

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
W.P.No. 20781 OF 2014

ORDER: *(per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The petitioner filed this Writ Petition challenging the order passed by the Debts Recovery Appellate Tribunal at Kolkata (for short, 'the Appellate Tribunal') in Appeal No. 119 of 2013/130-131 dated 03-06-2014 against the order passed by the Debts Recovery Tribunal, Visakhapatnam (for short, 'the Tribunal'), in S.A.No. 136 of 2012 dated 30-08-2012.

Respondent Nos. 2 and 3, being borrowers, have committed default in payment of debt due to the 1st respondent bank. The 1st respondent declared the secured asset as non-performing asset, initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act of 2002'), and issued notice dated 29-04-2011 under Section 13 (2) of the Act of 2002 demanding respondent Nos. 2 and 3 to pay the debt due to the 1st respondent but respondent Nos. 2 and 3 did not discharge the debt of Rs.50,51,000/- while promising to pay the amount *vide* letter 20-12-2011. Thereupon, notice, under Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules of 2002'), dated 22-08-2011 and paper publication dated 25-08-2011 were issued, took possession of the secured asset, affixed notice to the outer part of the secured asset and served on 24-08-2011. Since respondent Nos. 2 and 3 failed to discharge the debt, the 1st respondent bank filed petitioner before the District Magistrate under Section 14 of the Act of 2002 on 21-10-2011, took physical possession of the property.

Even after taking physical possession of the property, respondent Nos. 2 and 3 did not discharge the debt due to the 1st respondent. The 1st

respondent, exercising power conferred under the Act of 2002, brought the secured asset to sale in an extent of Ac. 2.38 cents with rice-mill, machinery, godown and shops therein with all easementary rights situated in Kajuluru Village and Mandal, East Godavari District, and conducted auction on 26-04-2012. In the said auction, the petitioner became the highest bidder for value of Rs.95,75,000/- by tender process.

As per the terms of auction notice, the petitioner deposited a sum of Rs.7,00,000/- by demand draft No. 519733 dated 26-04-2012 of State Bank of India, Treasury Branch, Kakinada, on State Bank of India, Gollapalem, being 10% of the reserve price (caution deposit) against the reserve price of Rs.70,00,000/-.

Respondent Nos. 2 and 3 filed a petition before the Tribunal under Section 17 of the Act of 2002 and also, challenging the proposed auction, filed I.A.No. 290 of 2012 for stay of all further proceedings in pursuance of the sale notice. The Tribunal, by its order dated 03-04-2012, directed the 1st respondent to proceed with the auction as scheduled; however, directed not to finalize and confirm the sale of the secured asset on condition that respondent Nos. 2 and 3 shall deposit 15% of the notice amount with the 1st respondent on or before 26-04-2012 and, in case, respondent Nos. 2 and 3 committed default in payment of the amount within the stipulated period, the 1st respondent is at liberty to proceed in accordance with law. In compliance with the direction of the Tribunal, respondent Nos. 2 and 3 deposited 15% of the notice amount and the said order was in force till disposal of S.A.No. 136 of 2012.

It is specifically contended that the Tribunal dismissed S.A.No. 136 of 2012 on 30-08-2012 along with interlocutory application giving liberty to the 1st respondent to proceed in accordance with law.

Consequent upon dismissal of S.A.No. 136 of 2012, the 1st respondent issued notice dated 08-09-2012 calling upon the petitioner to

deposit 25% of the bid amount (after deducting the EMI amount of Rs.7,00,000/-) immediately and the balance of Rs.71,75,000/- within 15 days from the date of notice on or before 24-09-2012 for completion of the sale. In pursuance of the above directions of the 1st respondent in the letter dated 08-09-2012, the petitioner deposited Rs.16,93,750/- on the same day and the balance of Rs.71,75,000/- on 15-09-2012 even before the date fixed for payment. The 1st respondent, having received entire sale consideration, issued sale certificate dated 17-09-2012 under Rule 9 (6) of the Rules of 2002, registered the document in the office of Sub-Registrar, Tallarevu, East Godavari District, delivered possession of the property to the petitioner. Thus, the petitioner became absolute owner of the property with marketable title and in lawful possession.

Respondent Nos. 2 and 3, aggrieved by the order of the Tribunal, preferred Appeal No. 119 of 2013/130-131 before the Appellate Tribunal but the Appellate Tribunal, without considering the material available on record in proper perspective, allowed the appeal by order dated 03-06-2014 setting aside the sale on the ground of irregularities *i.e.* non-compliance with mandatory procedure under Rule 9 of the Rules of 2002. It is further contended that the Appellate Tribunal, on erroneous appreciation of law in ***General Manager, Sri Siddeswara Cooperative Bank Limited and another Vs. Iqbal and others***^[1], allowed the appeal without considering the factual aspects with reference to law and committed an error in allowing the appeal. When the Tribunal passed an order not to finalize and confirm the sale, the petitioner is not under obligation to part with huge amount of Rs.16,93,750/- besides deposit of Rs.7,00,000/-. Thus, the 1st respondent itself postponed payment of 25% of the consideration. Thereby, the petitioner is no way responsible for non-payment of 25% of the sale price (consideration).

The petitioner further contended that he complied with all the

mandatory provisions of the Act of 2002 and the relevant Rules thereunder; the finding of the Appellate Tribunal that the petitioner did not comply with the mandatory requirements under the Act of 2002 and the Rules thereunder is not in accordance with law and prayed to set aside the order passed by the Appellate Tribunal in Appeal No. 119 of 2013/130-131 dated 03-06-2014 against the order of the Tribunal in S.A.No. 136 of 2012 dated 30-08-2012.

2. The 1st respondent filed counter affidavit admitting the allegations made in the petition, depositing of Rs.7,00,000/- initially as deposit, passing an order by the Tribunal granting stay of all further proceedings subject to certain conditions and dismissal of S.A.No. 136 of 2012 on 30-08-2012. It is further admitted about deposit of Rs.16,93,750/- on 08-09-2012 and balance of Rs.71,75,000/- on 15-09-2012 so also issue of sale certificate registered with Sub-Registrar' Office, Tallarevu, East Godavari District, on 17-09-2012. The 1st respondent supported the contention of the petitioner that the Appellate Tribunal did not appreciate the material available on record in proper perspective in the light of the law laid down by Apex Court, allowed the appeal erroneously and that the Appellate Tribunal had gone beyond its jurisdiction and allowed the appeal on extraneous and unfounded grounds which were not at all raised before the Tribunal. Therefore, the order under challenge is erroneous.

The 1st respondent mainly contended that the Appellate Tribunal, in allowing the appeal setting aside the sale, relied on Rule 9 (3) of the Act of 2002 which provides that purchaser shall deposit 25% of the sale price immediately and Rule 9 (4) of the Act of 2002 contemplates that the balance of sale price shall be paid by purchaser on or before 15th day of confirmation of sale. Since the sale itself could not be confirmed in view of the order passed by the Tribunal, the petitioner, though the successful bidder, who is not a party to S.A.No. 136 of 2012, did not deposit the amount as required under Rules 9 (3) and 9 (4) of the Rules of 2002. The Appellate Tribunal did

not take into consideration the circumstances under which Rules 9 (3) and 9 (4) of the Rules of 2002 could not be complied by the petitioner and erroneously allowed the appeal setting aside the order passed by the Tribunal. Finally, it is prayed to dismiss the Writ Petition setting aside the order passed by the Appellate Tribunal in Appeal No. 119 of 2013/130-131 dated 03-06-2014 while confirming the order of the Tribunal in S.A.No. 136 of 2012 dated 30-08-2012.

3. Respondent Nos. 2 and 3 filed counter affidavit denying material allegations made in the petition while admitting their ownership of the secured asset, borrowal of amount from the 1st respondent, commission of default, initiating proceedings under the Act of 2002 and taking possession *etc.,*. They also admitted about filing of S.A.No. 136 of 2012 before the Tribunal to declare that the proceedings in pursuance of the sale notice dated 25-03-2012 for auction of the secured asset on 26-04-2012 as illegal and arbitrary, filing of I.A.No. 290 of 2012 for grant of *interim* stay, passing an order directing the 1st respondent to proceed with the auction but not to finalize and confirm the sale subject to payment of 15% of the notice amount by respondent Nos. 2 and 3 with the 1st respondent on or before 26-04-2012 and compliance with the same. However, the Tribunal dismissed S.A.No. 136 of 2012 by order dated 30-08-2012. It is specifically contended that the order passed by the Tribunal is erroneous and respondent Nos. 2 and 3, aggrieved by the order, preferred an appeal before the Appellate Tribunal in Appeal No. 119 of 2013/130-131. In the appeal, the Appellate Tribunal, after considering necessary material on record, found that the petitioner violated Rules 9 (3) and 9 (4) of the Rules of 2002 which are mandatory and set aside the sale allowing the appeal. The Appellate Tribunal afforded reasonable opportunity to both the parties and, upon considering the material, passed the order impugned in this appeal. Therefore, the Appellate Tribunal did commit no error in allowing the appeal and finally prayed to dismiss the petition confirming the order passed by the

Appellate Tribunal in Appeal No. 119 of 2013/130-131.

4. During the course of hearing, Sri V.S.R.Anjaneyulu, learned counsel for the petitioner, would contend that the order under challenge passed by the Appellate Tribunal is totally based on irrelevant grounds and material and failure to deposit 25% as required under Rule 9 of the Rules of 2002 is only due to failure of the 1st respondent to inform about the order of the Tribunal dismissing S.A.No. 136 of 2012. Even otherwise, in view of the order passed by the Tribunal not to finalize and confirm the sale, the petitioner is not under obligation to pay 25% of the sale price on the day of auction itself. Only on receipt of information from the 1st respondent, the petitioner paid balance of Rs.16,93,750/-. Till then, the petitioner is not aware about disposal of S.A.No. 136 of 2012. Therefore, the delay in depositing 25% of the sale price of the secured asset in compliance with Rule 9 (3) is only due to delay of the 1st respondent and due to the stay granted by the Tribunal and such laches are not attributable to the petitioner.

Finally, it is contended that the petitioner deposited the balance of Rs.55,53,387/- out of the sale price of the secured asset before the date fixed for payment of the balance. Thus, the petitioner had not violated the mandatory provisions of the Act of 2002 and the Rules thereunder but the Appellate Tribunal, without looking into the facts, allowed the appeal setting aside the order passed by the Tribunal so also the sale held by the 1st respondent. If the totality of the circumstances, under which the petitioner could not comply Rule 9 (3) of the Rules of 2002, is taken into consideration, the Appellate Tribunal ought not to have allowed the appeal setting aside the sale and requested this Court, while exercising power under Article 226 of the Constitution of India, to set aside the order passed by the Appellate Tribunal in Appeal No. 119 of 2013/130-131 dated 03-06-2014.

5. Learned senior counsel appearing for respondent Nos. 2 and 3 contended that Rules 9 (1), (3) and (4) are mandatory and non-compliance of

those Rules would vitiate the entire sale. The petitioner shall deposit 25% of the sale price immediately after the sale under Rule 9 (3) and has to deposit the balance within 15 days in compliance with Rule 9 (4) of the Rules of 2002 unless the parties agreed otherwise in writing but there is no agreement in writing between the 1st respondent and the auction purchasers so also postponing payment of balance of sale consideration of 75% in compliance with Rule 9 (4) of the Rules of 2002. In the absence of any agreement for extension of time by the 1st respondent or respondent Nos. 2 and 3 with the petitioner, failure to comply with Rules 9 (3) and 9 (4) of the Rules of 2002 vitiates the sale. Thus, the Appellate Tribunal rightly concluded that the petitioner violated Rules 9 (3) and 9 (4) of the Rules of 2002. In view of the limited powers of this Court under Article 226 of the Constitution of India, this Court, at best, can exercise its powers to interfere if there is any gross violation of principles and finally prayed to dismiss the Writ Petition.

6. Considering rival contentions and perusing the material available on record, the sole point that arises for consideration is

"Whether the petitioner complied with Rules 9 (3) and 9 (4) of the Rules of 2002 and whether it is based on any pleadings in the petition in S.A.No. 136 of 2012 before the Tribunal, if so, whether the order passed by the Appellate Tribunal by sustained aside?"

7. Undisputedly, respondent Nos. 2 and 3 committed default in payment of debt due to the 1st respondent bank. Thereupon, the 1st respondent bank initiated proceedings under the Act of 2002 by following necessary procedure and issued sale notice dated 25-03-2012 for sale of the property fixing date of auction as 26-04-2012. On receipt of sale notice, respondent Nos. 2 and 3 approached the Tribunal under Section 17 of the Act of 2002 seeking relief to declare that the sale notice dated 25-03-2012 published in Enadu Newspaper by the 1st respondent is arbitrary. Along with S.A.No. 136 of 2012, respondent Nos. 2 and 3 filed I.A.No. 290 of 2012 for grant of *interim*

order. The Tribunal passed the following *interim* order:

"Ld. Counsel for the applicant is present. Considering the facts and circumstances of the case, it is though fit to grant an interim order. Accordingly, while the respondent bank i.e., the authorized officer is at liberty to proceed and initiate & continue the auction sale and any bid received by the bank on the date of auction, such bids relating to highest bidder may be retained pursuant to the sale notice dt. 24.03.2012 published on 25.3.2012 in "The Eenadu" newspaper by the respondent bank, however, directed not to finalize and confirm the sale in respect of schedule property mentioned in the SA and more fully described in sale notice dt. 24.03.2012 and the respondent bank is further restrained from dispossessing the applicant from their house property without leave of this Tribunal however on condition that the petitioner/applicant shall at least deposit 15% of the notice amount with the respondent bank on or before 26.04.2012. In case the petitioner/applicant commits default in payment of the said amounts within the said stipulated period, the respondent bank is at liberty to proceed in accordance with law. For compliance of payment, Notice, counter/reply and hearing, call on 04.05.2012."

In pursuance of the direction while granting *interim* order, respondent Nos. 2 and 3 have complied with the conditions specified therein. Finally, S.A.No. 136 of 2012 was dismissed by the Tribunal assigning its own reasons by order dated 30-08-2012. Thereafter, the sale was confirmed on deposit of the requisite amount as required under Rule 9 of the Rules of 2002. Aggrieved by the dismissal order passed by the Tribunal in S.A.No. 136 of 2012 dated 30-08-2012, respondent Nos. 2 and 3 preferred appeal before the Appellate Tribunal in Appeal No. 119 of 2013/130-131 raising several contentions, more particularly about arbitrariness in issuing the sale notice. It appears from the order passed by the Appellate Tribunal, which is under challenge in this Writ Petition, that learned counsel for respondent Nos. 2 and 3 raised a specific contention that the petitioner did not comply with Rules 9 (3) and 9 (4) of the Rules of 2002 i.e. deposit of 25% of the auction price and 75% for confirmation within the specified time. Basing on the said contention, the Appellate Tribunal framed the following point for consideration:

"Whether the non-payment of the 25% of the sale price on the date of sale i.e. 26.4.12 and the non-payment of the remaining sale price within 15 days

from the date of sale was fatal to the sale itself?"

As seen from the order passed by the Tribunal in S.A.No. 136 of 2012, respondent Nos. 2 and 3 challenged only the sale notice issued under Rule 8 (6) of the Rules of 2002 on various grounds including the value fixed by the 1st respondent and sale price at Rs.73,00,000/- though it was valued at Rs.90,74,000/-. However, the 1st respondent bank filed counter contending that all steps were taken strictly in accordance with the law and that the contentions of respondent Nos. 2 and 3 are not sustainable since the provisions of the Act of 2002 were strictly adhered to.

8. The 1st respondent further contended that the sale was already conducted and requested to pass appropriated orders for confirmation of the sale in favour of the highest bidder. In para No. 8 of the order, the Tribunal, while dismissing the application, observed that

"Nothing could be pointed out/substantiated by the applicant that the recourse taken by the secured creditor O.P. Bank under sub-section 4 of Sec. 13 is not in accordance with the provisions of the Act and rules made there under, on the contrary it has been established that recourse taken by the O.P. Bank is in accordance with the provisions of the SARFAESI Act and Rules made there under and does not warrant any intervention from this Tribunal."

9. Curiously, the Appellate Tribunal, basing on oral submission, during hearing, about non-compliance of Rules 9 (3) and 9 (4) of the Rules of 2002, framed the point for consideration directly pointing out irregularities in deposit of 25% of the sale price on 26-04-2012 and 75% of the sale price within 15 days of the sale and answered the point in favour of respondent Nos. 2 and 3. In fact, respondent Nos. 2 and 3 before the Appellate Tribunal never challenged the auction for violation of Rules 9 (3) and 9 (4) of the Rules of 2002 and, on the other hand, the said defence was not available before the Tribunal as S.A.No. 136 of 2012 was filed prior to auction of the property. That apart, the *interim* order passed by the Tribunal extracted above clearly shows that the auction was proposed to be held on 26-04-2012. While

granting stay of further proceedings, the 1st respondent was directed not to finalize and confirm the sale in pursuance of the sale notice dated 24-03-2012 without the leave of the Tribunal subject to deposit of 15% of the notice amount with the 1st respondent bank on or before 26-04-2012. Thus, by the date of filing of S.A.No. 136 of 2012, the auction was not conducted. Therefore, question of raising the plea about non-compliance of Rules 9 (3) and 9 (4) was not available by the date of filing S.A.No. 136 of 2012. A perusal of the grounds of appeal before the Appellate Tribunal, no such contention was raised, particularly about non-compliance of Rules 9 (3) and 9 (4) of the Rules of 2002. However, during the course of argument, violation of Rules 9 (3) and 9 (4) of the Rules of 2002 was pointed out by learned counsel for respondent Nos. 2 and 3 before the Appellate Tribunal and, on the strength of the same, the Appellate Tribunal, by following the judgment in ***General Manager, Sri Siddeswara Cooperative Bank Limited and another*** (1st *supra*), allowed the appeal setting aside the sale on the ground that it is vitiated by irregularities.

10. Sri V.S.R.Anjaneyulu, learned counsel for the petitioner, would contend before us that the ground of non-compliance of Rules 9 (3) and 9 (4) of the Rules of 2002 was not urged before the Tribunal since it was not available and, though the petitioner was already made a party, no such ground was raised in the entire grounds of appeal but for the first time, during hearing, it was pointed out by learned counsel for respondent Nos. 2 and 3. The general rule is that unless there is a plea before the original Court, the Appellate Court cannot entertain any plea purely based on fact or mixed question of fact and law. When an appeal is filed even if violation of Rules 9 (3) and 9 (4) of the Rules of 2002 is based on pure question of law, he would have raised a specific ground in the grounds of appeal but no such ground was raised in the grounds of appeal before the Appellate Tribunal. In fact, no specific rules governing appeals are specified under the Act of 2002. However, under Section 18 (2) of the Act of 2002, the Appellate Tribunal

shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for brevity, 'the Act of 1993'), and rules made thereunder. Section 20 of the Act of 1993 governs appeals to the Appellate Tribunal but no specific procedure is prescribed except limited procedure of entertaining appeal, sending copy *etc.*, to parties. Rule 10 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994 (for brevity, 'the Rules of 1994'), prescribed what memorandum of appeal should contain. According to it, every memorandum of appeal filed under Rule 5 shall set forth concisely under distinct heads, the grounds of such appeal without any argument or narrative, and such grounds shall be numbered consecutively and shall be typed in double line space on one side of the paper. It shall not be necessary to present separate memorandum of appeal to seek *interim* order or direction if in the memorandum of appeal, the same is prayed for. Even Rule 10 of the Rules of 1994 also did not specify the procedure to be followed for raising additional grounds of appeal. Thus, question of raising additional grounds during hearing before the Appellate Tribunal does not arise if the procedure prescribed under the Rules of 1994 is strictly adhered to.

11. Order XLI Rule 2 of the Code of Civil Procedure (for brevity, 'C.P.C.') deals with grounds which may be taken in appeal. According to Order XLI Rule 2 of C.P.C., the appellant shall not, except by leave of the Court, "**urge or be heard**" in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under the rule. A rider is added to Rule 2 and, according to it, the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground. In view of Order XLI Rule 2 of C.P.C., additional grounds may be raised with the leave of the Court and the Appellate Court, after affording opportunity to the respondent,

may consider the additional grounds urged before it. Even if the principle contained under Order XLI Rule 2 of C.P.C. is applied to the Rules of 1994, it is obligatory on the part of respondent Nos. 2 and 3 to obtain leave from the Court to raise additional grounds to vitiate the sale on the ground of irregularities but no such leave was obtained. However, while arguing the matter across the bar, learned counsel for respondent Nos. 2 and 3 raised such ground of confirmation of sale in contravention of Rules 9 (3) and 9 (4) of the Rules of 2002. The general principle is that question of raising additional plea would arise only in case any ground is urged before the original Court but, here, failed to raise such ground in the grounds of appeal while challenging the order of the original Court. When no such plea was raised and when the petitioner herein was not a party before the original Court *i.e.* the Tribunal, the plea relating to violation of Rules 9 (3) and 9 (4) of the Rules of 2002 cannot be entertained by the Appellate Tribunal for the first time. The general principle is that any plea must be based on factual foundation in pleadings before original Court and Courts cannot grant relief traveling beyond pleadings as held by Apex Court in **Ramesh Kumar & Another Vs. Furu Ram & Another**^[2], wherein it was observed as follows:

"The case set forth in written statement by the defendant was completely different from the case made out in the evidence of their witnesses. No amount of evidence contrary to pleadings could be relied on or accepted."

If the principle laid down in the above judgment is applied to the present facts of the case, it is evident that respondent Nos. 2 and 3 did not challenge the sale notice before the Tribunal on the ground of violation of Rules 9 (3) and 9 (4) of the Rules of 2002 since it was not available. Even in the grounds of appeal before the Appellate Tribunal, no such ground was urged and no steps were taken to file additional grounds with the leave of the Court. In such case, the Appellate Tribunal is precluded to consider those submissions to base its order.

12. During the course of argument, learned counsel for respondent Nos. 2

and 3 contended that the Appellate Tribunal considered the objections raised by respondent Nos. 2 and 3 and the submissions of the petitioner. Therefore, the plea is within the knowledge of the petitioner even before the Appellate Tribunal. However, the said contention of learned counsel for respondent Nos. 2 and 3 cannot be accepted for the reason that there was no factual foundation before the Tribunal to raise such plea and no steps were taken to raise additional grounds in the grounds of appeal even before the Appellate Tribunal. In the absence of any specific plea before the Tribunal and in the absence of any specific ground in the grounds of appeal or additional grounds filed with the leave of the Court, the Appellate Tribunal would not have considered the said plea of irregularities in the auction.

13. This Court can interfere under Article 226 of the Constitution of India when the order of the Tribunal is perverse, prompted by extraneous considerations or made in contravention of principles of natural justice. In the present case, the Appellate Tribunal, swaying away with the submissions of learned counsel for respondent Nos. 2 and 3, framed a point, which is not based on pleadings before the Tribunal or in the grounds of appeal before the Appellate Tribunal, and passed an erroneous order totally against the law. No doubt this Court cannot sit as an Appellate Authority over the judgment of the Appellate Tribunal but, when the order of the Appellate Tribunal is totally perverse and against the law under which it is constituted *i.e.* the Act of 2002 and the Rules of 1994, this Court is certainly competent to interfere with such erroneous decisions. That apart, respondent Nos. 2 and 3 did not bring to the notice of the Appellate Tribunal the subsequent events as per the procedure. Mere raising a new contention not based on any pleadings since it is a subsequent event, the same needs no consideration.

In ***Mukund Limited Vs. Mukund Staff Officer's Association***^[3], the finding of the Tribunal regarding the status of the employees, though upheld by the High Court, was set aside by the Supreme Court on the ground that the finding is not based on any specific plea. If this principle is applied to the

present facts of the case, framing of point and finding of the Appellate Tribunal is bereft of pleadings. Therefore, the order passed based on such plea is unsustainable under law since the Appellate Tribunal exercised its power beyond the pleadings which amounts to perversity. In such case, this Court can certainly interfere and set aside the order.

14. In view of our foregoing discussion, we find that the order of the Appellate Tribunal is contrary to the law, not based on factual foundation in the pleadings and the same deserves to be set aside. We, however, make it clear that we have not expressed any opinion on the petitioner's contention regarding non-compliance of Rules 9 (3) and 9 (4) of the Rules of 2002 and the respondents are at liberty to invoke the jurisdiction of the Tribunal in this regard.

15. In the result, the Writ Petition is allowed; setting aside the order of the Debts Recovery Appellate Tribunal, Kolkata, in Appeal No. 119 of 2013/130-131 dated 03-06-2014; restoring the order of the Debts Recovery Tribunal, Visakhapatnam, in S.A.No. 136 of 2012 dated 30-08-2012. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA

MURTHY, J.

Date: 09th March, 2015.

JSK

[\[1\]](#) (2013) 10 SCC 83

[\[2\]](#) 2011 (8) SCC 613

[\[3\]](#) (2004) 10 SCC 460