

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

Co.Appeal.No. 4 of 2015 ()

(AGAINST THE ORDER/JUDGMENT IN C.A.NO.815 of 2007 IN Co.Pet
36/2002 of HIGH COURT OF KERALA DATED 30.10.2014

APPELLANT(S)/ADDL.APPLICANTS 2 AND 3:

1. MINI ROY AGED 43 YEARS
W/O.LATE JOSEPH ANTONY P.S.
RESIDING AT POTHADY HOUSE, S.R.M.ROAD, KOCHI 18.

2. KIRAN ROY POTHADY, S/O.LATE JOSEPH ANTONY P.S. AGED 23
YEARS, RESIDING AT POTHADY HOUSE, S.R.M.ROAD, KOCHI 18.

BY ADVS.SRI.K.GOPALAKRISHNA KURUP (SR.)
SRI.K.SURESH
SRI.S.MANU
SRI.ABHISHEK KURIAN

RESPONDENT(S)/RESPONDENTS:

1. S.G.NAIR
PROPRIETOR AND CHIEF EXECUTIVE RANK ADVERTISING CONSULTANT
S.R.M.ROAD, COCHIN 682 019
& PROPRIETOR AND CHIEF EXECUTIVE
NISEEMA PRINTERS & PUBLISHERS, S.R.M.ROAD,
COCHIN - 682 019.

2. JOYMAT HOTEL RESORTS LTD
MALIACKAL BUNGALOW, NEAR JUDGEMUKKU, THRIKKAKARA
COCHIN - 682 021.

3. THE OFFICIAL LIQUIDATOR, HIGH COURT OF KERALA
ERNAKULAM -31
REPRESENGING M/S.JOYMAT HOTEL RESORTS LTD.
(IN PROVISIONAL LIQUIDATION)

4. THE RECOVERY OFFICER, DEBTS RECOVERY TRIBUNAL,
NEW DELHI 110 055

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5. PEEVEES REALTORS PVT LTD.,
501, OPPANAKARA STREET
COIMBATORE - 641 001. REP. BY
TIS MANAGING DIRECTOR P.V.ANWAR

6. P.V.ANWAR, MANANGING DIRECTOR
PEEVEES REALTORS PVT.LTD, 501, OPPANAKARA STREET
COMBATORE - 641 001.

7. STATE BANK OF INDIA, CITY BRANCH, COIMBATORE - 641001.

8. STATE BANK OF INDIA
REP. BY ITS GENERAL MANAGER, CHENNAI

R3 BY ADV. SRI.K.MONI
R5,R6 BY ADV. SRI.T.K.SAIDALIKUUTYY
R7,R8 BY ADV. SRI.P.V.SURENDRANATH(B/O)

THIS COMPANY APPEAL HAVING BEEN FINALLY HEARD ON 05.10.2015,
THE COURT ON 09.11.2015 DELIVERED THE FOLLOWING:

(CR)

**P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.**

.....
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.....

Dated this the 9th day of November, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Center (Forum) for adjudication is the centre of dispute involved in this case. Grievance is against dismissal of the Company Application 815/2007 preferred in C.P.36 of 2002 whereby the application preferred by the appellants to set aside the sale and its confirmation ordered by the Recovery Officer (pursuant to the order passed by the DRT, Delhi in the concerned O.A.), despite the pendency of the C.P. before this Court was declined to be entertained, leading to dismissal of the Company Application.

2. The appellants are additional applicants impleaded in C.P.No.36 of 2002, preferred by the Original Applicant, (by name P.S. Joseph Antony), who is no more. The first appellant is the widow and the second appellant is the son of the original applicant. The original applicant was a share holder of the

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second respondent company, which is a company registered under the relevant provisions of the Companies Act and engaged in the running of hotel/resort. The main asset of the Company consists of 11.46 acres of land in Edathala Village Ernakulam District in Kerala, which was stated as held on the basis of a Lease for 99 years executed by the partners of the firm by name International Housing Complex, in consideration of the shares allotted to them as the cash equivalent.

3. By virtue of the pressing pecuniary needs of the second respondent Company, the aforesaid property was given as security and mortgage interest was created in favour of the Tourism Finance Corporation of India (TFCI in short) and Industrial Finance Corporation of India (IFCI in short), borrowing a loan of Rs. 2.25 crores. Since repayment was not effected on time and the Company turned to be a defaulter, the creditors/Financial Institutions jointly filed O.A. 347 of 1999 against the Company before the DRT, New Delhi, also arraigning the two Directors of the Company (by name Joy Mathew and Grace Mathew) as the defendants 2 and 3, besides the Company

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shown as the first defendant. On conclusion of the trial, O.A. was decreed by the Tribunal enabling the creditors/financial institutions to realise a sum of Rs. 42913757/- with interest as specified. Pursuant to the final verdict passed on 18.5.2001, the DRT issued a recovery certificate on 21.6.2001, based on which, the Recovery Officer passed an order of attachment of the immovable property of the Company on 03.09.2001. Subsequently, a Receiver was appointed on 01.03.2002 and possession of the property was taken over by the Receiver on 3.3.2002.

4. In the course of further steps, sale proclamations were issued on different occasions, right from the year 2002. The sale did not take place in the initial 'four' rounds as there were no bidders. Finally in the 5th round, pursuant to the notification published in the Malayala Manorama daily dated 30.08.2006, the sale was held on 18.09.2006, whereby it was purchased by the fifth respondent Company for a total sum of Rs.5.54 crores. The sale was confirmed by the Recovery Officer on 15.11.2006, followed by issuance of sale certificate in favour of the fifth

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respondent on the next date , i.e. 16.11.2006 and the possession was handed over to the purchaser on 18.11.2006.

5. In the meanwhile, one of the share holders of the second respondent Company approached the Company Court in Kerala at Ernakulam by filing C.P. 36/2002 on 05.07.2002 for winding up the Company. On 26.07.2002, a provisional order for winding up was passed by the Company Court and Official Liquidator of this Court was appointed as provisional liquidator with direction to take charge of the assets. But the assets could not be taken over by the Official Liquidator as the auctioneer appointed by the DRT had already taken possession of the properties by that time, which in turn was intimated to the Company Court. It is also seen that the Official Liquidator subsequently appeared before the DRT, New Delhi and filed a statement of objections on 21.06.2004, mainly contending that valuation of the property was not correct and further that C.P.36 of 2002 was pending before the Company Court, Ernakulam. As per the statement of objections, it was pointed out by the Official Liquidator that the property had been

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valued to an extent of Rs.31 crores by a Government approved valuer and a request was made to conduct the sale at Kochi and to have the income generated to be deposited with the Official Liquidator, in view of pendency of the Company Petition.

6. The objections filed by the Official Liquidator were considered by the Recovery Officer, who rejected the same as per order dated 02.07.2004. The said order is not seen challenged by the Official Liquidator and the same was set to rest. Later, the Official Liquidator approached the Company Court by filing C.A.245 of 2007 seeking to set aside the sale on different grounds. Another share holder by name M/s. V.C.K. Capital Market Services Ltd. also approached the Company Court by filing C.A. 433 of 2007 for appropriate directions to be given to the Official Liquidator to have the property seized, for further steps to be pursued. It was thereafter, that the Original Applicant in C.A.No.815 of 2007 (the pre-decessor in interest of the appellant herein) approached the Company Court raising similar prayers to have the sale set aside on various grounds.

7. The above three applications were heard in detail by

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the Company Court with reference to the sequence of events, the nature of contentions raised, the relevant provisions of law and binding precedents.

8. The main grounds of challenge raised were with reference to denial of opportunity to the Official Liquidator to get associated with the sale proceedings, the violation of the relevant provisions of law in notifying and conducting the sale, the clandestine nature of the deal effected on a pre-arranged basis, rather than a public auction and such other grounds. The Company Court observed that the merits of the case/rival contentions were not required to be considered or appreciated by the Court for the reason that the remedy of the Official Liquidator, if aggrieved of the proceedings pursued by the Recovery Officer, in terms of the law made clear by the Apex Court in **Official Liquidator, Uttar Pradesh and Uttarakhand vs. Allahabad Bank and others** ((2013) 4 SCC 381), was to challenge the proceedings by approaching the DRT by way of appeal and not by way of Company Application to be preferred before the Company Court in the pending CP. Interference was

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declined and all the Company Applications were dismissed, which forms the subject matter of challenge in this appeal preferred by the Additional applicants in C.A. 815 OF 2007.

9. Mr. K. Gopalakrishna Kurup, the learned Sr. Counsel appearing on behalf of the appellants submits that the finding and reasoning given by the Company Court is not correct or proper and that the dictum in **(2013)4SCC 381 (cited supra)**, as it is, is not applicable to the case in hand. It is pointed out that the said decision will be applicable only in a 'contested' matter; whereas in the instant case, it is rather an agreed sale / order and as such, no effective remedy will be available under Section '30' of the Act, particularly by virtue of Section 20 of the RDB Act (Recovery of Debts Due to Banks and Financial Institutions Act, 1993). It is contended that the Official Liquidator was appointed as provisional Liquidator by the Company Court way back in the year 2002 and as such, the sale conducted by the Recovery Officer in the year 2006 without proper involvement of the Official Liquidator was not correct or sustainable and it was always subject to orders to be passed by

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the Company Court, in view of the ruling rendered by the Supreme Court in **M.V. Janardhan Reddy vs. Vijaya Bank and another (2008 AIR SCW 3417)** . It is pointed out that the reserve price fixed as Rs.5.53 crores was abysmally on the lower side.

10. Actually there was only 5th respondent in the field, who offered to purchase the property for Rs.5.54 crores and the sale was conducted accordingly and confirmed in favour of the 5th respondent. It is contended that there was no proper and wide publication. The last sale proclamation was published in the 'Malayala Manorama' daily dated 30.08.2006 and as such, the sale could not have been conducted before expiry of '30 days' time. Hence the sale stated as conducted on 18.09.2006 was in clear violation of the Rule/Clause 55 of Part III of Schedule 2 of the Income Tax Act, which is the procedure to be followed as stipulated under the RDB Act . The so called sale was an instance of farce and not at all an auction. That apart, what was intended to be sold was only the 'lease hold right' over the property for 99 years and as such, no title could have been

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sold; more so when the Company was not the title holder of the property. The buyer/5th respondent has been exonerated from all the consequences of liability of the Company, shown in the proclamation and as such, undue benefit has been extended to the 5th respondent, who is stated as a bidder planted by the interested parties and hence the challenge.

11. Mr. Vivek Chib, the learned Counsel for the respondents 5 and 6 submits that the idea and understanding of the appellants as to the scope of the proceedings is thoroughly wrong and misconceived. It is stated that the property was valued by renowned valuers and wide publicity was effected. The very fact that despite such publicity at different rounds of sale proclamation, issued in the earlier four rounds, no bidder had turned up, itself is a pointer as to the true state of affairs. Admittedly, the Official Liquidator had participated in the proceedings by filing statement of objections before the Recovery Officer, referring to valuation of the property and the pendency of the C.P. before the Company Court at Ernakulam. The said objections were rejected as per the order dated

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2.7.2004 passed by the recovery officer holding that no valuation report, if the property was having still higher value, was produced by the Official Liquidator and also referring to the adverse tactics sought to be pursued by the judgment debtors, when the sale was sought to be conducted at Kochi in the earlier rounds. The said order has become final, having not been challenged by the Official Liquidator. The dates and events from filing O.A. before the DRT, passing of decree on 18.5.2001, issuance of recovery certificate on 21.06.2001, attachment ordered on 03.09.2001, appointment of receiver on 01.03.2002 and possession taken by the Receiver on 01.03.2002 were specifically adverted to, pointing out that C.P. 36/2002 for winding up the company came to be filed only on 05.07.2002.

12. The bar of jurisdiction under Section 18 of the RDB Act is referred to and reference is made to Section 34 of the Act which is having an overriding effect in relation to other statutes, particularly when the Companies Act is not mentioned under Section 34(2). of the RDB Act. Reference to Companies Act is made only under Section 19(19) of the said Act, where

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distribution of income generated/sale proceeds is made in relation to the claim of the worker under Section 529A of the Companies Act. Referring to the observations made by the Apex Court in paragraph 29 and 30 of the decision rendered by the Apex Court in **Union of India vs. Delhi High Court Bar Association ((2002) 4 SCC 275)** (where the Act was challenged contending that the powers under the Act were unbridled), it is stated that the remedy of the Official Liquidator or anybody aggrieved is to pursue further steps in terms of Rule 11 of the Second Schedule of Income-Tax Act [*option 1*], rule 60 seeking to set aside the sale by effecting deposit within 30 days [*option 2*], challenging the sale referring to the material irregularities/ non-service of notice (where no deposit is contemplated) with reference to Rule 61 of the Rules [*option 3*] or by filing necessary proceedings before the DRT under Section 30 of the Act (Option 4). If the orders passed by the DRT turn to be detrimental to the rights and interests, the aggrieved party can still move the DRAT by way of statutory remedy and thereafter the High Court, in exercise of the writ jurisdiction

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(under Articles 226/227). It can never be by way of proceedings in a Company Court; more so in view of the law declared by the Apex Court in **Official Liquidator, Uttar Pradesh and Uttarakhand vs. Allahabad Bank and others** ((2013) 4 SCC 381).

13. The learned Counsel for the respondents 5 and 6 further submits that only one share holder approached the Company Court by way of Com. Application 815 of 2007 (appellants have stepped into the shoes of the said Original Applicant who is no more) adding that share holders have absolutely no right in the Company's property. Reliance is sought to be placed on the decision rendered by a Division Bench of the Calcutta High Court in **AIR 1969 Calcutta 424 (Shyamlal Purohit and anr vs. Jagannath Ray and anr.)** , wherein reference has been made to the judgment rendered by the Madras High Court in this regard as well. It is pointed out that, if there is any genuine problem for the share holders, the remedy is to approach the Company Court by filing proceedings under Section 457 of the Companies Act and not the other way

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round. With reference to the alleged violation of the provisions of Section 19(23) in causing the proceedings to be forwarded to the DRT, Ernakulam, the learned Counsel submits that the circumstances under which the proceedings were pursued and finalised by the Recovery Officer at Delhi are very much discernible from the proceedings, particularly with regard to delaying tactics and stalling of the proceedings for sale by the interested parties /judgment debtors when the sale was sought to be done at Ernakulam, pursuant to the sale proclamation effected as many as four times. That apart, the word used under Section 19(23) is 'may' and not as 'shall' and hence is not mandatory. A purposive interpretation has to be given to the statute; in the light of the ruling rendered by a Division Bench of the Gujarat High Court , reported in **AIR 2010 Guj.124 (Bank of Baroda vs. Balbir Kumar Paul and 11 ors)** (paragraph 11, 12 and 13). It is also pointed out that the RDB Act, being a special statute, it has to be preferred over the provisions of the Companies Act, by virtue of the ruling rendered by the Supreme Court in **(2000) 4 SCC 406 (Allahabad Bank**

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v. Canara Bank). The only requirement to be satisfied when a Company Petition is pending is that the Official Liquidator has to be associated , as made clear by the Apex Court in **(2005) 8 SCC 190 (Rajasthan State Financial Corporation vs. Official Liquidator)** (paragraphs 17, 18.), which requirement is satisfied in the instant case. The Company Court can proceed with the matter only if the machinery under the Special Act is not set in motion, submits the learned Counsel.

14. Mr. K.Moni, the learned Standing Counsel for the Official Liquidator submits that based on the verdict passed by the Company Court, a lawyer has already been engaged to move the DRT, New Delhi and that the matter is being pursued accordingly.

15. Mr. Gopalakrishna Kurup, the learned Sr. Counsel for the appellants submits in reply, that no proper opportunity was given to the Official Liquidator to get associated with the proceedings but for opportunity to file objections and rejection of objection is of summary in nature .

16. From the contentions raised by either side, it is clear

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that there is no dispute with regard to the finality of the decree passed by the DRT, New Delhi in O.A., the steps and proceedings in causing attachment of the property, appointment of the Receiver and taking possession of the property etc. The dispute is only with regard to further course of action pursued after filing of the Company Petition before this Court in the year 2002. Obviously, the merit of the case has not been discussed by the learned Company Court Judge. After referring to the nature of contentions raised from both the sides, the question posed by the learned Judge was whether it was necessary to consider those points and to have the issue adjudicated on merits ; and what would be the proper course of action to be pursued, if at all the sale notified by the Recovery Officer, conducted and confirmed by him was bad in any respect. It was accordingly, that the legal position in this regard as per the verdict rendered by the Apex Court in **2013 (4)SCC 381 (Official Liquidator vs. Allahabad Bank)** was relied on and interference was declined, holding that the remedy was only to approach the DRT by filing appropriate proceedings in accordance with law and not by way of any

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proceedings before the Company Court to get the sale set aside. This being the position, the only point to be considered by this Court, is only with regard to the interference declined by the learned Judge and whether the same requires any interception at the hands of the appellate Court. In other words, consideration on merits would arise, only if the verdict passed by the Company Judge requires modification/interference. The legal position and binding precedents are to be examined in the above perspective.

17. The primary question to be considered is whether the jurisdiction that is being exercised by the Company Court is ordinary jurisdiction alone; whether the scope of the proceedings before the DRT by virtue of RDB Act (Recovery of Debts due to Banks and Financial Institutions Act, 1993) are to be affected because of pendency of the proceedings before the Company Court; (whether it be in course of adjudication or in the subsequent stage of execution). The first question had come up for consideration before the Apex Court in **Jyoti Bhushan Gupta vs. Banaras Bank Ltd. (AIR 1962 SC 403) (a four member Bench)** and it was held that, while exercising jurisdiction under

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the Companies Act, 1956, the High Court is exercising only its 'ordinary jurisdiction' and not any extraordinary or inherent jurisdiction; of course the jurisdiction of the High Court under Article 226 of 227 would not be affected in any manner. This was followed by the Supreme Court in the subsequent decisions as well, including in **Official Liquidator vs. Allahabad Bank (2013 (4)SCC 381)**.

18. There arose a question as to the jurisdiction of the DRT and recovery officer vis-a-vis Company Court. If a winding up proceeding was pending before the Company Court, was it necessary to get leave of the Company Court to initiate or pursue the proceedings before the DRT/Recovery Officer in terms of the provisions of the RDB Act and whether the jurisdiction of the DRT or Recovery Officer was exclusive? The scope of Section 34 of the RDB Act stipulating the overriding effect of the statute in relation to the inconsistency of the provisions of the Companies Act, particularly with reference to 442, 446 and 537, was subjected to detailed analysis in **Allahabad Bank vs. Canara Bank ((2000) 4 SCC 406)**, wherein the special nature of the

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RDB Act and overriding effect over the provisions of the Companies Act was upheld. The questions raised before the Apex Court in the said case are the following:

“(1) Whether in respect of proceedings under the RDB Act at the stage of adjudication for the money due to the banks or financial institutions and at the stage of execution for recovery of monies under the RDB Act, the Tribunal and the Recovery Officers are conferred exclusive jurisdiction in their respective spheres?

(2) Whether for initiation of various proceedings by the banks and financial institutions under the RDB Act, leave of the Company Court is necessary under Section 537 before a winding-up order is passed against the company or before provisional liquidator is appointed under Section 446(1) and whether the Company Court can pass orders of stay of proceedings before the Tribunal, in exercise of powers under Section 442?

(3) Whether after a winding-up order is passed under Section 446(1) of the Companies Act or a provisional liquidator is appointed, whether the Company Court can stay proceedings under the RDB Act, transfer them to itself and also decide questions of liability, execution and priority under Section 446 (2) and (3) read with Sections 529, 529-A and 530 etc. of the Companies Act or whether these questions are all within the exclusive jurisdiction of the Tribunal?

(4) Whether in case it is decided that the distribution of monies

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is to be done only by the Tribunal, the provisions of Section 73 CPC and sub-sections (1) and (2) of Section 529, Section 530 of the Companies Court (sic Act) also apply — apart from Section 529-A — to the proceedings before the Tribunal under the RDB Act?

(5) Whether in view of provisions in Sections 19(2) and 19(19) as introduced by Ordinance 1 of 2000, the Tribunal can permit the appellant Bank alone to appropriate the entire sale proceeds realised by the appellant except to the limited extent restricted by Section 529-A. Can the secured creditors like Canara Bank claim under Section 19(19) any part of the realisations made by the Recovery Officer and is there any difference between cases where the secured creditor opts to stand outside the winding up and where he goes before the Company Court?

(6) What is the relief to be granted on the facts of the case since the Recovery Officer has now sold some properties of the Company and the monies are lying partly in the Tribunal or partly in this Court?

19. After a threadbare analysis of the provisions of law and judicial precedents, it was held by a two member Bench that the jurisdiction of the Tribunal in regard to adjudication is exclusive (which however does not apply to the jurisdiction of the Supreme Court or High Court exercising powers under Article 226 /227 of the Constitution.).

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20. The Apex Court further held that even in regard to "execution", the jurisdiction of the Recovery Officer is exclusive and that the certificate granted under Section 19(22) has to be executed only by the Recovery Officer; and no dual jurisdictions at different stages are contemplated. It was specifically held that, but for the DRT/Recovery Officer, no other court or authority much less the civil court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the RDB Act. It was made clear that the Company Court cannot decide the claims of banks and financial institutions; and therefore, there is no need for the appellant to seek leave of Company Court to proceed with its claim before the DRT or in respect of the execution proceedings before the Recovery Officer; simultaneously observing that no such proceedings can be transferred to the Company Court as well and that Sections 442, 446 and 537 of the Companies Act cannot be applied against the Tribunal. The Apex Court also held that Section 19(19) of the RDB Act is clearly inconsistent with Section 446 and other provisions of the Companies Act; and

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that only Section 529-A is attracted to the proceedings before the Tribunal , dealing with distribution of income generated. It was accordingly made clear that on questions of adjudication, execution and working out priorities, the special provisions made in the RDB Act have to be applied and nothing else.

21. The aforesaid decision was approved by a 'three member Bench' of the Supreme Court in the subsequent decision in **Rajasthan State Finanacial Corporation vs. Official Liquidator ((2005)8 SCC 190)** wherein the constitutional validity of Act was a subject matter of consideration. After making a comparative analysis of the RDB Act and Companies Act, it was held by a three member Bench of the Apex Court as follows:

"The right to sell under the SFC Act or under the Recovery of Debts Act by a creditor coming within those Acts and standing outside the winding up, is different from the distribution of the proceeds if the sale of the security. The distribution in a case where the debtor is a company in the process of being wound up, can only be in terms of Section 529-A read with Section 529 of the Companies Act. After all, the Liquidator represents the

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entire body of creditors and also holds a right on behalf of the workers to have a distribution pari passu with the secured creditors and the duty for further distribution of the proceeds on the basis of the preferences contained in Section 530 of the Companies Act under the directions of the Company Court. In other words, the distribution of the sale proceeds under the direction of the Company Court is his responsibility. To ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale xxxxxxxxxxxx".

The legal position summed up in paragraph 18 of the said verdict is in the following terms:

"18. In the light of the discussion as above, we think it proper to sum up the legal position thus:

(i) A Debts Recovery Tribunal acting under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be entitled to order the sale and to sell the properties of the debtor, even if a company-in-liquidation, through its Recovery Officer but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him.

(ii) A District Court entertaining an application under Section 31 of the SFC Act will have the power to order sale of the assets of a borrower company-in-liquidation, but only after notice to the Official Liquidator

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or the Liquidator appointed by the Company Court and after hearing him.

(iii) If a financial corporation acting under Section 29 of the SFC Act seeks to sell or otherwise transfer the assets of a debtor company-in-liquidation, the said power could be exercised by it only after obtaining the appropriate permission from the Company Court and acting in terms of the directions issued by that court as regards associating the Official Liquidator with the sale, the fixing of the upset price or the reserve price, confirmation of the sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of Section 529-A and Section 529 of the Companies Act.

(iv) In a case where proceedings under the Recovery of Debts Du to Banks and Financial Institutions Act, 1993 or the SFC Act are not set in motion, the creditors concerned is to approach the Company Court for appropriate directions regarding the realisation of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company-in- liquidation.

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22. Coming to the verdict passed by the Apex Court in **Official Liquidator vs. Allahabad Bank ((2013)4 SCC 381)**, the question of law raised before the Supreme Court was

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whether the Company Judge under the Companies Act 1956 has jurisdiction at the instance of the Official Liquidator to set aside the auction or sale held by the Recovery Officer under the RDB Act, 1993 or whether the Official Liquidator is required to follow the route as engrafted under the RDB Act by filing an appeal assailing the auction and the resultant confirmation of sale. After detailed deliberations, it was held by the Apex Court that the special provisions made under the RDB Act, 1993 have to be applied and that by virtue of Section 34 of the RDB Act, the provisions in the said Act override the Companies Act 1956, to the extent there is anything inconsistent between the Acts. It was also made clear that the RDB Act being a subsequent legislation and being a special law, would prevail over the general law, the Companies Act. With regard to the role of the Official Liquidator, the Apex Court observed that, it is the function of the Official Liquidator to represent all the creditors and workers in a proceeding before the Company Court and by virtue of the key position, it is for him to bring the actual facts and figures to the notice of the DRT/Recovery Officer, if the proceedings before the

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Tribunal/Recovery Officer are in relation to such a Company. This being the position, the association of the Official Liquidator is very much essential and is mandatorily required under the RDB Act and being a 'person aggrieved', he can very well maintain an appeal under Section 30 of the RDB Act, if the Recovery Officer has pursued any act contrary to the actual facts and figures or the relevant provisions of law.

23. If the order passed by the DRT turns to be detrimental to the rights and interests, the Official Liquidator can have recourse by way of appeal before the DRAT as provided under the Act itself. It was with reference to the said scheme of the statute that a finding was rendered by the Apex Court in the above verdict, that it was the only course of action which was to be pursued by the Official Liquidator and that there was no question of any existence of two or more remedies so as to have the recourse to the doctrine of election. It was categorically held by the Apex Court that it was difficult to conceive that there were two remedies, asserting that the Official Liquidator has only one remedy, i.e. to challenge the order passed by the Recovery

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Officer before the DRT, also observing that the order passed under Section 30 of the RDB Act by the DRT is still appealable. Based on the above discussion, it was made clear in crystal clear terms, that no proceedings will lie before the Company Court to challenge the order passed by the Recovery Officer either effecting sale or confirming the sale.

24. With regard to the reliance sought to be placed by the appellant on the decision rendered by the Apex Court in **M.V. Janardhan Reddy vs. Vijaya Bank and another** (2008 AIR SCW 3417), it is true that the sale effected by the recovery officer was intercepted at the instance of the Official Liquidator appointed by the Company Court. The Apex Court, referring to the law declared in **Sikander Khan vs. Radha Kishan ((2002) 9 SCC 405)** and other decisions mentioned therein, observed that it was very much obligatory for the DRT to have the Official Liquidator associated with the proceedings pending before the Tribunal. It was also noted that the Company Court had permitted the sale proceedings before the Tribunal to go on subject to confirmation by the Court. An interim order had

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already been passed by the Company Court in this regard and it was without any regard to the said interim order that confirmation of the sale was effected by the Recovery Officer. After referring to the factual sequence, the Apex Court held that, by virtue of the interim order already passed by the Company Court and further that since all the parties were aware of the condition imposed as to the confirmation of sale by the Company Court, it was never open for the Recovery Officer to have the sale confirmed under any circumstance. Observing that the order passed by the Recovery Officer was in clear violation of the order passed by the Company Court and being inconsistent with the specific condition imposed by the Court, it was intercepted by the Apex Court.

25. Coming to the factual position involved in the present case, the aforesaid decision stands on a different footing and is not seen applicable in the given context. The final order was passed in the O.A. on 18.05.2001, the Recovery Certificate was issued on 21.06.2001, the property was attached on 03.09.2001, the Receiver/auctioneer was appointed by the DRT on

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01.03.2002; whereas the Company Petition came to be filed only on 05.07.2002. No interim order as of the nature in **M.V. Janardhan Reddy vs. Vijaya Bank and another** (2008 AIR SCW 3417) was ever passed by the Company Court in the instant case, but for appointing the Official Liquidator as provisional liquidator. There is no case for the Official Liquidator or any of the appellants that they had approached the Company Court by filing necessary proceedings then and there to intercept the sale [which even otherwise would not have been maintainable by virtue of law declared by the Supreme Court in **Official Liquidator vs. Allahabad Bank** ((2013)4 SCC 381)]. Similarly, the Official Liquidator was associated with the proceedings before the Recovery Officer and he had filed his objections as well, referring to the valuation of the property and such other aspects including pendency of the Company Petition. The said objection was rejected as per the order dated 02.07.2004 by the recovery officer, which was never subjected to challenge by the Official Liquidator or anybody else. It was much later, that the sale proclamation was issued, that too, by

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effecting publication in various dailies at different points of time and the initial four rounds did not turn to be fruitful. It was only on the fifth round, that the sale could take place on 18.09.2006, which in turn was confirmed by the Recovery Officer. As such, the decision sought to be relied on, i.e. **M.V. Janardhan Reddy vs. Vijaya Bank and another (2008 AIR SCW 3417)** is not applicable to the case in hand.

26. The scope of the said decision (Janardhan Reddy's case) has been referred to and explained by the Apex Court in the subsequent decision in **(2013)4 SCC 381** (cited supra). A reference to paragraph 36 of the said decision in this regard is relevant, which is extracted below:

.....36. We will be failing in our duty if we do not take notice of the decision in M.V. Janardhan Reddy⁴ wherein the sale was set aside by the Company Judge. It may be stated here that the Company Court had imposed a condition that the permission of the Company Court shall be obtained before the sale of the properties, immovable or movable, is confirmed or finalised. On the aforesaid basis, this Court opined that when the bank was permitted to go ahead with the proposed sale of the assets of the

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company under liquidation by way of auction but such sale was subject to confirmation by the Company Court and all the parties were aware about the condition as to confirmation of sale by the Company Court, it was not open to the Recovery Officer to confirm the sale and, therefore, the sale was set aside by the Company Court, being in violation of the order. Thus, we find that the facts in the said case were absolutely different and further this Court did not deal with the jurisdiction of the Company Court vis-à-vis DRT as the said issue really did not arise. Hence, it is not an authority for the proposition that the Official Liquidator can approach the Company Court to set aside the auction or sale conducted by the Recovery Officer of DRT

From the above, it is clear that the decision in **M.V. Janardhan Reddy** (*cited supra*) is not at all applicable to the case in hand and the contention raised by the appellants in this regard stands repelled.

27. In so far as the issue involved in this case is concerned, this Court is of the firm view that the appellants are not at all entitled to have any relief to set aside the sale by approaching the Company Court and the challenge, if any, will lie only before the DRT by way of appropriate proceedings in accordance with

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law. The learned Counsel appearing on behalf of the Official Liquidator has conceded that, pursuant to the verdict passed by the learned Company Judge, proceedings have already been initiated to have the matter challenged before the DRT, New Delhi, by way of appropriate proceedings. This Court finds that the appeal is devoid of any merit and none of the grounds raised in support of the same could be held as tenable. Interference is declined and the appeal stands dismissed.

**P.R. RAMACHANDRA MENON,
JUDGE**

**K. HARILAL,
JUDGE**

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