corporation may apply to the district court for any of the following reliefs :-

-
1. For order of sale of the property pledged, hypothecated, mortgaged to financial corporation.
 2. For enforcing liability of surety.
 3. For transferring management of industrial concern to financial corporation.
 4. For ad-interim injunction restraining the industrial concern from selling their property.
-

The Gujarat High Court has held that parliament wanted special financial institutions to be set up for giving financial accomodation to industrial concerns and at the same time confer special rights of recovery in some cases even without adjudication by judicial authorities. **52

**52 D. J. NIRADIYA V/s. GSFC 1990 2 GLH 562

The procedure to be followed by District Judge is narrated in section 32. In case of immovable property the court shall attach and direct the sale of the property. The Supreme Court has held that Section 32 does not contemplate passing of money decree. **53

In most of the cases the State Financial Corporations prefer to proceed under Section 29 without involving the intervention of the Court. Whenever applications under Section 31 and 32 are filed the time involved is one year or more. The application involves payment of court fees and usually financial corporations are found reluctant to resort to this remedy.

B. CO-OPERATIVE BANKS

Section 96 of Gujarat Co-Operative Societies Act lays down special procedure and forum for deciding the disputes touching the constitution, management or business of the societies, if the parties are the society, member or surety of a member, in such case the matter will be referred to board of nominees and the decision of the board will be final. The Civil Court does not have jurisdiction to decide such cases. Hence the recovery cases of cooperative banks go to the board of nominees. For enforcement of hypothecated securities and for recovery of funds of the Co-Operative banks nominee of registrar has the jurisdiction. **54 The disputes regarding elections also can be decided only by the board.**55

**53 EVEREST INDUSTRIAL CORP. V/s. GSFC 1987, 3 SCC 597

**54 NAVJEEVAN PAPER MART V/s. RAJKOT VIBHAG NAGRIK SAHKARI BANK LTD. 1975 GLR PAGE 80

**55 K. G. JOSHI V/s ANYONYA SAHAKARI MANDALI LTD. BARODA 1975 16 GLR 1058

Any money claimed by a member against the society which in civil law is known as counter claim also constitutes a dispute and has to be referred to board of nominees. **56

The board of nominees also have the power to grant injunctions. During the course of research study, hearings in the board of nominees hearings at Baroda and Ahmedabad were attended and it was observed that there was heavy back log of cases and substantial number of cases were pending since 3 to 4 years. The common problems like delay in service of summons, adjournment etc. were found to be main causes of delay.

XII

OTHER CONSTRAINTS

A. LIMITATION LAWS

Under the law of limitation banks are required to enforce their rights within time frame under the Limitation Act. Some of the main provisions of the Limitation Act are summarized below.

<u>ART.NO.</u>	<u>DESCRIPTION OF SUIT</u>	<u>PERIOD OF</u> <u>LIMITATION</u>	<u>TIME FROM WHICH</u> <u>IT BEGINS</u>
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19	FOR MONEY PAYABLE	3YEARS	WHEN THE LOAN IS MADE.
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21	WHEN LENDER HAS GIVEN CHEQUE FOR MONEY.	3 YEARS	WHEN CHEQUE IS PAID
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**56 JITENDRA THAKAR V/s. HIRABAUG CO.OP.HOUSING SOC. LTD. 1978
19 GLR 92

22	FOR MONEY DEPOSITED UNDER AGREEMENT INCLUDING CUSTOMER'S MONEY WITH BANK	3YEARS	WHEN LOAN IS MADE.
31	ON A BILL OF EXCHANGE	3YEARS	WHEN THE BILL FALLS DUE
36	ON A PROMISSORY NOTE BOND PAYABLE BY INSTALMENT	3YEARS	ON DATE OF EACH INSTALMENT.
61a.	BY A MORTGAGOR TO RECOVER POSSESSION	3YEARS	WHEN THE MORTGAGE MONEY BECAME DUE.
b.	BY MORTGAGEE FOR FORECLOSURE	3 YEARS	WHEN RIGHT TO REDEEM ACCRUES
116a	APPEAL TO HIGH COURT UNDER CPC	90DAYS	FROM THE DATE OF THE ORDER
b.	ANY OTHER CASE	30DAYS	FROM THE DATE OF THE ORDER
c.	LEAVE TO DEFEND IN SUMMARY PROCEDURE	10DAYS	WHEN THE SUMMONS IS SERVED.
136	EXECUTION OF DECREES	12 YEARS	FROM THE DECREE.
137	ANY OTHER APPLICATION	3YEARS	WHEN RIGHT TO APPLY ACCRUES.

Because of the limitation factor the bankers are required to initiate action within the stipulated period.

B. INCOMPLETE DOCUMENTS

Most of the documents taken from the borrowers by the banks are in printed forms and relevant particulars have to be filled up. It is found that sometimes the material particular in the documents are filled and as a result the borrower gets opportunity to allege that blank documents were obtained from him. Sometimes it becomes difficult for the bank to file up at later stage because the person who has filled part of the document is not available, Some of the banks follow the system of having attestation memo to identify the officer in whose presence the documents were obtained. The borrowers also raise the plea that contents of documents were not explained in vernacular language. For this purpose the banks obtain a letter confirming that documents were explained in vernacular language.

C. MISSING OF SECURITY

In the detailed discussion in separate chapter on securities by the banks various advantages and disadvantages of securities have been discussed at length. It is observed that when security in form of hypothecation, by the time suit is filed, the security is either removed or it loses its value. When security is movable asset cases are not uncommon where the borrower disposes off the security and misappropriates the sale proceeds. Since the concept of hypothecation has not been specifically defined under Indian Law the courts are found reluctant to prosecute and punish when criminal complaint was filed by the borrower who has disposed off the hypothecated assets.

D. FICTITIOUS AND NON TRACEABLE BORROWERS

While discussing the problem of pendency of cases due to non service of summons, various modes by which a summons can be served were examined. It was noticed that the borrower after availing the loans shift or do not have any permanent contact address. When lending is made to large number of borrowers even the identification of the borrowers becomes difficult and in such case the subsequent process become futility. To avoid this problem bankers obtain

photograph of borrower and also insist for proof of their residence like ration cards etc. This is to an extent helpful to trace the borrowers.

E. TRANSFER OF ASSETS

Whenever movable assets are transferred it becomes difficult to trace the same and it is not possible to take possession of the same from third party. **57

In case of vehicles under Section 51 of Motor Vehicles Act, charge by way of hypothecation can be registered with RTO and once it is so registered the vehicle can not be tranfered unless permission in writing is given by the bank. Some dishonest borrowers however transfer the vehicle. The rule in case of mortgage property is that the property always goes subject to charge. Parties however transfer use of the property or lease the same and disputes are raised by third parties at a later stage which further delays the enforcement of securities.

XIII

COST FACTORS INVOLVED IN FILING OF SUITS

The data of pending suits of the bank reveals that most of the banks have several suit filed accounts. The banks are required to incur heavy expenses for various suit filed accounts under different heads of costs as given below:-

DIRECT COSTS

- A) Expenses for sending notice
- B) Fees to be paid to DRT
- C) Court fees
- D) Costs for comissioner/receiver/inventory
- E) Costs for maintainance of judgement debtor if detained in civil prison

**57 SECTION 51 OF MOTOR VEHICLE ACT.

- F) Expenses for execution proceedings
- G) Professional charges for Advocates/Solicitors
- H) Expenses for public notice/publishing summons in newspaper etc.
- I) Travelling expenses of witnesses
- J) Typing, zerox, misc. expenses charges etc.

OTHER COSTS

- (A) Misc. expenses reimbursed to Advocates.
- (B) Travelling and other expenses for filing of suit.
- (C) Expenses for Advocates who attend outstation courts.
- (D) Expenses for arranging substitute staff in place of those who attend the court.
- (E) Incidental expenses for preservation/protection of security/obtaining information of heirs etc.
- (F) Expenses on appeal/revision if bank is not satisfied with decision.
- (G) Expenses incurred for follow up in case of winding up of corporate borrowers.

A comparative study of the expenses incurred by various banks/institutions under the head law charges is summarised below :-

NAME OF BANK	EXPENSES INCURRED (RS.IN CRORES) AS ON 31/3/1998
STATE BANK OF INDIA	11.68
BANK OF BARODA	11.30
BANK OF INDIA	14.77
DENA BANK	0.76
INDUSIND BANK LTD.	6.10
INDIAN BANK	1.18
GUJARAT INDUSTRIAL INV. CORP.(GIIC)	0.64
IND. DEV. BANK OF INDIA (IDBI)	1.12
HOUSING DEV. FIN. CORP. LTD. (HDFC)	2.09
SOURCE : ANNUAL REPORTS OF THE INSTITUTIONS.	

For almost all the banks/institutions the figures show increasing trend.

The major segment of legal expense goes towards court fees. The banks incur heavy expenses for the recovery application before Debt Recovery Tribunals.

The charges payable by way of fees are as under :-

AMOUNT	FEES PAYABLE **58
Rs.10 lacs	Rs.12,000/-
For every Rs.1 lac or part thereof.	Rs. 1,000/-
Subject to maximum of	Rs.1,50,000/-

For suits filed in Civil Court the court fees payable vary on advalorem basis and the same are as under :-

AMOUNT	COURT FEES
Rs.100000/-	3300
Rs.200000/-	4300
Rs.300000/-	5300
Rs.400000/-	6300
Rs.500000/-	7300
Rs.600000/-	8300
Rs.700000/-	9300
Rs.800000/-	10300
Rs.900000/-	11300
Rs.1000000/-	15000 MAXIMUM **59

**58 RULE – 7 OF THE DEBT RECOVERY TRIBUNAL (PROCEDURE) RULES, 1993.

**59 BOMBAY COURT FEES ACT.

The State of Gujarat proposed to increase the court fees but because of the agitation by advocates the increase was not implemented.

In State of Karnataka the court fees have been increased substantially and this provision was upheld by Supreme Court of India. **60

B. ADVOCATE FEES

This amount is payable usually as per the schedule fixed by the High Courts for payment of advocate fees. Sometimes the senior advocates/counsels insist for higher fees and the banks incur heavy expense for such fees.

The miscellenous expenses incurred by the advocate for service of process/ summons etc. are reimbursed under the head of out of pocket expenses.

C. COSTS FOR EXECUTION OF DECREES

Unless the decree is successfully and promptly executed the whole exercise becomes futile. As per the schedule expenses for execution are one fourth of total fees for suit. The banks are facing difficulties to find proper advocates who are willing to undertake the work of execution at such rates. Hence some of the banks maintain separate penal for execution. To provide proper motivation, higher fees are paid on basis of the recovery effected.

**60 A SETTY AND OTHERS V/s. STATE OF KARNATAKA, AIR 1989 SC 100

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