

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.01.2017

C O R A M:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

Writ Petition No.5530 of 2014

S. Reshma ... Petitioner

Vs.

1. Debt Recovery Tribunal-I
rep. By its Registrar
Spencer Towers
6th Floor
No.770 A Anna Salai
Chennai 600 002.
2. M/s. Kotak Mahindra Bank Ltd
Asset Reconstruction Division
No.3 II Line Beach
Parrys
Chennai 1.
3. M/s. Kayware Exports
rep. By its Partners,
Mr.MOH Iqbal
5 Damodara Street
Chetpet
Chennai 31.

4.Mrs. Zahira
5.Ms.I.Reseena

6. M/s. MOH Leathers Pvt. Ltd,
576 Mount Road,
Teynampet, Chennai 6.
7. The Recovery Officer, DRT - I,
Tamil Nadu & U.T of Pondicherry
6th Floor, Spencer Towers
No.770 A Anna Salai
Chennai 600 002.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified

mandamus to call for the records relating to the impugned order vide OA/TA/SA/SR No.7183/2013 dated 21/1/2014 and quash the same and consequently direct the first respondent to take on file Appeal SR.No.7183/2013 and dispose the same on merits and in accordance with law.

For Petitioner ... Mr.R.Thiyagarajan

For 2nd Respondent ... Mr.P.Elaya Rajkumar
for M/s. Ramalingam Associates

O R D E R

(Order of the Court was made by S.Manikumar,J)

On 13/7/2011, in D.R.C.No.161/2010, in O.A.No.119 of 2007, Debts Recovery Tribunal - I, Chennai, has passed the following order:-

"Whereas you the defendants have failed to pay the sum of Rs.6,04,67,154.42 p (Rupees Six crores four lakhs sixty seven thousand one hundred and fifty four and paise forty two only), payable by you, jointly and severally, to the applicant in terms of Debt Recovery Certificate No.161/2010 dated 14/12/2010 issued in O.A.No.119/2007 drawn up by the Hon'ble Presiding Officer, Debts Recovery Tribunal - I, at Chennai, and further interest and costs payable as per law:

Whereas the Certificate holder bank has now identified the undermentioned unsecured immovable property in which the fourth certificate debtor/defaulters is having one third share, being a joint owner, which is sought to be attached/sold by the certificate holder bank in execution of the RC issued against the defaulters.

It is hereby ordered that you, the said defendants be and you are hereby prohibited and restrained from transferring and charging the under mentioned properties in any way and that all persons be and are hereby prohibited and restrained from taking any benefit under such transfer or charge.

Also note that unless the money is paid forthwith the undermentioned properties will be sold by public auction and the money will be realised without any further notice or intimation.

Description of Property

One third undivided share of Ms.L.Rasina (4th certificate debtor/defaulters) in all that piece and parcel of land and building bearing Door No.5, Damodara Mudali Street, Chetpet, Chennai measuring an extent of 2 grounds and 1678.5 sq.ft comprised in S.No.450/5 and

450/41 of Egmore village, Egmore - Nungambakkam Taluk, Chennai, bounded on the North by Club Road; South by Door No.6, Damodara Mudali Street; East by Door No.54 B, 54 A and 54 part of Dr.T.V.Naidu Street and on the West by Door No.4 property owned by LIC of India, situated within the Sub-Registration District of Periamet."

2. S.Reshma, Chennai, a third party to the above said proceedings, has filed Claim Petition No.26 of 2011 in D.R.C.No.161 of 2010 in O.A.No.109/2007, on the file of the Debts Recovery Tribunal - I, Chennai, contending inter alia that she is the owner of the property, by virtue of Hiba, dated 9/10/1998, which was reduced into writing on 15/10/1998, under the proceedings of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993). In the Claim Petition No.26 of 2011, she has sought for impleadment as respondent No.6 in Recovery proceeding ARC No.161/2010. She has also sought for a prayer, to vacate the order of attachment, dated 13/7/2011, in respect of the undivided share of Ms.L.Rasina, in respect of the property situated at Door No.5, Damodara Mudali Street, Chetpet, Chennai 31. Opposing the prayer sought for, M/s. Kotak Mahindra Bank Limited, Asset Reconstruction Division, has filed a detailed counter affidavit.

3. After considering the rival submissions to the challenge viz., the order of attachment, dated 13/7/2011, as against the undivided share of Ms.L.Rasina/fourth defendant (certificate debtor) in respect of the above said property and the claim of the writ petitioner/third party, the Debts Recovery Tribunal - I, Chennai, vide, order, dated 10/12/2013 in C.P.No.26 of 2011 in D.R.C.No.161 of 2010, dismissed the claim petition.

4. Being aggrieved by the same, writ petitioner/third party has filed an appeal before the Debts Recovery Tribunal - I, Chennai, under Section 30 (1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

5. Debts Recovery Tribunal - I, Chennai, vide order dated 21/1/2014, rejected the appeal in S.R.No.7183 of 2013 and the same reads as hereunder:-

"The petitioner having filed claim/objection before Recovery Officer as per Rule 11 of Procedure for Recovery of Tax, if aggrieved by any order of RO shall seek Redressal subject to Sub-Rule (6) to Rule 11. No appeal is filed/preferred before the Tribunal."

6. Being aggrieved by the order of the Debts Recovery Tribunal, instant writ petition has been filed.

7. Inviting the attention of this Court to Section 30 of

the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Mr.R.Thiyagarajan, learned counsel for the writ petitioner/third party submitted that when the statute provides for an appeal to the Tribunal, against the order passed by the Recovery Officer, the Tribunal ought not to have rejected the appeal by relegating the appellant to go before the Civil Court, as provided under Rule 11 (6) of the Income Tax Rules, which prescribes only a procedure for recovery of tax.

8. He further submitted that the Tribunal ought to have considered that the provisions of the Second and Third schedule to the Income Tax Act, 1996, would apply with necessary modifications and not as such. He further submitted that the Tribunal has failed to consider the notwithstanding clause in Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In support of his contention, reliance was also made to a decision of the Hon'ble Supreme Court in Sadashiv Prasad Singh Vs. Harendar Singh and Others, {(2015) 5 Supreme Court Cases 574}.

9. Per contra, inviting the decision of this Court, to Rule 11 (6), referred to by the Tribunal, Mr.P.Elaya Rajkumar for M/s.Ramalingam Associates, learned counsel for Kotak Mahindra Bank Ltd., Chennai/second respondent submitted that the appropriate remedy to challenge the order of the Recovery Officer, rejecting the claim petition, would be under the abovesaid rule.

10. Heard the learned counsel for the parties and perused the materials available on record.

11. The fact that a claim petition has been made on the averments stated supra, challenging the order of attachment, dated 13/7/2011, in C.P.No.26 of 2011 in D.R.C.No.161 of 2010 in O.A.No.7183 of 2013, on the file of the Recovery Officer, Debts Recovery Tribunal - I, Chennai has not been disputed.

12. Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is extracted hereunder:-

"Application of certain provisions of Income tax Act - The provisions of the second and third schedules to the Income-Tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income tax:

Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the defendant under this Act."

13. Section 30 of the said Act is by way of a substitution, by Act 1/2000 with effect from 17/1/2000 and it deals with Appeals against the order of the Recovery Officer and it reads thus:-

(1) Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2). On receipt of an appeal under Sub-Section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Section 25 to 28 (both inclusive)."

14. Rule 11 of the Second Schedule of the Income Tax Act, 1961, is extracted hereunder:-

"11. Investigation by Tax Recovery Officer - (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3). The claimant or objector must adduce evidence to show that -

(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(b). (in the case of movable property) at the date of the attachment, he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter

at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other persons, or partly on his own account and partly on account of some other persons, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5). Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6). Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil Court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."

15. As regards non-obstante clause, this Court deems it fit to consider few decisions,

(i) In *State of West Bengal v. Union of India* reported in [1964] 1 SCR 371, it is observed as under:

"The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

(ii) In *Union of India v. I.C.Lala* reported in AIR 1973 SC 2204, the Hon'ble Supreme Court held that non obstante clause does not mean that the whole of the said provision of law has to be made applicable or the whole of the other law has to be made inapplicable. It is the duty of the Court to avoid the conflict and construe the provisions so that they are harmonious.

(iii) In *Union of India v. G.M.Kokil* reported in AIR 1984 SC 1022, the Hon'ble Supreme Court, at Paragraph 10, held as follows:

"It is well-known that a non-obstante clause is a legislative device which is usually employed to give over-riding effect to certain provision over some contrary provision that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

(iv) In Chandavarkar Sita Ratna Rao v. Ashalata S.Guram reported in 1986 (4) SCC 447, at Paragraph 67, the Hon'ble Supreme Court held as follows:

"67. A clause beginning with the expression "notwithstanding any thing contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in The South India Corporation (P) Ltd., v. The Secretary, Board of Revenue, Trivandrum & Anr., AIR 1964 SC 207 at 215-[1964] 4 SCR 280."

(v) In Vishin N.Kanchandani v. Vidya Lachmandas Khanchandani reported in AIR 2000 SC 2747, at Paragraph 11, the Hon'ble Supreme Court held that,

"There is no doubt that by non-obstante clause the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind."

(vi) In ICICI Bank Ltd., v. SIDCO Leathers Ltd., reported in 2006 (10) SCC 452, the Hon'ble Supreme Court, at Paragraphs 34, 36 and 37, held as follows:

"34. Section 529-A of the Companies Act no doubt contains a non-obstante clause but in construing the provisions thereof, it is necessary to determine the purport and object for which the same was enacted.

.....

36. The non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy.....

37. A non-obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same."

(vii) The Hon'ble Supreme Court in *Central Bank of India v. State of Kerala* reported in 2009 (4) SCC 94, at Paragraphs 103 to 107, considered many cases, on non-obstate clause, which are extracted,

"103. A non obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non obstante clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. This rule of interpretation has been applied in several decisions.

104. In *State Bank of West Bengal v. Union of India* [(1964) 1 SCR 371], it was observed that:

68.the Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

105. In *Madhav Rao Jivaji Rao Scindia v. Union of India and another* [(1971) 1 SCC 85], Hidayatullah, C.J. observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. A search has, therefore, to be made with a view to determining which provision answers the description and which does not.

106. In *R.S.Raghunath v. State of Karnataka and another* [(1992) 1 SCC 335], a three-Judge Bench referred to the earlier judgments in *Aswini Kumar Ghose v. Arabinda Bose* [AIR 1952 SC 369], *Dominion of India v. Shrinbai A. Irani* [AIR 1954 SC 596], *Union of India v. G.M.Kokil* [1984 (Supp.) SCC 196], *Chandravarkar Sita Ratna Rao v. Ashalata S.Guram*

[(1986) 4 SCC 447] and observed:

".....The non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules."

107. In A.G.Varadarajulu v. State of Tamil Nadu [(1998) 4 SCC 231], this Court relied on Aswini Kumar Ghose's case. The Court while interpreting non obstante clause contained in Section 21-A of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 held :-

"It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In Aswini Kumar Ghose v. Arabinda Bose [AIR 1952 SC 369], Patanjali Sastri, J. observed:

"The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously;"

16. The expression, "as far as possible" in Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, came up for consideration in C.N.Paramasivan v. Sunrise Plaza reported in 2013 (2) CTC 356 and after considering G.P.Singh's Principles of Statutory Interpretation, decisions made in Ram Kirpal Bhagat v. State of Bihar reported in 1969 (3) SCC 471 and Mahindra and Mahindra Ltd., v. Union of India reported in 1979 (2) SCC 529, at Paragraphs 16 to 19 and 21, the Hon'ble Apex Court held as follows:

"16. A bare reading of the above leaves no manner of doubt that the rules under Income Tax Act were applicable only "as far as possible" and with the

modification as if the said provisions and the rules referred to the amount of debt due under the RDDB Act instead of the Income Tax Act. The question is whether the said two expressions render the provisions of Rule 57 directory no matter the same is couched in a language that is manifestly mandatory in nature.

17. Legislation by incorporation is a device to which legislatures often take resort for the sake of convenience. The phenomenon is widely prevalent and has been the subject matter of judicial pronouncements by Courts in this country as much as Courts abroad. Justice G.P. Singh in his celebrated work on Principles of Statutory Interpretation has explained the concept in the following words:

"Incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been 'bodily transposed into it. The effect of incorporation is admirably stated by LORD ESHER, M.R.: 'If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it.

Even though only particular sections of an earlier Act are incorporated into later, in construing the incorporated sections it may be at times necessary and permissible to refer to other parts of the earlier statute which are not incorporated. As was stated by LORD BLACKBURN: "When a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense it bore in the original Act from which it was taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act."

18. In *Ram Kirpal Bhagat and Ors. v. State of Bihar* (1969) 3 SCC 471 this Court examined the effect of bringing into an Act the provisions of an earlier Act and held that the legislation by incorporation of the provisions of an earlier Act into a subsequent Act is that the provisions so incorporated are treated to have been incorporated in the subsequent legislation for the first time. This Court observed:

"The effect of bringing into an Act the provisions of an earlier Act is to introduce the incorporated Sections of the earlier Act into the subsequent Act as if those provisions have been enacted in it for the first time. The nature of such a piece of legislation was explained by Lord Esher M. R. in *Re Wood's Estate* [1881] 31 Ch. D.607 that "if some clauses of a former Act were brought into the subsequent Act the legal effect was to write those Sections into the new Act just as if they had been written in it with the pen".

19. To the same effect is the decision of this Court in *Mahindra and Mahindra Ltd. v. Union of India* and Anr. (1979) 2 SCC 529 where this Court held that once the incorporation is made, the provisions incorporated become an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. The following passage is in this regard apposite:

"The effect of incorporation is as if the provisions were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute."

20. We may also refer to the decisions of this Court in *Onkarlal Nandlal v. Rajasthan* and Anr. (1985) 4 SCC 404, *Mary Roy and Ors. v. State of Kerala* and Ors. (1986) 2 SCC 209, *Nagpur Improvement Trust v. Vasantrao and Ors.* and *Jaswantibai and Ors.* (2002) 7 SCC 657, and *M/s Surana Steels Pvt. Ltd. v. The Deputy Commissioner of Income Tax and Ors.* (1999) 4 SCC 306, which have reiterated the above proposition of law.

21. Applying the above principles to the case at hand Section 29 of the RDDB Act incorporates the provisions of the Rules found in the Second Schedule of the Income Tax Act for purposes of realisation of the dues by the Recovery Officer under the RDDB Act. The expressions "as far as possible" and "with necessary modifications" appearing in Section 29 have been used to take care of situations where certain provisions

under the Income Tax Rules may have no application on account of the scheme under the RDDB Act being different from that of the Income Tax Act or the Rules framed thereunder. The provisions of the Rules, it is manifest, from a careful reading of Section 29 are attracted only in so far as the same deal with recovery of debts under the Act with the modification that the 'amount of debt' referred to in the Rules is deemed to be one under the RDDB Act. That modification was intended to make the position explicit and to avoid any confusion in the application of the Income Tax Rules to the recovery of debts under the RDDB Act, which confusion could arise from a literal application of the Rules to recoveries under the said Act. Proviso to Section 29 further makes it clear that any reference "to the assessee" under the provisions of the Income Tax Act and the Rules shall be construed as a reference to the defendant under the RDDB Act. It is noteworthy that the Income Tax Rules make provisions that do not strictly deal with recovery of debts under the Act. Such of the rules cannot possibly apply to recovery of debts under the RDDB Act. For instance Rules 86 and 87 under the Income Tax Act do not have any application to the provisions of the RDDB Act, while Rules 57 and 58 of the said Rules in the Second Schedule deal with the process of recovery of the amount due and present no difficulty in enforcing them for recoveries under the RDDB Act. Suffice it to say that the use of the words "as far as possible" in Section 29 of RDDB Act simply indicate that the provisions of the Income Tax Rules are applicable except such of them as do not have any role to play in the matter of recovery of debts recoverable under the RDDB Act. The argument that the use of the words "as far as possible" in Section 29 is meant to give discretion to the Recovery Officer to apply the said Rules or not to apply the same in specific fact situations has not impressed us and is accordingly rejected."

17. In M/s.Indian Bank v. Stanfroze Agvet Farms (W.P. No.19833 of 2007), it came to the notice of a Hon'ble Division Bench of this Court that the borrower challenged the auction sale made pursuant to an order passed by recovery officer, but an appeal u/s 30 of DRT Act, 1993 was not preferred before the Debts Recovery Tribunal and the statutory amount required to be deposited under rule 60 of the II Schedule to the Income Tax Act, 1961 was not deposited. In the said case, vide order, dated 10th July, 2008 in W.P. Nos.19833 and 31170 of 2007, this Court held as follows :-

"13. Under Section 30 of the RDB Act, 1993,

appeal can be preferred against the order of the Recovery Officer within 30 days' from the date on which copy of such order is issued. As the borrowers intended to challenge the auction-sale pursuant to the order passed by the Recovery Officer, it was open for them to prefer such appeal under Section 30, but such appeal could have been only before the DRT and not before the DRAT.

14. Under Section 29 of the RDB Act, 1993, the provisions of Second and Third Schedule to the Income Tax Act, 1961 are applicable, as far as possible."

18. In *Nazims Continental v. The Indian Overseas Bank* [W.P.No.13210 of 2008, dated 29.04.2009], a Hon'ble Division Bench of this Court held as follows:

"18. By virtue of Section 29 of Act, 1993, the provisions of 2nd and 3rd Schedule of IT Act, 1961 and Income Tax (Certificate Proceedings) Rules, 1962, were made applicable for realisation of dues by recovery officer. At that stage, there was no other mode of recovery except the under Chapter V (Sections 25 to 28) and the Rules under 2nd and 3rd Schedule of Income Tax Act, 1961 r/w Income Tax (Certificate Proceedings) Rules, 1962. Subsequently, Section 30 of Act, 1993, was substituted w.e.f. 17th Jan., 2000. to prefer appeal against order of recovery officer within 30 days before DRT.

19. In the case of *Union of India Vs Delhi High Court Bar Association* (2002 (4) SCC 275 :: AIR 2002 SC 1479), the Supreme Court noticed Section 29 and Section 30 substituted vide Amendment Act, 2000 and held as follows:-

30. By virtue of Section 29 of the Act, the provisions of the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, have become applicable for the realisation of the dues by the Recovery Officer. Detailed procedure for recovery is contained in these Schedules to the Income Tax Act, including provisions relating to arrest and detention of the defaulter. It cannot, therefore, be said that the Recovery Officer would act in an arbitrary manner. Furthermore, Section 30, after amendment by the Amendment Act, 2000, gives a right to any person aggrieved by an order of the Recovery Officer, to prefer an appeal to the Tribunal. Thus now an appellate forum has been provided against any orders of the Recovery Officer which may not be in accordance with law. There is, therefore, sufficient safeguard which has been provided in the event of the Recovery Officer acting in an arbitrary or an

unreasonable manner. The provisions of Sections 25 and 28 are, therefore, not bad in law."

19. One of the issues involved in *D.Duraisrinivasan v. The Registrar, Debt Recovery Appellate Tribunal* [W.P.No.5485 of 2009, dated 03.12.2009], was whether the appeal under Section 30 against the order of confirmation of sale, is maintainable. At Paragraphs 15 to 17, a Hon'ble Division Bench, held as follows:

"15. We do not agree with the submission by the learned counsel for the Bank that the appeal under Section 30 of the DRT Act, 1993, is not maintainable against the order of confirmation of sale passed by the Recovery Officer under Rule 63 of Schedule-II.

16. In the case of "*Nazims Continental and others Vs. The Indian Overseas Bank and others*", in W.P.No.13210 of 2008 and analogous cases, a Division Bench of this Court, vide order dated 29.4.2009, relied on the decision of the Supreme Court in the case of "*Union of India Vs. I.C.Lala*", reported in AIR 1973 SC 2204, wherein it was held that the non-obstante clause (Section 30 of the DRT Act, 1993) does not mean that the whole said provision of law has to be made applicable or the whole of the other law has to be made inapplicable and it is the duty of the Court to avoid the conflict and construe the provisions so that they are harmonious. In the said case, the Division Bench of this Court further held that the DRT under Section 30 of the DRT Act, 1993 and the Recovery Officer under Rules 60, 61 and 62 of Part-III of Schedule-II to the Income Tax Act, in regard to movable property, and the jurisdiction of the Tribunal under Part-II of Schedule-II of the Income Tax Act, in regard to movable property, have concurrent jurisdiction and the Division Bench of this Court further noticed that no such application of any of the defendant can be entertained by the Tribunal under Section 30, without pre-deposit of the amount in terms of Rule 60/61, bypassing the jurisdiction of the Recovery Officer.

17. It is to be noticed that there are other types of orders which may be passed by the Recovery Officer, against which also, appeal is maintainable under Section 30 of the DRT Act, 1993. In many of the cases, pre-deposit may not be required, except in the case of challenge of sale."

20. How to interpret a statute and heading, this Court deems it fit to consider few decisions,

(i) In *Refugee Co-operative Housing Society Ltd., New Delhi v. Harbans Singh Bhasin* reported in AIR 1982 Del. 335, the Court that, "Headings prefixed to a section may be read along with the enacting provisions of the section to resolve any doubt-heading

cannot prevail when intention of the Legislature can be gathered by reference to other sections."

(ii) At Paragraph 21, the Hon'ble Apex Court in Pannalal Bansilal Pitti v. State of A.P., reported in 1996 (2) SCC 498, observed that the words are the skin of the language, which opens up the bay of the maker's mind. The legislature gives its own meaning and interpretation of the law. It does so employing appropriate phraseology to attain the object of legislative policy, which it seeks to achieve.

(iii) In Raichurmatham Prabhakar v. Rawatmal Dugar reported in AIR 2004 SC 3625, the Hon'ble Supreme Court held that,

"The view is now settled that the Headings or Titles pre-fixed to sections or group of sections can be referred to in construing an Act of the Legislature. But conflicting opinions have been expressed on the question as to what weight should be attached to the Headings or Titles. According to one view, the Headings might be treated as preambles to the provisions following them so as to be regarded as giving the key to opening the mind of the draftsman of the clauses arranged thereunder. According to the other view, resort to Heading can only be taken when the enacting words are ambiguous. They cannot control the meaning of plain words but they may explain ambiguities. (Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, v. 2004, pp. 152, 155). It is permissible to assign the heading or Title of a section a limited role to play in the construction of statutes. They may be taken as very broad and general indicators of the nature of the subject-matter dealt with thereunder. The Heading or Title may also be taken as a condensed name assigned to indicate collectively the characteristics of the subject-matter dealt with by the enactment underneath; though the name would always be brief having its own limitations. In case of conflict between the plain language of the provision and the meaning of the Heading or Title, the Heading or Title would not control the meaning which is clearly and plainly discernible from the language of the provision thereunder."

(iv) In Mahesh Housing Co-operative Society Ltd., v. State of West Bengal reported in 2004 (1) CHN 10, the Court held that,

"That the headings constitute an important part of the Act and may be read not only as explaining the sections, which immediately follow them, but the headings may be read as preamble to a statute and may be looked for that purpose to explain the enactment. The same can be considered as key to the construction

of section, which follow them."

(v) At Paragraphs 99 to 102, the Hon'ble Supreme Court in Central Bank of India v. State of Kerala reported in 2009 (4) SCC 94, held as follows:

"99. In his famous work on Statutory Interpretation, Justice G.P. Singh has quoted Professor H.A. Smith in the following words:

"`No word', says Professor H.A. Smith `has an absolute meaning, for no words can be defined in vacuo, or without reference to some context'. According to Sutherland there is a `basic fallacy' in saying `that words have meaning in and of themselves', and `reference to the abstract meaning of words', states Craies, `if there be any such thing, is of little value in interpreting statutes'. ... in determining the meaning of any word or phrase in a statute the first question to be asked is -- `What is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase.' The context, as already seen in the construction of statutes, means the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy."

100. In Poppatlal Shah v. State of Madras [AIR 1953 SC 274], this Court while construing the word `sale' appearing in the Madras General Sales Tax Act, 1939 before its amendment in 1947, observed: "it is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statutes are to be taken together, and each word, phrase or sentence is to be considered in the light of the general purpose of the Act itself".

101. In RBI v. Peerless General Finance and Investment Co. Ltd., [(1987) 1 SCC 424], it was observed, "that interpretation is best which makes the textual interpretation match the contextual." Speaking for the Court, Chinappa Reddy, J. noted the importance of rule of contextual interpretation and held:-

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.

With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'prize chit' in *Srinivasa* [(1980) 4 SCC 507] and we find no reason to depart from the Court's construction."

102. In *R. v. National Asylum Support Services* [(2002) 4 All ER 654], LORD STEYN observed "the starting point is that language in all legal texts conveys meaning according to the circumstances in which it was used. It follows that context must always be identified and considered before the process of construction or during it. It is, therefore, wrong to say that the court may only resort to the evidence of contextual scene when an ambiguity has arisen."

(vi) In *V.L.S. Finance Ltd., v. Union of India* reported in 2013 (6) SCC 278, at Paragraph 18, the Hon'ble Supreme Court, held as follows:

"As is well settled, while interpreting the provisions of a statute, the court avoids rejection or addition of words and resort to that only in exceptional circumstances to achieve the purpose of Act or give purposeful meaning. It is also a cardinal rule of interpretation that words, phrases and sentences are to be given their natural, plain and clear meaning. When the language is clear and unambiguous, it must be interpreted in an ordinary sense and no addition or alteration of the words or expressions used is permissible. As observed earlier, the aforesaid enactment was brought in view of the need of leniency in the administration of the Act because a large number of defaults are of technical nature and many defaults occurred because of the complex nature of the

provision."

(vii) In Hardeep Singh v. State of Punjab reported in 2014 (3) SCC 92, at Paragraphs 43 and 44, the Hon'ble Supreme Court held as follows:

"43. The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology etc., it is for others than the court to rectify that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot re-write, recast or reframe the legislation for the reason that it has no power to legislate.

44. No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the Statute. By construction, a provision should not be reduced to a "dead letter" or "useless lumber". An interpretation which renders a provision an otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in "an exercise in futility" and the product came as a "purposeless piece" of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was "most unwarranted besides being uncharitable." (Vide: Patel Chunibhai Dajibha etc. v. Narayanrao Khanderao Jambekar & Anr., AIR 1965 SC 1457; The Martin Burn Ltd., v. The Corporation of Calcutta, AIR 1966 SC 529; M.V.Elisabeth & Ors., v. Harwan Investment & Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-de-Gama, Goa, AIR 1993 SC 101; Sultana Begum v. Prem Chand Jain, AIR 1997 SC 1006; State of Bihar & Ors. etc. v. Bihar Distillery Ltd. etc. etc., AIR 1997 SC 1511; Institute of Chartered Accountants of India v. M/s.Price Waterhosue & Anr., AIR 1998 SC 74; and The South Central Railway Employees Co-operative Credit Society Employees Union, Secundrabad v. The Registrar of Co-operative Societies, AIR 1998 SC 703).

At Paragraph 45, the Hon'ble Supreme Court considered the decision made in Rohitash Kumar v. Om Prakash Sharma reported in 2013 (11) SCC 451, wherein, the Hon'ble Supreme Court, at Paragraphs 27 to 29, held as follows:

"27. The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word... A section is to be interpreted by reading all of its parts together, and it is not permissible, to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act.....

28. The Statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The Courts have to administer the law as they find it, and it is not permissible for the Court to twist the clear language of the enactment, in order to avoid any real, or imaginary hardship which such literal interpretation may cause.....

29.under the garb of interpreting the provision, the Court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation."

21. Sections 29 and 30 of RDBI Act, have to be given effect, by applying the doctrine of harmonious construction. Though in Rule 11(6) of Second Schedule of the Income Tax Act, 1961, filing of a suit, is mentioned, having regard to the amendment, by way of Act 1/2000, with effect from 17.01.2000, where the Legislature has specifically provided for an appeal, as against the order of Debt Recovery Officer, within 30 days, the expression, "as far as possible" in Section 29 of the RDBI Act, has to be harmoniously read with Section 30 of the said Act, so that, both the provisions can operate. On the aspect of purposive and harmonious construction of the provisions, in a statute, this Court deems it fit to extract few decisions,

(i) In Anwar Hasan Khan v. Mohd. Shafi reported in 2001(8) SCC 540, the Hon'ble Supreme Court, at Paragraph 8, held as follows:

"For interpreting a particular provision of an Act, the import and effect of the meaning of the words

and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a "dead letter" is not harmonious construction."

(ii) In *R.S. Pillai v. M.L. Peratchi*, reported in (2000) 4 CTC 543, a Hon'ble Division Bench of this Court, at Paragraphs 23 held as follows:

"23. Before we take up such an exercise, the settled legal position in interpreting the statutes has to be borne in mind. It is settled law that the statute must be read as a whole and this principle equally applies to different parts of the same Section. *The Balasinor Nagrik Co-op. Bank Ltd., v. Babubhai*, AIR 1987 SC 849.

No provision in the statute and no word in the Section may be construed in isolation. *Syed Hasan Rasul Numa v. Union of India*, AIR 1991 SC 711.

Where the language of the provision is plain, clear and unambiguous, only the plain meaning of the provision is to be adopted so as to avoid any hardship or absurdity resulting therefrom. *R.S. Raghunath v. State of Karnataka*, 1992 (1) SCC 335 and *Mohammed Ali Khan v. W.T. Coimr.*, AIR 1997 SC 1165."

(iii) Again in *M. Sathyanathan v. The District Collector*, reported in (2006) 1 CTC 328, this Court held that,

"8. It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading; in the absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, courts will interpret such a provision keeping in mind the objects sought to be achieved and the purpose intended to be served by such a provision so as to

advance the cause for which the enactment was brought into force. If two interpretations are possible, the one which promotes or favours the object of the Act and purpose it serves, is to be preferred. At any rate, in the guise of purposive interpretation, the courts cannot rewrite a statute. A purposive interpretation may permit a reading of the provision consistent with the purpose and object of the Act, but the Courts cannot legislate and enact the provision either creating or taking away substantial rights by stretching or straining a piece of legislation. Vide Sri Ram Saha v. State of W.B., 2004 (11) SCC 497."

(iv) In R.Sridharan v. Presiding Officer reported in 2008 (6) MLJ 1181, at Paragraph 41, this Court has held that,

"41. Interpretation of a Statutory provision should be to find out the intention of the legislature and that has to be understood with due regard that the object of the legislation also. The word employed in the Statute will acquire meaning and content depending upon the context in which they are used. The word should not be torn out by the context and by interpretation, it would make another provision Otiose/redundant and such interpretation should not be adopted."

22. Though Rule 11(6) of Second Schedule of the Income-Tax Act, 1961, speaks about a suit to be filed, Section 30 of the RDBI Act, 1993, enables a party aggrieved by an order of the Debt Recovery Officer, to prefer an appeal, within 30 days, from the date of receipt of the copy of the order, notwithstanding what is stated in Section 29 of the said Act. When Section 30 of the Act contains a non-obstante clause, by referring to a particular provision, Section 29 of the Act, then, in our considered opinion, the latter intends to overcome the former.

23. In Sadashiv Prasad Singh Vs. Harendar Singh and Others reported in (2015) 5 Supreme Court Cases 574, objections were raised to the recovery proceedings by a person claiming to be the owner of the property. There were other issues also. While interpreting Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the High Court concluded that certain provisions of the Income Tax Act would be applicable in the matter of recovery of dues.

24. The High Court, then, referred to Rule 11 of the Second Schedule of Income Tax Act, 1961 and arrived at the conclusion that sub-Rule 2 of 11 had not been complied with by the Recovery Officer in as much as the objection raised therein

had not been adjudicated upon. As such, the High Court finally concluded that the proceedings before the Recovery Officer, were in violation of the provisions of Rule 11 (2) of the Income Tax Act, 1961. When the matter was taken to the Hon'ble Apex Court, after considering Rule 11 of the Second Schedule of the Income Tax Act, 1961, rival contentions and after extracting Section 30 of the Act, at paragraph No.23.3, the Hon'ble Apex Court held as follows:-

"Thirdly, a remedy of appeal was available to Harender Singh in respect of the order of the Recovery Officer assailed by him before the High Court under Section 30, which is being extracted herein to assail the order dated 5/5/2008:

25. As rightly contended by the learned counsel for the writ petitioner, provisions of the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate proceedings) Rules, 1962, in force from time to time, shall, can be made applicable only "as far as possible", with necessary modifications. Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, starts with the opening sentence of a notwithstanding clause and the same has been given effect. Amending effect of a statute, cannot be ignored by a Court.

26. In the light of the discussion and the decision of the Hon'ble Apex Court in Sadashiv Prasad Singh Vs. Harendar Singh and Others {(2015) 5 Supreme Court Cases 574}, the petitioner can prefer an appeal to the Tribunal, under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. We are inclined to interfere with the order of the Debts Recovery Tribunal - I, Chennai, dated 21/1/2014, made in S.R.No.7183 of 2013, filed against Kotak Mahindra Bank Ltd., Chennai. Accordingly, proceedings, dated 21/1/2014 is set aside. Debts Recovery Tribunal - I, Chennai is directed to process the appeal in S.R.No.7183 of 2013, in accordance with the statutory provisions and the Procedural Rules, 1994.

27. In the result, writ petition is allowed. No costs.

sd/
Assistant Registrar(CS III)

/true copy/

Sub Assistant Registrar

mvs/skm

To

1. The Registrar
Debt Recovery Tribunal
Spencer Towers
6th Floor
No.770 A Anna Salai
Chennai 600 002.

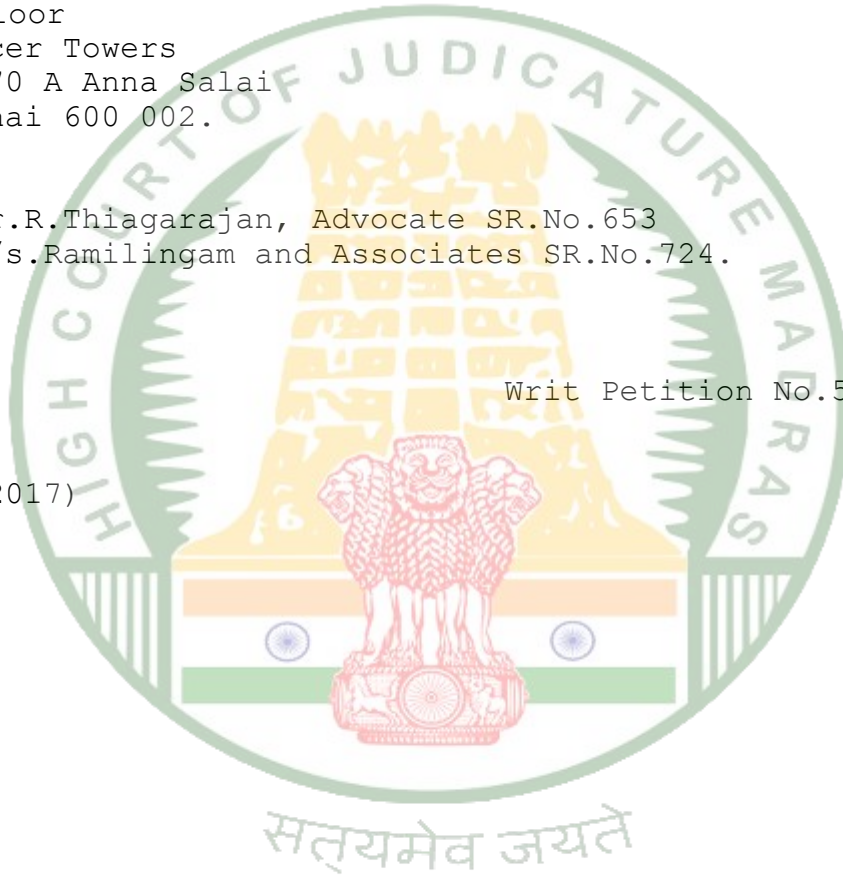
2. The Recovery Officer
DRT - I
Tamil Nadu & U.T of Pondicherry
6th Floor
Spencer Towers
No.770 A Anna Salai
Chennai 600 002.

+1cc to Mr.R.Thiagarajan, Advocate SR.No.653

+2cc to M/s.Ramilingam and Associates SR.No.724.

Writ Petition No.5530 of 2014

GMI (CO)
GN (07/02/2017)



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