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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON : 12th JULY , 2017

+ **W.P.(C) 5964/2016 & CM APPL. 24568/16**

D.K. MODI Petitioner

Through : Mr.B.B.Gupta, Sr.Advocate with
Mr.Nilesh Kumar, Advocate.

versus

OFFICIAL LIQUIDATOR & ORS Respondents

Through : Ms.Shobha, Advocate with
Mr.B.Mehra, Advocate for R1.
Mr.S.K.Gandhi, Advocate with
Mr.Himanshu Dubey, Adv. for R2.
Mr.Dinkar Singh, Advocate for R4.
Mr.Hashmat Nabi, Advocate for R5.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The present writ petition is directed against an order of the Recovery Officer under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The dispute, in short, is whether the Recovery Officer committed an error of law in declining to exercise discretion in transferring the Recovery Certificate, arising out of a final order, in favour of the second respondent (hereinafter referred as 'the Bank'). The records would reveal that the Bank assigned the debt and all its rights and interest therein to the fourth respondent. It further appears to have assigned it to the third respondent. The principal borrower was M/s. Spark Plug Company India Ltd.

(hereinafter referred as 'the Company') which is presently under liquidation and under management of the Official Liquidator who is represented in Court.

2. The Debt Recovery Tribunal (DRT) by its final order dated 16.09.2004 allowed OA No. 514/2000, upholding the Bank's claim against the company and decreeing its claim with interest @ 10 % per annum. The recovery certificate was drawn in accordance with the decree. Since one of the properties owned by the judgment debtor / company is located in Alwar (Rajasthan), a transfer of the Recovery Certificate was sought. The request for transfer, made on behalf of the creditor – whose right was secured at that time by the fourth respondent, was accepted and the Recovery Officer by an order dated 16.05.2016, transferred the Recovery Certificate to enable its execution against the property located at Alwar. The Bank (whose rights were taken over by fourth respondent) held second charge as against the property. The petitioner claims to hold a first charge against the property, moved for transfer of the Recovery Certificate. On the same day i.e. 16.05.2016, the Recovery Officer after noticing Section 19 (23) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, observed :

“Bare perusal of section 19(23) of RDDB&FI Act reveals that discretion has been given to the Tribunal which has issued RC to transfer the copy of RC to the other Tribunal for the purpose of execution,

It is well settled law that an executing Court cannot go behind the decree or question the jurisdiction of the Court which passed it, Its function is to execute the decree as it stands. In view of this the objections raised

by the highest bidder are not maintainable and this Forum is not competent to decide the issue qua the transfer of RC to the other Tribunal”

3. Senior Counsel for the petitioner urges that the Recovery Officer has taken an inconsistent approach in respect of the same subject matter – same property. On the one hand, it accepted the creditors (at that time, the fourth respondent) request for transfer, since the property was located outside the jurisdiction of the Tribunal, whereas for some inexplicable reason, quoting the same provision, the DRT declined to accept the petitioner’s request for transfer of certificate. The petitioner also stated that the Recovery Certificate in question (RC No. 142/2004) is concerned only with the subject matter and none other – located at Alwar (Rajasthan). Counsel for the fourth respondent submitted that whilst it is not in dispute that the tribunal did make inconsistent orders, this Court should not interfere in orders of the Recovery Officer given that an appeal is an appropriate remedy available under Section 30 of the Act.

4. In respect of the Recovery Certificate concerning the same property, the Tribunal when confronted with application for transfer has taken two diametrically opposed views. The fourth respondent’s objections are on propriety of this Court entertaining the proceedings, when alternative remedies are available. Whilst that it is a matter of convenience and practice, in a stark situation like the present one, concerning Recovery Certificate arising out of proceedings which concern the same property, the objection with respect to availability of alternative remedies, is inconsequential. The Recovery Officer, in our

opinion, clearly fell in error in declining to grant the petitioner's request for transfer of the certificate in his favour, in respect of the same property for which another Recovery Certificate was transferred to the competent tribunal at Jaipur.

5. In view of the above discussion, the impugned order is hereby set aside. The Recovery Certificate arising out of recovery proceedings RC No.142/2004 is hereby directed to be transferred to the DRT Jaipur to be dealt with in accordance with law by its Recovery Officer. The Recovery Officer – II, DRT Delhi is directed to transmit the record for compliance of the present judgment within four weeks. These records shall include an application for confirmation of sale made by the auction purchaser, which has remained pending. .

6. The writ petition is allowed in the above terms. Pending application also stands disposed of.

S. RAVINDRA BHAT
(JUDGE)

S.P.GARG
(JUDGE)

JULY 12, 2017 / tr