



CNR: KAHC010805242025

NC: 2026:KHC:39245-DB
WP No. 37504 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT PETITION NO. 37504 OF 2025 (GM-DRT)

BETWEEN:

KOTAK MAHINDRA BANK.,
NO. 487, 1ST FLOOR, 9TH MAIN ROAD,
4TH BLOCK, JAYANAGAR,
BENGALURU - 560 010.

...PETITIONER

(BY SRI. D.R.RAVISHAKJAR, SENIOR ADVOCATE FOR
SRI.V.J. ACHALANAND, ADVOCATE)

AND:

1. H. AMARNATH,
S/O MR MA HANUMANTHA SA,
R/O NO. 331/29 (OLD NO. 31),
8TH 'A' MAIN ROAD, 'A' BLOCK,
2ND STAGE, MILK COLONY,
RAJAJINAGAR,
BENGALURU - 560 010.

2. S. RAMJI,
S/O MR. SWAMINATHAN,
AGED MAJOR,
HAVING HIS ADDRESS AT
NO. 49/3, 2ND FLOOR,
16TH CROSS, MALLESWARAM,
BENGALURU - 560 003.



**NC: 2026:KHC:39245-DB
WP No. 37504 of 2025**

CNR: KAHC010805242025

3. GEETHA RAMJI,
W/O MR S RAMJI,
AGED MAJOR,
HAVING HER ADDRESS AT:
NO. 49/3, 2ND FLOOR,
16TH CROSS, MALLESWARAM,
BENGALURU - 560 003.
4. KRITIKA RAMJI,
D/O MR S RAMJI, AGED MAJOR,
HAVING HER ADDRESS AT:
NO.49/3, 2ND FLOOR,
16TH CROSS, MALLESWARAM,
BENGALURU - 560 003.
5. DEEPIKA RAMJI,
D/O MR S RAMJI, AGED MAJOR,
HAVING HER ADDRESS AT:
NO.49/3, 2ND FLOOR,
16TH CROSS, MALLESWARAM,
BENGALURU - 560 003.
6. M/S. HITEK PROFILE FORMERS
PRIVATE LIMITED,
NO2, SANGEETHA APARTMENTS,
4TH MAIN ROAD, MALLESWARAM,
BENGALURU - 560 003.

...RESPONDENTS

(BY SRI. S.V. BHAT., ADVOCATE FOR R1,
VIDE ORDER DATED 09.07.2026; NOTICE TO
R2 TO R6 ARE DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF CONSTITUTION OF INDIA, PRAYING TO PASS AN
APPROPRIATE WRIT/DIRECTION/ORDER SETTING ASIDE THE
IMPUGNED ORDER DATED:24.07.2025 PASSED IN MA
NO.21/2017 BY THE HON'BLE DEBT RECOVERY APPELLATE
TRIBUNAL, CHENNAI (AT ANNEXURE-A) AS ARBITRARY AND
PERVERSE AND ETC.,



CNR: KAHC010805242025

**NC: 2026:KHC:39245-DB
WP No. 37504 of 2025**

THIS PETITION, COMING ON FOR PRELIMINARY HEARING
'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL ORDER

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This writ petition under Articles 226 and 227 of the Constitution of India is directed against the order dated 24.07.2025, passed by the Debt Recovery Appellate Tribunal¹ at Chennai (Annexure-A) in MA.No.21/2017, by the Bank.

2. The DRAT under the impugned order, allowed the appeal and set-aside the order passed by the Recovery Officer, DRT dated 09.06.2010 passed in Recovery proceedings No.DCP 1300 in O.A.No.730/1995 and order of the DRT, Bengaluru dated 20.02.2014 passed in

¹ 'DRAT' for short



CNR: KAHC010805242025

AOR.No.8/2010, allowing the objections of respondent No.1 herein.

3. The contesting parties are referred as Bank and subsequent purchaser for easy reference.

4. The facts germane to filing of this petition are as under:

4.1 The Bank is before this Court seeking for the following reliefs:

- I. "Pass an appropriate writ/direction/order setting aside the Impugned order dated 24.07.2025 passed in MA No.21 of 2017 by the Hon'ble Debt Recovery Appellate Tribunal, Chennai (at Annexure-A) as arbitrary and perverse;*
- II. Grant costs of the proceedings; and*
- III. Grant such other or further reliefs as deemed necessary, in the facts and circumstances of the case, in the interest of justice and equity."*



CNR: KAHC010805242025

- 4.2 It is the contention of the bank that the State Bank of India² granted credit facilities by way of cash credit to the tune of Rs.49 Lakhs in favour of respondent No.6, wherein respondent Nos.2 and 3 stood as Guarantor for the transaction way back in 09.03.1991.
- 4.3 In view of default in repayment by respondent No.6, the SBI had filed OS.No.1815/1994 before the City Court, Bengaluru, which was transferred to DRT and renumbered as O.A.No.730/2025 on establishment of DRT.
- 4.4 On 30.07.1999, the DRT passed an order as per Annexure-B, holding that the contention of the Bank by placing materials on record, have not been questioned nor the defendants have led any evidence. The Court answered the point for consideration in favour of the bank, allowed the

² 'SBI' for short



CNR: KAHC010805242025

application and issued recovery certificate as claimed in plaint.

- 4.5 Respondent No.2 who was guarantor, contested the matter, before the DRT in OA.730/1995. Thereafter, has conveyed his personal property to his daughters, by way of Gift Deed dated 20.01.2000.
- 4.6 A Recovery Certificate came to be issued on 17.11.2000 and 23.02.2007. A Demand Notice was issued thereafter on 23.11.2000 and 03.04.2007. An order of attachment came to be passed by the Recovery Officer, DRT (Annexure-F) on 29.09.2004.
- 4.7 On 25.04.2005, the property under attachment by DRT, was alienated by respondent Nos.4 and 5 through their mother respondent No.3 in favour of respondent No.1, under the registered Sale Deed dated 25.04.2005 (Annexure-G).



CNR: KAHC010805242025

4.8 On 23.06.2006, the deed of assignment under which the loan facility was irrevocably and unconditionally assigned, released and transferred unto the petitioner-Bank along with security interest and Guarantees.

4.9 An application in DCP.No.1300 was filed in OA.No.730/1995, to which, respondent Nos.4 and 5 filed objections, which came to be disposed on 13.09.2009 and the objection filed by respondent No.1 came to be dismissed on 09.06.2010 (Annexure-J and J1 respectively), by the Recovery Officer.

4.10 The Recovery Officer of DRT specifically stated in the order afore, which reads as under:

"Section 53(1) of the transfer of property act states "every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed". OA No.730/1995 was



CNR: KAHC010805242025

allowed by an order dated 30/7/1999 passed by this Hon'ble Tribunal and defendant No.2 has contested the OA. The alienation of the property by defendant No.2 Shri S.Ramji in favour of his daughters by way of gift deed dated 20/1/2000 is with intent to defeat the purpose of creditors. As such the aforementioned transfer is non existent in the eyes of law. The attachment order dated 29/9/2004 is in accordance with law.

The other issue to be considered is whether the benefit of Section 53(2) i.e., "every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the transfer of such transferee" is available to the objector. The case of objector is taken away by the fact that he has purchased the property subsequent to the service of demand notice dated 9/12/2001 and attachment of the property dated 29/9/2004. Rule 16 of the Second Schedule of Income Tax Act Prevails."

4.11 This clearly shows that after the order in O.A.730/1995, the defendant No.2 - S.Ramji conveyed the property in dispute in favour of his daughters by way of Gift Deed dated 20.01.2000



CNR: KAHC010805242025

with an intent to defeat the purpose of the creditors. As such, held that the transfer afore is non existent in the eye of law. As such, the attachment order dated 29.09.2004 was in accordance with law.

4.12 The subsequent purchaser filed AOR.No.8/2010, calling in question the order dated 09.06.2010 passed by the Recovery Officer, rejecting the objection of the subsequent purchaser to sell the schedule property for realizing the debt due to the Bank in the said proceedings. The DRT after going through the entire records found that the order passed by the recovery officer impugned therein is in accordance with law and the sale deed of the appellant runs under legal eclipse, unless the loan is cleared and paid to the Bank and no documents were produced to show that the transfer is bonafide transfer. In that view of the matter, dismissed the AOR application, which was the subject matter before the DRAT in MA.No.21/2017.



CNR: KAHC010805242025

4.13 The DRAT though observed that, obviously the respondent No.3 accepting that the Bank would proceed against his property after the order passed in OA.No.730/1995 dated 30.07.1999, in order to defeat the claim of the Bank had gifted the property to his daughters. However, observed that the first respondent-bank had not taken care and caution in advancing the loan to secure the loan amount by insisting or creating mortgage on immovable property, there was delay in recovery certificate, and even the attachment order was not obtained immediately on the issue of recovery certificate. The attachment order passed on 29.09.2004 was subsequent to the property gifted by respondent No.3 in favour of respondent Nos.5 and 6 i.e., his daughters. As such, the claim of the appellant that he is a bonafide purchaser without notice of the suit, OA and recovery proceedings cannot be denied.



CNR: KAHC010805242025

4.14 Further, referring to Section 53 of Transfer of Property Act, 1882³, has held that though it is true that the provision of the Act, states that transfer of immovable property made with intent to defeat or delay the creditors of the transfer shall be voidable at the option of any creditors who defeated or delayed, further, held that the next part of the said section says that nothing in the subsection shall interfere with the rights of a transferee bonafide in good faith and for consideration. Further held that no documents were placed to show that the petitioner was not a bonafide purchaser and the sale deed was the effect of sham transaction.

4.15 In that view of the matter, stating that the judgment referred by the respondent-bank is not helpful to the facts of the case, proceeded to hold that the appellant is a bonafide purchaser and set aside both

³ 'TPA' 1882



CNR: KAHC010805242025

the orders, one by the Recovery Officer of DRT, Bengaluru dated 09.06.2010 in DCP No.1300 in OA.730/1995 and another order passed by the DRT, Bengaluru dated 20.02.2014 in AOR No.08/2010 and sustained the objections filed by the appellant insofar as the effort made for selling the property for realizing the debt due to the Bank. It is this order passed by the DRAT called in question in this writ petition.

5. Heard, Sri.D.R.Ravishankar, learned Senior counsel assisted by Sri.V.J.Achalanand, learned counsel for the petitioner and Sri.S.V.Bhat, learned counsel for respondent No.1. Vide order dated 09.07.2026, notice to respondent Nos.2 to 6 are dispensed with.

6. Sri.D.R.Ravishankar, learned Senior counsel submits that, the law is settled that, a transfer of property by fraudulent means is not binding upon the creditor. Admittedly, the transfer is '*pendente-lite*' and is not



CNR: KAHC010805242025

sustainable and the transferee does not have any independent right of objecting the execution of proceedings. He further submits that, the DRAT has failed to appreciate that as per Rule 16 of Schedule-II of Income Tax Act, 1961, and the Recovery of Debts and Bankruptcy Act, 1993, once a notice has been served on the defaulter, the defaulter or his representative shall not be competent to deal with any property belonging to him, except with the permission of jurisdictional Court or Tribunal. Admittedly, the registered Gift Deed dated 20.01.2000 was subsequent to the final order dated 30.07.1999 passed by the DRT in OA.No.730/1990, wherein the person who has gifted the property to his daughters, was arrayed as defendant No.2 and he had contested the matter.

7. Learned Senior counsel further submits that subsequent to the order passed by the DRT on 30.07.1999, a Recovery Certificate came to be issued on 17.11.2000, thereafter, an Attachment Order came to be



CNR: KAHC010805242025

issued on 29.09.2004 to which respondent Nos.2 and 3 were parties, identifying the property in dispute as the property attached. In these circumstances, the further conveyance by daughters of Ramji in favor of the appellant is nothing but the continued action of defrauding and defeating the rights of the petitioner.

8. Learned Senior counsel further submitted that the DRAT failed to appreciate that as per Section 53(1) of Transfer of Property Act, 1891, every transfer of immovable property made with intend to defeat or delay the creditors, the transfer shall be voidable at the option of any creditor so defeated and delayed. A conjoint reading of all the orders, since 1999 till 2004 clearly show the actions of respondent No.2 who was defendant No.2 a contesting party in OA.No.730/1995, transferring the property by way of gift in favour of his daughters, thereafter by way of conveyance executed by his daughters in favour of respondent No.6/appellant before the DRAT, were with an intention to defeat the rights of



CNR: KAHC010805242025

the creditor. As such, it has to be legitimately inferred that all the respondents transferred the properties by conveyance after conveyance, only with an intention to defraud, and this aspect of the matter, the DRAT has failed to consider accordingly. With this learned Senior counsel prays to allow the writ petition and set aside the order passed by the DRAT.

9. In contrast, Sri.S.V.Bhat, learned counsel with equal vehemence submits that the Appellate Tribunal in its judgment, especially at paragraph Nos.10, 11 and 12, clearly considered the entire material and accordingly passed the order allowing the objections and setting aside the order passed by the Recovery Officer and DRT, impugned therein.

10. Sri.S.V.Bhat, submits that in O.A.No.730/1995 the order came to be passed on 30.07.1999 but Recovery Certificate was issued belatedly on 17.11.2000. By that time, respondent No.2 already parted with the property by



CNR: KAHC010805242025

way of Gift in favour of his daughters. Thereafter, an Attachment Order was passed to which his vendors were not parties. There was no communication to the concerned Jurisdictional Sub-Registrar, identifying the property in dispute for recovery of the dues to the bank. The entire action was done keeping the appellant in dark. The appellant has purchased the property with all bonafides, after verifying all the records as there was no encumbrance entered indicating the attachment. Accordingly, he is the transfer in his favour is saved under Section 53, since he had purchased the property in good faith and for valuable consideration. The DRAT properly considered the entire case, holding that no evidence has been placed by the Bank that the property is not purchased in good faith or was without consideration, whereas the property was purchased for valuable consideration without any fault attributable to the appellant and the right acquired is saved under the



CNR: KAHC010805242025

registered sale deed, with this he sought to dismiss the writ petition.

11. Having considered the rival submissions, we have perused the entire writ petition papers.

12. The point that would arise for our consideration is:

Whether the Appellate Tribunal is right in allowing the application sustaining the objection filed by the appellant, whereby setting aside the order passed by Recovery Officer of DRT as well as the DRT?

13. Our answer to the point for consideration is in the **NEGATIVE** for the following:

REASONS

14. It is not in dispute that the SBI granted credit facilities by way of cash credit to the tune of Rs.45 lakhs in favour of respondent No.6 to which respondent Nos.2 and



CNR: KAHC010805242025

3 stood as guarantors. A suit was filed in OS.No.1815/1994 before the Civil Court, Bengaluru, which after establishment of Debt Recovery Tribunal transferred and re-numbered as O.A.No.730/1995. The claim of the Bank, which was contested by respondent No.2 in aforementioned OA resulted in favour of the bank issuing recovery certificate as per the claim.

15. On 17.11.2000, Recovery Certificate was issued and on 23.11.2000 demand notice came to be issued against respondent Nos.2, 3 and 6, were served with the notice of demand.

16. Respondent No.2 who had contested the matter, parted with the property by way of gift deed in favour of his daughters, thereafter on 20.01.2000. An order of attachment came to be passed on 29.09.2004, identifying the property in dispute as attached for the purpose of recovery of due to the bank. On 23.06.2006, deed of assignment, whereby the loan facility was



CNR: KAHC010805242025

irrevocably and unconditionally assigned, released and transferred unto the petitioner along with security interest and guarantees.

17. An Objection came to be filed by third party on 27.10.2004, whereby, a contention was taken that, the objector along with her sister Jyothika Ramji and Deepika Ramji were absolute owners of immovable property having acquired the same under a registered gift deed dated 20.01.2000 and were in possession of the property jointly upto 18.01.2003 and thereafter, under a registered partition deed, the objector was put in possession of the ground floor portion of the property. The revenue records also changed in terms of the earlier gift deed as well as partition dated 18.01.2003.

18. Further, it was contented that the property bought for sale by the authority is not subject to any mortgage and the objector is not a party before the Tribunal in the OA and since the property was not owned



CNR: KAHC010805242025

by any of the defendants in O.A.No.730/1995, the same cannot be proceeded against.

19. It is apt to mention here that the third party objection was filed on 27.10.2004 in DCP No.1300 in OA No.730/1995. Though several opportunities were given to the objectors, they did not turn up. Accordingly, the objection is disposed of as not pursued and no proceeding was taken even thereafter, laying any challenge to the order dated 13.09.2009.

20. On 25.04.2005, respondent Nos.4 and 5 executed a sale deed in favour of the appellant, with these facts, which are not disputed by the parties, regarding the conveyances, but disputed the way and the circumstances under which they were executed.

21. The petitioner-bank claims that, there is an order way back in the year 30.07.1999, allowing the claim of the petitioner for recovery of the amount. Respondent No.2, who had contested the matter, suffered an order,



CNR: KAHC010805242025

conveyed the property by way of gift in favour of his daughters only with an intention to defeat the rights of the creditor. Thereafter, the vendors of respondent No.1 who were well aware of the fact regarding passing of attachment order, identifying the property for the purpose of recovering the dues to the bank, deliberately conveyed the same in favour of respondent No.1. The objection statement filed by one of the daughter as an objector on 27.10.2004 extracted in Annexure-J, clearly shows that the daughter is aware of the attachment order. Despite the same they have ventured to convey the property in favour of respondent No.1. In that view of the matter the transaction is hit by Section 53 of Transfer of Property Act as well as Rule 16 of Schedule II of Income Tax Act, 1961. Once a notice as well as attachment order has been passed, the defaulter or his representative in interest shall not be competent to deal with any property belonging to him except with the express permission of the jurisdictional Court. The conduct of respondent No.2 and



CNR: KAHC010805242025

subsequently of respondent Nos.4 and 5 are nothing but an engineered act to defraud and defeat the rights of the Bank.

22. In that view of the matter, the document itself is hit by provision under Section 53 of the Act, which has been properly considered by the Recovery Officer in the order at Annexure-J1 dated 09.06.2010. Though an attempt has been made by respondent No.1 to contend that he is a bonafide purchaser without notice, but the fact remains that his vendors were well aware of the Recovery Certificate, Demand Notice as well as the Order of Attachment. In that circumstances, it cannot be ruled out that respondent No.1 is aware of the proceedings and purchased the property with litigation at his cost and risk. The law is very clear that any fraudulent transfer is voidable at the instance of the person against whose interest so defeated or delayed.



CNR: KAHC010805242025

23. All the incidents which have taken place earlier to creation of rights in favour of respondent No.1 lucidly show that, transfer by respondent No.2 in favour of respondent Nos.4 and 5 and thereafter respondent Nos.4 and 5 in favour of respondent No.1, are nothing but an engineered act, to defraud the Bank. The Appellate Tribunal has swayed much on the continued of Section 53(1) that says 'nothing in the sub-section shall impair the rights of transferee in good faith and for consideration'. For the facts afore, we are of the considered opinion that the next part of Section 53(1), is not applicable to the case on hand, as there is no bonafides found in favour of respondent No.1. The Tribunal weighed much on the aspect that the bank has delayed in obtaining Recovery Certificate as well as non-furnishing of attachment order to the sub-registrar. The objection filed to the attachment by one of the daughter, which we have already stated supra, clearly shows that the vendors are well aware of the proceedings and in order to delay, defraud and defeat the



CNR: KAHC010805242025

rights of the creditor, they ventured to enter into a sale deal in favour of respondent No.1.

24. In that view of the matter, we find that the DRT, after properly considering the entire material has come to a right conclusion, that the very foundation of the right of daughters cannot be approved in the eye of law, as such, the alienation further by them in favour of respondent No.1, who is the appellant before the DRT automatically becomes illegal and hence cannot be approved under the law.

25. The intention and conduct of the parties clearly show that the deed is a creature of deliberate intention to defeat the right of the bank. The rights of the bank cannot be defeated on technicalities as they are dealing with public money and accountable to the public. The actions stated afore would come well within Section 53(1). As such, the order passed by the DRAT is not sustainable in law, besides erroneous.



CNR: KAHC010805242025

NC: 2026:KHC:39245-DB
WP No. 37504 of 2025

26. For the reasons afore, we proceed to pass the following:

ORDER

1. Writ petition is ***allowed***.
2. The order passed by the DRAT in MA No.21/2017 dated 24.07.2025 is set aside/quashed.
3. The order impugned therein are sustained and confirmed.
4. Given the facts and circumstances, no order as to costs.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

PK
List No.: 1 Sl No.: 32
ct-vn