

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 27-11-2019
Coram
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.21976 of 2019
And
M.P.Nos.21217, 21218, 30961 and 31647 of 2019

M/s.UCO Bank,
Asset Recovery Management Branch,
Represented by its Assistant General Manager,
Mr.S.Jagadesh Kumar,
No.169, Thambuchetty Street,
Chennai.

.. Petitioner

vs.

1.The Recovery Officer,
Employees Provident Fund Organisation,
Regional Office,
(Ministry of Labour and Employment Government
of India), No.101, 100 Ft. Road,
Sree Venni Commercial Complex,
Chollan Nagar,
Olandaikeerapalayam,
Puducherry 605 004.

2.The Managing Director,
Pondicherry Textile Corporation Limited,
(erstwhile M/s.Anglo French Textiles),
AFT Mill Premises,
Cuddalore Road,
Pondicherry-605 004.

3.M/s.Nagarajan and Co.,
Represented by its Proprietor,
N.Ponnusamy, No.64, Patel Road,
Ramnagar,
Coimbatore-641 009.
(R-3 impleaded as per order of Court
dated 04.11.2019 in WMP No.30573 of
2019 in WP No.21976 of 2019)

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India praying for the issuance of a Writ of
Certiorari, calling for the records pertaining to the order
proclamation of sale notice dated 27.05.2019 vide

No.TBM/RO/PDY/Recy-Cell/Div-I/PC/20/2019 issued by the first respondent herein and quash the same.

For Petitioner : Mr.V.Suthakar

For Respondent-1 : Ms.V.J.Latha

For Respondent-2 : No Appearance

For Respondent-3 : Mr.Yogesh Kannadasan

O R D E R

The proclamation of sale notice dated 27.05.2019, issued by the first respondent, is under challenge in the present writ petition.

2. The writ petitioner is the UCO Bank.

3. The writ petitioner-Bank states that M/s.Pondicherry Textile Corporation Limited (erstwhile M/s.Anglo French Textiles), the second respondent herein, availed various credit facilities fund based and non-fund based for a total sum of Rs.4,365.69 lakhs from the Puducherry Main Branch of the writ petitioner-Bank and as a security towards repayment of credit facilities, the second respondent has created equitable mortgage of the property situate at Pondicherry by depositing original title documents of the properties.

4. M/s.Pondicherry Textile Corporation committed series of default in repaying the loan dues, the account of the second respondent has become irregular and consequently, the writ petitioner-Bank was constrained to declare the account of the second respondent as Non-Performing Asset (NPA).

5. As a financial creditor as defined under the Insolvency and Bankruptcy Code 2016 and consequently, the writ petitioner-Bank through their Puducherry Branch initiated proceedings under Section 7 of the Insolvency and Bankruptcy Code 2016 before the National Company Law Tribunal, Chennai for corporate resolution of their claim and the same has been numbered as IBA/514/CB/2019 and is pending before the National Company Law Tribunal, Chennai.

6. In the meantime, the first respondent issued an auction notice for conducting by publishing proclamation of sale of the movables viz., machineries vide No.TBM/RO/PDY/Recy-Cell/Div-I/PC/20/2019 of the second respondent-Company for recovering

outstanding dues of Rs.3,64,00,534/- as the second respondent committed default in repaying the Provident Fund Contribution of the second respondent by fixing the upset price as Rs.30,60,000/- for three machineries mentioned in the sale notice.

7. On 21.06.2019, the writ petitioner-Bank through their Puducherry Branch wrote a letter to the first respondent informing that they are the leader of Consortium of Banks, who have given various credit facilities to the second respondent-Company and having the first charge over the movables and immovables of the second respondent-Company. In the meantime, the sale supposed to have taken place on 27.06.2019 pursuant to the proclamation of sale notice dated 27.05.2019, was postponed to 10.07.2019.

8. On 27.06.2019, the first respondent wrote a letter to the writ petitioner-Bank stating that they have first charge over the movables even in the case of Companies, which are under liquidation as the Provident Fund Authorities are entitled to sell the mortgage properties as Employees Provident Fund Act, 1952 provides for priority of Provident Fund Contribution over the debts of the industries under liquidation of Sick Unit.

9. On 14.07.2019, the writ petitioner-Bank wrote a letter stating that they are the secured creditor of the both movables and immovable assets of the second respondent-Company and the petition has been filed before the National Company Law Tribunal for resolution of their claim which cannot be construed that the writ petitioner-Bank has given up their right as a secured creditor. In spite of the letter dated 04.07.2019, the first respondent is proceeding with the sale of the hypothecated movables on 10.07.2019 pursuant to the proclamation of sale notice dated 27.05.2019, which is impugned in the present writ petition.

10. Setting out the above facts, the learned counsel for the writ petitioner reiterated that the respondent-Provident Fund Organisation may have a claim and also have priority. However, by virtue of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act 2002), the writ petitioner is entitled to proceed with the mortgaged property. The first respondent-GPF Authorities have to file a claim petition before the appropriate Forum. However, the mortgaged properties with the writ petitioner-Bank, cannot be attached by the first respondent and therefore, the impugned proclamation of sale is untenable.

11. It is contended that the second respondent-Company borrowed loan from the writ petitioner-Bank and mortgaged their movable and immovable properties. Once the machineries are hypothecated and the properties are given by way of security, then the Bank alone has got the right to proceed against the properties and the first respondent should have set out a claim for their dues. Contrarily, the first respondent cannot issue the impugned proclamation sale by invoking the provisions of the EPF Act. The writ petitioner, though admits that the EPF claimants have got priority discretion with the principles that the EPF authorities cannot issue the proclamation of sale, they have to file their claim petition before the appropriate Forum.

12. The learned counsel for the writ petitioner-Bank reiterated that the writ petitioner-Bank initiated Corporate Insolvency Resolution by filing a petition before National Company Law Tribunal, Chennai under Section 7 of IBC Code 2016 as the writ petitioner-Bank is the financial creditor. When the Corporate Resolution petition is pending on 27.05.2019, the first respondent issued a proclamation of sale, for sale of machineries for the value of Rs.30,60,000/- and scheduled to have auction on 27.06.2019.

13. On 27.06.2019 itself, the writ petitioner-Bank wrote a letter to the first respondent-EPF Authorities stating that they are the leader of the Consortium Bank, wherein sanctioned credit facilities to the second respondent-Company and having first charge over the movables viz., machineries as well as the immovable and requested them not to proceed with the auction and await for the outcome of the resolution process pending before the National Company Law Tribunal, Chennai. The auction did not take place on that day i.e., on 27.06.2019, which was postponed to 10.07.2019. The first respondent wrote a letter to the writ petitioner-Bank stating that they have first charge over the movables in the case of companies which are under liquidation by relying Section 11(2) of EPF Act, 1952.

14. The writ petitioner-Bank wrote a letter to the first respondent stating that in view of Section 31B of SARFAESI Act, as amended by Act 44 of 2016, the writ petitioner-Bank has a secured creditor, have priority of sale of secured assets and shall also have priority over other debts and Government dues including revenue etc., and once again requested them not to proceed with the sale. At this juncture, the writ petitioner-Bank filed the present writ petition and pursuant to the interim order of status quo, the further actions are stopped.

15. The learned counsel for the writ petitioner states that there was a meeting held between the Puducherry Government, the Company and Consortium of Banks, including the writ

petitioner-Bank as the leader of Consortium Banks and a Settlement was arrived to settle the dues of the Banks. The Government of Puducherry made a budgetary allocation for settling the dues of gratuity claim of the employees and Banks on 17.07.2019. Based on the budgetary allocation, the second respondent-Company requested the Bank to accept the Settlement and withdraw IBC case pending before the National Company Law Board Tribunal (NCLT), Chennai. The OTS proposal was accepted by the Bank with certain terms and conditions. On 04.10.2019, based on the OTS, IBA/514/CB/2019 was withdrawn by the Bank.

16. Relying on the above facts, the learned counsel for the writ petitioner-Bank reiterated that as per Section 11 (2) of the EPF Act, undoubtedly, the EPF Organisation's claim has got priority. However, in this case, by virtue of the amended provisions, Section 31B of the SARFAESI Act, the writ petitioner-Bank has got priority. The writ petitioner-Bank has to release the amount by selling the assets of movable and immovable belonging to the Company and the only option for the first respondent is to submit a claim in respect of EPF contributions. The writ petitioner-Bank as a secured creditor has priority of selling the secured assets and claim over all other debts. In this regard, the learned counsel for the writ petitioner-Bank reiterated that object and dominant purpose of both the Acts are to be considered by this Court. By virtue of the amendment in SARFAESI Act, the writ petitioner-Bank got priority in respect of selling the secured assets and claim over all other debts.

17. In this regard, it is contended that reading the objects and reasons of both Acts and dominant purpose, it is abundantly clear that EPF Act shall ensure social security for the workers, whereas the SARFAESI Act shall regulate securitisation and reconstruction of financial assets and enforcement of security interest. Thus Section 31B of SARFAESI Act, mainly deals with priority in enforcement of security viz., sale of the secured assets and Section 11(2) deals with priority in making claim of workers dues. Hence, Section 11(2) will not override Section 31B of the SARFAESI Act, as dominant purpose of both enactments are entirely different. Accordingly, the writ petitioner-Bank has priority in sale of the secured assets.

18. The learned counsel appearing on behalf of the first respondent disputed the contentions raised by the learned counsel for the writ petitioner by stating that under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The first respondent has got every authority to proceed against the sale by auctioning the properties. The EPF claimants have got priority over all other

claims and therefore, the proclamation of sale issued by the first respondent is in consonance with the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

19. The learned counsel for the first respondent reiterated that the Courts have held that the EPF claims stands on priority over all other claims, including the claims of the Banks, from whom the Company borrowed the loans. Therefore, the powers conferred under the EPF Act will prevail over all other claims as the EPF Act is a welfare legislations and the claims of the poor employees, who all are the victim on account of the closure of the Company, cannot be penalised or made to wait for an unspecified period.

20. In this regard, the learned counsel for the first respondent relied on the judgment of a Division Bench of Gujarat High Court in the case of Indian Overseas Bank vs. Employees Provident Fund Organization and Others [decided on 10.04.2017 in Special Civil Application No.4879 of 2017], in clear terms, observed as under:-

"The impugned order of attachment of immovable properties issued by the respondent PF organization was also in respect of the very same properties and therefore, claim of the petitioner was to claim priority over the properties to satisfy its debts over the claim of PF dues."

21. In the abovesaid paragraph, it is stated that the case before the Gujarat High Court was also regarding the immovable properties issued by the respondent Provident Fund Organisation and the properties were the very same one and therefore, the claim of the Indian Overseas Bank was to claim priority over the properties to justify its debts over the claim of Provident Fund dues. Thus, the facts are also on the same line and therefore, the Division Bench judgment of the Gujarat High Court will have application in respect of the facts and circumstances of the present case is concerned.

22. The Division Bench judgment of the Gujarat High Court considered the Full Bench judgment of the Apex Court in the case of Central Bank of India vs. State of Kerala and Others [(2009) 4 SCC 94]. In the said judgment, the Apex Court was considering whether Section 38-C of the Bombay Sales Tax Act, 1959 and Section 26-B of Kerala General Sales Tax Act, by which first charge is created on the property of a person, who is liable to pay sales tax, are in consistent with the provisions of DRT Act, 1993 and SARFAESI Act, 2002 for enforcement of security interest and whether by virtue of non obstante clause in relevant Section of the DRT and Securitisation Act, will have

primacy over the said legislations, were considered.

23. The Apex Court proceeded to not only consider as Sales Tax Act, but also several other Acts, including the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). After considering the judgment of Division Bench of Kerala High Court on the point of precedence of EPF Act, where Section 11(2) creates first charge, the Apex Court held as under:-

"While enacting the DRT Act and Securitisation Act, Parliament was aware of the law laid down by this Court wherein priority of the State dues were recognized. If Parliament intended to create first charge in favour of banks, financial institutions or other secured creditors on the property of the borrower, then it would have incorporated a provision like Section 529A of the Companies Act or Section 11(2) of the EPF Act and ensured that notwithstanding series of judicial pronouncements, dues of banks, financial institutions and other secured creditors should have priority over the State's statutory first charge in the matter of recovery of the dues of sales tax, etc."

24. In paragraph 31 of the Division Bench judgment of the Bombay High Court, cited supra, it is observed as under:-

"We shall now consider the question whether the provision contained in Section 11 (2) of the Act operates against other debts like mortgage, pledge, etc. Answer to this question is clearly discernible from the plain language of Section 11. The priority given to the dues of provident fund etc., in Section 11 is not hedged with any limitation or condition. Rather, a bare reading of the Section makes it clear that the amount due is required to be paid in priority to all other debts. Any doubt on the width and scope of Section 11 qua other debts is removed by the use of expression 'all other debts' in both the sub-sections. This would mean that the priority clause enshrined in Section 11 will operate against statutory as well as non-statutory and secured as well as unsecured debts including a mortgage or pledge. Sub-section (2) was designedly inserted in the Act for ensuring that the provident fund dues of the workers are not defeated by prior claims of secured or unsecured creditors.

This is the reason why the legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable under the Act would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any other law for the time being in force. It is, therefore, reasonable to take the view that the statutory first charge created on the assets of the establishment by sub-section (2) of Section 11 and priority given to the payment of any amount due from an employer will operate against all types of debts."

25. In paragraphs-6, 6.1, 7 and 8 of the Division Bench judgment of the Bombay High Court, cited supra, it is observed as under:-

"6. Section 31B of the RDDB Act reads as under:-

31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise the secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

6.1 In so far as amendment to include Section 31B in the RDDB Act is concerned, Statement of Objects and Reasons for amendment by Amendment Act, viz., the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 reads as under:-

"The Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, were enacted for expeditious recovery of loans of banks and financial institutions. Presently, there are approximately seventy thousand cases pending in Debts Recovery Tribunals. Though the Recovery of Debts due to Banks and Financial

Institutions Act provides for a period of 180 days for disposal of recovery applications, the cases are pending for many years due to various adjournments and prolonged hearings. In order to facilitate expeditious disposal of recovery applications, it has been decided to amend the said Acts and also to make consequential amendments in the Indian Stamp Act, 1899 and the Depositories Act, 1996.

3. The amendments proposed in the Recovery of Debts due to Banks and Financial Institutions Act, 1993 inter alia, include (i) expeditious adjudication of recovery applications; (ii) electronic filing of recovery applications, documents and written statements; (iii) priority to secured creditors in repayment of debts; (iv) debenture trustees as financial institutions; (v) empowering the Central Government to provide for uniform procedural rules for conduct of proceedings in the Debts Recovery Tribunals and Appellate Tribunals."

7. Inclusion of Section 31B does not change the position insofar as primacy of claim under the provisions of the EPF Act is concerned. The mention of Government dues which would include revenues, taxes, cesses and rates due to the Central Government, State Government or local authority would not take into its fold, the first charge created by operation of law in the form of Section 11 (2) of the EPF Act.

8. On the other hand, what is sought to be recovered by the petitioner-Bank from respondent No.2 is its debts which are included in Section 11(2) of the EPF Act and therefore, there is no hesitation in holding that the PF organization was within its power to issue the order dated 09.08.2016."

26. In the case of Employees Provident Fund Commissioner vs. Official Liquidator [2011 (6) CTC 317 (SC)], wherein in paragraphs-18 and 43, the Supreme Court held as under:-

"18. An analysis of Section 11 of the EPF Act shows that it gives statutory priority to the amount payable to the employees over other debts. Section 11(1)

relates to an employer who is adjudged insolvent or being a company against whom an order of winding up is made. It lays down that the amount due from the employer in respect of any contribution payable to the fund or, as the case may be, the insurance fund, damages recoverable under Section 14-B, accumulations required to be transferred under Section 15(2) or any charges payable by him under any other provision of the Act or the scheme or the insurance scheme shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be. Section 11(2) of the EPF Act contains a non obstante clause and lays down that if any amount is due from an employer whether in respect of the employees' contribution deducted from the wages of the employees or the employer's contribution, the same shall be deemed to be the first charge on the assets of the establishment and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts. To put it differently, sub-section (2) of Section 11 not only declares that the amount due from an employer towards contribution payable under the EPF Act shall be treated as the first charge on the assets of the establishment, but also lays down that notwithstanding anything contained in any other law, such dues shall be paid in priority to all other debts.

43. The effect of the amendment made in the Companies Act in 1985 is only to expand the scope of the dues of workmen and place them on a par with the debts due to secured creditors and there is no reason to interpret this amendment as giving priority to the debts due to secured creditor over the dues of provident fund payable by an employer. Of course, after the amount due from an employer under the EPF Act is paid, the other dues of the workers will be treated on a par with the debts due to secured creditors and payment thereof will be regulated by the provisions contained in Section 529(1) read with Sections 529(3), 529-A and 530 of the Companies Act."

27. This Court also in the case of Phoenix ARC Pvt Ltd vs. Assistant Provident Fund Commissioner and Recovery Officer and 4 others [decided on 04.04.2018 in WMP Nos.5235 and 5237 of 2018 in WP No.4259 of 2018], in paragraphs 32 and 33 observed as under:-

"32. Under these circumstances, the first respondent is directed to recover the balance amount from the buyer within a short span of period as per the terms and conditions of the sale. Soon after the amount is recovered from the buyer, the first respondent is directed to settle the entire provident fund amount and all the dues and the pension scheme for five hundred (500) families within a period of four weeks from the date of settlement of the balance dues by the buyer.

33. The balance amount if any, shall be kept in an interest bearing fixed deposit account in any one of the Nationalised Bank by the first respondent, subject to the final orders to be passed in these writ petitions."

The above said order of this Court was confirmed by the Supreme Court also.

28. In the case of The Authorised Officer vs. Employees' Provident Fund Organisation and others [decided on 21.10.2019 in WP No.2718 of 2011], this Court considered these aspects and passed an order and the relevant paragraphs-33 and 38 are extracted hereunder:-

"33.
.. .. .

Now, the question posed before this Court is that, which Act will prevail over and which claim is to be settled on priority. As contended by the learned counsel for the petitioner, there is a provision for settlement under the SURFAESI Act itself and therefore, the respondents are bound to approach the authorities under the SURFAESI Act.

38. In the present case, the EPF and MP Act is also a Special Enactment as far as the Provident Fund is concerned. The SURFAESI Act is also a Special Act with reference to the context. However, when the matter of priority comes before the Courts, all mitigating factors are to be adjudicated, so as to arrive

a conclusion, which would be in the interest of justice as far as the respective parties are concerned. While considering the mitigating factors, as well as for providing complete justice, the very object, purpose and spirit of the respective Statutes are to be considered, more specifically, in consonance with the Constitutional mandates and perspectives. Thus, a pragmatic approach is required, so as to hold that where exactly the priority would lie. Under these circumstances, the Constitutional perspectives are the helpful elements, which all are to be considered to arrive a conclusion. Examining under this perspective, this Court has no hesitation in coming to the conclusion that the dues to the workers are to be settled on priority basis and on account of the legal battle between the Bank and the Company, the workers cannot made to suffer for an unspecified period, compromising their livelihood and the other social implications."

29. The Central Enactment EPF & PF is a welfare legislation. The Act was enacted in order to provide social protection, more specifically, for the livelihood of the class of employees working in various companies, industries, factories and establishments. Thus, a constructive interpretation is to be adopted so as to adopt a pragmatic view to safe guard the interest of these employees, who all are out of employment on account of the liquidation of the company. In the event of not providing such a social protection, the Constitutional Courts are also failing in its duty to protect the Social Justice, as adopted as a resolution, by "We the People of India" in the Preamble of our Constitution. Thus, providing "social justice" is of paramount important to these class of employees, who all are already deprived on account of liquidation of these companies. Such social and financial protection is to be extended as expeditiously as possible in order to save the livelihood of family of these employees, who all are made to suffer on account of the legal battle between the Nationalized Banks as well as the companies in liquidation. Liberal interpretations are also required, regarding which Act will prevail over in the interest of justice. However, welfare legislation, which was enacted to protect the livelihood and the interest of the employees must be held as prevail over the other legislations, as it involves the fundamental rights of the workers including right to life.

30. This exactly is the view taken by this Court in a case of Central Bank of India Vs. The Authorized Officer, Employees Provident Fund Organization in W.P.No. 1209 of 2016 dated 05.09.2018 and the relevant paragraphs are extracted hereunder:-

"4.This Court has tested the similar issue in the case of Phoenix ARC Pvt Ltd., .Vs. The Asst. Provident fund Commissioner & Recovery Officer in WMP Nos.5236 & 5237 of 2018 in W.P.No.4259 of 2018 dated 04.04.2018, and the relevant paragraphs of the order are extracted here under:-

"13.The two separate writ petitions are filed, challenging the actions initiated by the 1st respondent/Assistant Provident Fund Commissioner. However, the fact remains that the present writ petitions are filed in respect of the actions initiated by the 1st respondent/ Assistant Provident Fund Commissioner under the provisions of the Provident Fund Act. The other related provisions are to be considered at the time of final adjudication of the present writ petitions. However, Section 11(2) of the Employee's Provident Fund and the Miscellaneous Provisions Act, 1952 unambiguously states that the amount so due, shall be deemed to be the first charge on the assets of the establishment and shall, notwithstanding anything contained in any other law for the time being force, be paid in priority to all other debts. Thus, the very purpose of Section 11(2) of the Act is unambiguous that notwithstanding anything contained in any other law for the time being force, the provident fund contributions are to be given priority to all other debts. The Act being a welfare legislation, the very purpose of settling the provident fund dues to the labourers are ensured and therefore, the same is to be achieved in all respects. Because of certain disputes between the management and the financial institutions, the plight of the poor labourers cannot be stalled. The Court has to ensure that the grievances of the labourers in respect of the provident fund dues are settled in all respects without any undue delay.

14. Therefore, the prima facie opinion of this Court is that the first charge shall be of the provident fund claims and all the debts are to be treated as secondary, because the said provision unambiguously stipulates that notwithstanding anything contained in any other law for the time being in force. When such a phraseology is used in the provision itself, then the Court has to interpret the same in a constructive manner.

15. After all, the Employee's Provident Fund and Miscellaneous Provisions Act, is a welfare legislation. In a welfare legislation, when certain benefits are extended to the labourers/employees, the same cannot be denied on certain technical grounds. It is the constitutional obligation on the part of the Court to see that the poor families struggling to meet out their day-to-day expenditure are saved.

16. The Constitution makers were highly influenced by the feeling of social equality and welfare of the common man. On principle, they agreed that this sacrosanct work could only be done by State. For this reason, they incorporated such provisions in the Constitution of India which made the role of state important and went towards social welfare and ideal state.

17. The Concept of government in which the state plays a key role in protecting and promoting the economic and social well-being of its citizens, is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those who lack the minimal provisions for the good life. The term may be applied to a variety of forms of economic and social organization. A basic feature of the welfare state is social insurance, intended to provide benefit during periods of greatest need (Example: old age, illness, unemployment). The welfare State also usually includes public provision for education, health services, and housing.

18. A welfare state strives to achieve many ideals, some of them are -

- ◆ Removal of inequalities in distribution of economic resources
- ◆ Equality of opportunity for employment
- ◆ Equal pay for equal work.
- ◆ Elimination of exploitation of labourers
- ◆ Establishment of a welfare state
- ◆ Initiation of schemes relating to health, education, social security, and other such essential matters.

19. The Constitution Bench of the Hon'ble Supreme Court of India in the case of D. S. Nakara v. Union of India, reported in (1983) 1 SCC 305, held that the principal aim of a Socialist State is to eliminate inequality in income, status and standards of life. The basic frame work of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. Amongst there, it envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism, leaning heavily on Gandhian socialism. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society reveals a long march, but, during this journey, every state action, whenever taken, must be so directed and interpreted so as to take the society one step towards the goal.

20. The Apex Court in the case of Excel Wear v Union of India, reported in AIR (1979) SC 25 held that the addition of the word "socialist" might enable the courts

to learn more in favour of nationalisation and State ownership of an industry. But, so long as private ownership of industries is recognized which governs an overwhelming large principles of socialism and social justice can not be pushed to such an extent so as to ignore completely, or to a very large extent, the interest of another section of the public, namely the private owners of the undertaking.

21. The Indian Constitution set certain values which struck happy balance between individualism and socialism. It eliminates the

vices of unbridled private enterprises, and protects interests by social control and welfare measures. The value system structured by our Constitution finds its expression in its various provisions and, more particularly, in Part III, Part IV and the Preamble of the Constitution.

22. In *Meneka Gandhi v. Union of India*, reported in AIR 1978 SC 597, the Hon'ble Supreme Court of India gave a new dimension to Article 21. It held that the right to "live" is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Article 38 of the Indian Constitution provides State to secure a social order for the promotion of welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life. The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

23. Employee's Provident Fund Act is one such Act enacted for the purpose of achieving constitutional perceptions. Therefore, this Court is of an opinion that the provisions contained in such Act to be given paramount importance, more specifically, in the matter of settlement of provident fund to the employees/labourers".

5. The said judgment of this Court was taken by way of an Appeal by Phoenix ARC Private Limited in W.A.Nos.998 and 999 of 2018, and the Hon'ble Division Bench also confirmed the order of this Court on 28.04.2018. The said orders were taken by way of a SLP before the Hon'ble Supreme Court of India in Special Leave to Appeal (C) Nos.14005-14006/2018, and the Hon'ble Supreme Court also dismissed the SLP filed by the Company on 01.06.2018. Thus, the order passed by this Court on 04.04.2018, has been confirmed. The legal

principles followed in the said order is to be followed in the present case also, in view of the similarity in facts and the legal questions raised. In view of the afore mentioned judgments, the 2nd respondent-Recovery Officer is entitled to proceed in accordance with law, if necessary by issuing fresh orders to recover the amount and settle the same to the employees of the Company."

31. The view taken by this Court was upheld by the Hon'ble Supreme Court of India.

32. In *Queen v. London County Council* [(1893) 2 QB 454], Bowen, L.J. lucidly explained the difference between a General Act and a Special Act.

"Now, a general Act, *prima facie*, is that which applies to the whole community. In the natural meaning of the term it means an Act of Parliament which is unlimited both in its area and, as regards the individual, in its effects; and as opposed to that you get statutes which may well be public because of the importance of the subjects with which they deal and their general interest to the community, but which are limited in respect of area - a limitation which makes them local - or limited in respect of individuals or persons - a limitation which makes them personal."

33. In *LIC v. D.J. Bahadur* [(1981) 1 SCC 315], this Court held that the ID Act is a special act vis-a-vis the Life Insurance Corporation Act, 1956. Krishna Iyer, J. was of the view that in determining whether a legislation is a general or a special legislation, focus should be on the principal subject matter and the particular perspective.

34. There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and as a general statute vis-a-vis another legislation. (see *Allahabad Bank v. Canara Bank* [(2000) 4 SCC 406]).

35. Yet another perspective to the problem that can arise in a conflict between provisions of two different statutes has been dealt with in *Ashoka Marketing v. Punjab National Bank* [(1990) 4 SCC 406]. The question before this Court was whether the Public Premises Act (Eviction of Unauthorised Occupants) was a special legislation vis-a-vis the Delhi Rent Control Act, 1958. After examining object of both the legislations carefully,

this Court was of the opinion that both the Rent Control Act and the Public Premises Act are special statutes.

36. In the present case, the EPF and MP Act is also a Special Enactment as far as the Provident Fund is concerned. The SURFAESI Act is also a Special Act with reference to the context. However, when the matter of priority comes before the Courts, all mitigating factors are to be adjudicated, so as to arrive a conclusion, which would be in the interest of justice as far as the respective parties are concerned. While considering the mitigating factors, as well as for providing complete justice, the very object, purpose and spirit of the respective Statutes are to be considered, more specifically, in consonance with the Constitutional mandates and perspectives. Thus, a pragmatic approach is required, so as to hold that where exactly the priority would lie. Under these circumstances, the Constitutional perspectives are the helpful elements, which all are to be considered to arrive a conclusion. Examining under this perspective, this Court has no hesitation in coming to the conclusion that the dues to the workers are to be settled on priority basis and on account of the legal battle between the Bank and the Company, the workers cannot made to suffer for an unspecified period, compromising their livelihood and the other social implications.

37. When the EPF and MP Act itself provides a mechanism for recovery. The learned counsel for the respondents reiterated that they need not depend upon the actions to be initiated by the petitioner Bank with the company in liquidation. There is a possibility of irregularity or otherwise or other disputes in respect of loan transactions, mortgage transactions etc., However, the EPF and MP Act is concerned, it is a Welfare legislation and therefore, the benefits due to the labourers cannot be stalled on account of these disputes between the petitioner Bank and the company. The solidarity and the independence of the EPF and MP Act is to be protected, so as to ensure that the dues to the labourers are settled at the first instance without reference to the disputes raised by the company in liquidation and other authorities or persons.

38. This Court would like to remind that the social and economic justice as well as the equality of status and opportunity has resolved by "We, the People of India" in the Preamble of Constitution cannot be forgotten. The social justice or justice, economic and political as well as equality of status has to be achieved, as they being the philosophy of the Constitution. The various Enactments of the Central or the State are to be interpreted with reference to the concepts and the goals as resolved by "We, the People of India" in the

Constitution. Therefore, the constructive interpretation of the statutes, so as to minimize the injustice to be adopted. The balancing attitude by weighing the facts and circumstances are of paramount importance. Thus, the persons who all are disadvantageous, economically weak as well as status wise are to be taken care of by the Constitutional Courts, keeping in mind, the Constitutional perspectives and the goals. Any Enactment or Enactments, if creates a conflict in between and two mechanisms are provided in two different Acts, then the Constitutional Courts are bound to consider and arrive a conclusion, which should have the priority over the other Act and such a decision is to be taken keeping in mind the Constitutional Ethos and the principles. Thus, it is not as if the petitioner can say that the remedy is available under the SURFAESI Act. Equally, the respondent can say that the respondents are empowered to invoke the provisions of the EPF and MP Act for the purpose of declaring the writ petitioner as a "Deemed Defaulter". It is not as if that the provisions are there to recover the amount from the writ petitioner by the respondent. It is not as if the petitioner Bank can retain the entire money and deal with the money as per their own priorities and as per the SURFAESI Act. These mechanisms, which all are provided in order to maintain the Constitutional principles, equalities and other perspectives.

39. Part III of the Constitution can never be compromised by the Constitutional Courts. Equality Clause as well as Protection of life and personal liberty enunciated in Article 21 of the Constitution cannot be diluted under any circumstances. Right to Life includes a decent life as the Constitutional Courts repeatedly declared that life does not mean a mere animal life and it is a decent life, which is to be ensured for the citizen of this great Nation. Protection of life can never be compromised. On account of certain disputes between the Nationalized Bank and the company, the poor labourers, who served for number of years and now on the streets, cannot be left in lurch, but to be protected by the Constitutional Courts. Thus, the priority in settlement must be to the labourers as the provisions of the EPF and MP Act also contemplates that the respondents are empowered to recover from the persons concerned and settle the dues to the workers without causing any undue delay. The Court cannot shut its eyes in respect of the plight of these poor labourers, who all are left without employment and their dues are not settled for many number of years. Thus, the delay, and inaction in settling the dues to the labourers amount to violation of Article 21 of the Constitution of India and in the event of any further delay, the Courts have to declare that such actions are unconstitutional and in violation of the fundamental rights of the labour Class, who all are suffering on account of the wounding up of the Company.

40. Article 38 of the Constitution also contemplates State to secure a social order for the promotion of welfare of the people. Sub Clause 2 to Article 38 enumerates that "The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." Undoubtedly, it is a Directive principle of State Policy. However, the Article 38(2) has to be read harmoniously with Article 14, 21 and the Preamble of the Constitution. In the Preamble of the Constitution, "We, the People of India" have resolved justice, social, economic and equality in Status. Article 14 ensures Equality. Article 21 provides Protection of Life and Article 38(2) enumerates that the State should strive to minimise inequalities in income. Thus, one cannot brush aside the spirit of Article 38(2) by simply stating that it is a Directive principle of State policy and therefore, High Court cannot direct for implementation. However, the Article 38(2) has got certain importance and relevance with reference to Article 14 and Article 21. Thus, these Articles are to be read cogently and accordingly, the 'State' is bound to minimize the inequalities in income and endeavour to eliminate inequalities in Status, facilities and opportunities.

41. Applying the said principles, this Court is of an opinion that the writ petitioner Nationalised Bank is in a safe position. The company in liquidation is not worried about the plight of the labourers. The shareholders and the higher officials of the company, who all are well off and they are leading a safe, secured and luxurious life. However, the poor labourers, who served in the company for many number of years are left on the streets and they are struggling even for livelihood. If the Constitutional Courts are not prepared to protect the plight of these class, then the Constitutional Courts are also failing in its duty to upheld the Constitutional perspectives, Philosophies and Ethos. Under these circumstances, which Act will prevail, may not be a relevant question as the prevalence of the statute is to be read along with the Constitutional principles, so as to ensure that the weaker section is protected and the people in the safer zone are given an opportunity to enter into the legal battle for the purpose of resolving the issues.

42. In the present case, the question is regarding priority. Thus, the priority must be given to the labourers in respect of their Provident Fund and other dues to be settled for the services rendered by these labourers in the company in liquidation.

43. Considering the claim set out by the respective parties, this Court is of an opinion that the Division Bench of the Gujarat High Court in clear terms held that the EPF Act has to be operated and accordingly, the Provident Fund Organisation has got every right under the provisions of the EPF Act to issue proclamation of sale and accordingly recovered the dues. It is observed that the inclusion of Section 31-B of RDDB Act, does not change the position in so far as the primacy of claim under the provisions of the EPF Act is concerned. The mention of Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority would not take into its fold, the first charge created by operation of law in the form of Section 11 (2) of the EPF Act. In this view of the matter, this Court is of an opinion that the first respondent is well within his power to proceed under the provisions of the EPF Act and there is no infirmity in respect of the impugned notice of proclamation of sale.

44. The learned counsel for the writ petitioner-Bank made a submission that the case relied on by the first respondent, namely, Phoenix ARC Pvt Ltd vs. Assistant Provident Fund Commissioner and Recovery Officer (cited supra), wherein it is an interim measure ordered by this Court in the interest of workmen. As far as the case of the Authorised Officer, Indian Overseas Bank vs. Employees Provident Fund Organisation [decided on 21.10.2019 in WP No.2718 of 2011] is concerned, on facts the issue relates to claim of EPF authorities in making preferential claim of sale proceeds done by official liquidator and not the preferential sale of secured assets. Citing the factual differences, the learned counsel for the writ petitioner reiterated that the writ petitioner-Bank has got priority in respect of the secured assets and therefore, the writ petitioner-Bank has got claim over all other debts and accordingly, the impugned order is liable to be scrapped.

45. With reference to the arguments made by the learned counsel for the writ petitioner-Bank, the answer is provided in the judgment delivered by the Hon'ble Division Bench of the Gujarat High Court in the case of Indian Overseas Bank vs. Employees Provident Fund Organization and Others [decided on 10.04.2017 in Special Civil Application No.4879 of 2017], the Hon'ble Division Bench considered the very same question regarding the provisions of Section 11(2) of the EPF Act and Section 31B of the SARFAESI Act. While considering the dominant purpose as well as the object of the two Acts, the Division Bench, namely, EPF and SARFAESI Act, held that the statement of objects and reasons for amendment by Amendment Act, viz., the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 states that the amendment issued include (i) expeditious adjudication of

recovery applications; (ii) electronic filing of recovery applications, documents and written statements; (iii) priority to secured creditors in repayment of debts; (iv) debenture trustees as financial institutions; (v) empowering the Central Government to provide for uniform procedural rules for conduct of proceedings in the Debts Recovery Tribunals and Appellate Tribunals.

46. While extracting the statement of objects and reasons of the amended SARFAESI Act, the Division Bench arrived a conclusion that "Inclusion of Section 31B does not change the position insofar as primacy of claim under the provisions of the EPF Act is concerned. The mention of Government dues which would include revenues, taxes, cesses and rates due to the Central Government, State Government or local authority would not take into its fold, the first charge created by operation of law in the form of Section 11 (2) of the EPF Act". Accordingly, the Division Bench came to the conclusion that "what is sought to be recovered by the petitioner-Bank from respondent No.2 is its debts which are included in Section 11(2) of the EPF Act and therefore, there is no hesitation in holding that the Provident Fund Organisation was within its power to issue the order dated 09.08.2016"

47. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Recovery Officer,
Employees Provident Fund Organisation,
Regional Office,
(Ministry of Labour and Employment Government
of India), No.101, 100 Ft. Road,
Sree Venni Commercial Complex,
Chollan Nagar,
Olandaikeerapalayam,
Puducherry 605 004.

2.The Managing Director,
Pondicherry Textile Corporation Limited,
(erstwhile M/s.Anglo French Textiles),
AFT Mill Premises,
Cuddalore Road,
Pondicherry-605 004.

+1cc to Mr.V.Suthakar , Advocate SR.No. 99339

+1cc to M/s.V.J.Latha , Advocate SR.No. 99616

W.P.No.21976 of 2019

A.SK(02/01/2020)