

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

Judgment reserved on: 11.12.2019

% **Judgment delivered on: 12.12.2019**

+ **W.P.(C) 2404/2019 and C.M. Nos. 11209-11210/2019**

MS. SUJATA KAPOOR Petitioner

Through: Mr. Ravi Gupta, Senior Advocate
along with Mr. D.K. Malhotra,
Mr. Rajesh Kumar Malhotra
Mr. Sachin Jain & Ms. Diya Kapoor,
Advocates.

versus

UNION BANK OF INDIA AND ORS. Respondent

Through: Mr. Abhay Prakash Sahay, CGSC
with Mr. Suraj Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner has preferred this present writ petition to assail the order dated 31.12.2018 passed by the Debt Recovery Appellate Tribunal (hereinafter referred to as the DRAT), New Delhi in Appeal No. 459 of 2016, titled 'Ms. Sujata Kapoor v Union Bank of India & Ors.'.

2. Arguments were initially heard and judgment reserved on 02.04.2019. The judgment could not be pronounced earlier. Accordingly, the matter was fixed for directions on 06.12.2019. On that day, counsel for the petitioner appeared and it was adjourned to 11.12.2019 to enable him to recapitulate his submission, which he did. Consequently, the judgment was reserved.

3. The mainstay of the submissions of learned counsel for the petitioner – to ward off the attachment and sale of the property bearing No. 3, Racquet Court Road, Civil Lines, Delhi (hereinafter referred to as the ‘said property’), is the protection afforded to a Judgment Debtor/ Certificate Debtor by Section 60(1)(ccc) of the Code of Civil Procedure, 1908 (the Code) as applicable to Delhi. Thus, the scope and interpretation of the said provision arises for consideration before us. Before we proceed, we may take note of a few admitted facts, and facts emerging from the record. We may observe that the petitioner has selectively filed documents before us. The petitioner has not disputed the factual position as recorded in, and emerging from the orders passed by the Recovery Officer (R.O.), the Debt Recovery Tribunal (DRT) and the DRAT. We have, therefore, proceeded to consider the matter in the light of facts found in the orders passed by the said Authorities/ Tribunals.

4. Late Sh. B.R. Dougall (BRD in short) [described as respondent No.4 in the present writ petition], undisputedly, was the owner of the said property having acquired the same on his own. M/s Atul Food Products Limited obtained a loan from the respondent Union Bank of India (UBI for short). Amongst others, BRD offered his personal guarantee to secure the said loan. Since the loan was not serviced and repaid in time, the UBI

initiated recovery proceedings vide O.A. No.653/2000 before the DRT-II, Delhi under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the Act for short). The DRT by an ex-parte order allowed the Original Application on 10.01.2002 against the principal borrower/ debtor M/s Atul Food Products Limited (CD-1) and, *inter alia*, BRD (CD-3). Consequently, a recovery certificate was issued on 17.01.2002 for an amount of Rs.1,07,40,894/- with pendente lite and future interest @ 17.25% per annum with quarterly rests w.e.f. 06.12.2000 till realization, and costs of Rs.1,50,500/-. Upon service of the recovery certificate on the certificate debtors (CDs), including BRD (CD-3) in March 2002, BRD (CD-3) filed his affidavits dated 24.08.2004 and 28.09.2004 (vide Diary No.3060), wherein he stated that he, *inter alia*, owns the said property as his self acquired property. It appears that on 24.08.2004, the CDs, including BRD (CD-3), were restrained from creating any third party interest whatsoever to the detriment of the UBI in the immovable assets owned by the said CDs.

5. The aspect of recovery of the amounts found due by the DRT upon adjudication of the Original Application is dealt with in Section 29 of the Act, which provides that the provisions of the Second and Third Schedules to the Income Tax Act, 1961 (I.T. Act) and the Income Tax (Certificate Proceedings) Rules, 1962 (the 'Rules' for short) as in force from time to time shall, as far as possible, apply with necessary modifications, as if the said provisions and the Rules refer to the amount of debt due under the Act, instead of to Income-Tax. Thus, by virtue of Section 29, the provisions of the Second and the Third Schedules to the I.T Act get attracted in respect of

recovery of the amount of debt due and recoverable under the Act. Reference to the expression “assessee” in the said Schedules to the I.T. Act, is liable to be construed as reference to the “defendant” under the Act while applying the provisions of the Second and Third Schedules to the I.T. Act and the Income Tax (Certificate Proceedings) Rules, 1962.

6. Rule 2 contained in the Second Schedule to the I.T. Act reads as follows:

"2. When a certificate has been drawn up by the Tax Recovery officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule".

7. From the record, it appears that the certificate – which means the certificate drawn up by the Recovery Officer in respect of the defendant under the Act, was duly drawn up and served, *inter alia*, on BRD (CD-3) in March, 2002.

8. Rule 4 of the Second Schedule provides for mode of recovery. The same, *inter alia*, provides that if the amount mentioned in the notice is not paid within the time specified in the notice referable to Rule 2, the Recovery Officer shall proceed to realize the amount, *inter alia*, by attachment and sale of the defaulter’s immovable property. Rule 5 of the Second Schedule provides for recovery of interest, costs and charges as well. These Rules read as follows:

“4. If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes :—

(a) by attachment and sale of the defaulter’s movable property;

(b) by attachment and sale of the defaulter’s immovable property;

(c) by arrest of the defaulter and his detention in prison;

(d) by appointing a receiver for the management of the defaulter’s movable and immovable properties.

5. There shall be recoverable, in the proceedings in execution of every certificate,—

(a) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sub-section (2) of section 220, and

(b) all charges incurred in respect of—

(i) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and

(ii) all other proceedings taken for realising the arrears.” (emphasis supplied)

9. Thus, the defaulter’s immovable property could be sold to realize the amount due under the Recovery certificate. Rule 11 empowers the Recovery Officer to deal with any claim or objection made to the attachment or sale of property in execution of a certificate, and the same reads as follows:

“11. (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”

10. Rule 16 of the Second Schedule provides that where a notice has been served on a defaulter under Rule 2, the defaulter or his representative-in-interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him, except with the permission of the Recovery Officer, nor shall any Civil Court issue any process against such property in execution of a decree for the payment of money. The text of the said Rule is as follows:

“16(1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2). Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.” (emphasis supplied)

11. Rule 48 provides for attachment of immovable property of the defaulter. The same reads as follows:

“48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.”

12. Rule 51 provides that where any immovable property is attached under the Second Schedule, the attachment shall relate back to and take effect from the date on which the notice to pay the arrears (amount due under the Recovery Certificate) issued under the Second Schedule was served upon the defaulter. The said Rule reads as follows:

*“51. Where any immovable property is attached under this Schedule, **the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.**”*
(emphasis supplied)

13. It appears that the Authorities/ Tribunals proceeded on the basis that attachment was directed by the R.O. under Rule 48 on 18.04.2011, and on 26.05.2011. Consequently, the sale proclamation was settled on 26.08.2011. By virtue of Rule 51, the attachment of the said property of BRD (CD-3) related back to March 2002, when he was served with the certificate under Rule 2.

14. At that stage, the petitioner made her appearance by preferring objections under Section 25 of the Act read with Rule 11 of the Second Schedule to the I.T Act to the order of attachment and notice for settling the terms of sale proclamation in respect of the said property.

15. The petitioner placed heavy reliance on Rule 10, which reads as follows:

“10. (1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer’s decision as to what property is so entitled to exemption shall be conclusive.” (emphasis supplied)

16. According to the petitioner, the said property was exempted from attachment and sale in execution of a decree by a Civil Court, on the ground that the said property was the only residential house of BRD (CD-3), and continues to be the only residential property of the petitioner even now. For this purpose, reliance was placed on Section 60(1), proviso (ccc) of the Code, as applicable to Delhi.

17. The prayers sought by the petitioner in the said objections, filed on or about 12.09.2011, read as follows:

“i) The objections/claim of the Objector may kindly be allowed and the attachment of the property bearing No.3, Racquet Court Road, Civil Lines, Delhi, made vide Order dated 18.04.2011, 26.05.2011 or any other order of this Hon’ble Tribunal may kindly be set aside/withdrawn/discharged consequently notice dated 26.08.2011 for settling sale proclamation of the property bearing No.3, Racquet Court Road, Civil Lines, Delhi, may also be recalled/discharged/set aside.

ii) Meanwhile, till the disposal of present objection/claim filed by objector, the further proceedings qua property bearing No.3, Racquet Court Road, Civil Lines, Delhi may kindly be stayed.”

18. The petitioner claimed that she was a bona fide purchaser without notice for valuable consideration of the said property from the erstwhile owner, namely BRD (CD-3) vide sale deed dated 29.11.2006. She claimed that BRD (CD-3) had mortgaged the said property with the Indian Overseas Bank (IOB) in respect of the loan obtained by his son Vivek Dougall in the name of his sole proprietary firm M/s Vinayak International Inc. sometime in 1993. She claimed that IOB had instituted O.A. No.15/2002 against Vivek Dougall and BRD in his capacity as surety/ guarantor before the DRT. IOB had made an offer for One-Time Settlement of the outstanding dues for Rs.2,09,18,000/- on 16.09.2006. She claimed that her father and brother had offered to buy the said property in her name for Rs.2,11,90,000/.

19. The IOB had agreed to the said sale. Consequently, the said property was purchased in the name of the petitioner vide sale deed dated 29.11.2006. She claimed that she had also got mutated the said property in her name in the records of the MCD in 2007, and she had been paying the property tax thereafter. BRD (CD-3) passed away on 28.02.2009.

20. She argued that BRD (CD-3) had created the equitable mortgage in favour of the IOB on 27.01.1994, i.e. much prior to issuance of the recovery certificate in favour of the UBI on 17.01.2002. Thus, the sale of the said property in favour of the petitioner/ objector was not a fraudulent sale to defeat the interest of any creditor.

21. She also claimed that the said property, in any event, could not be attached and sold to recover the amount due to UBI, since it was exempted under Rule 10 of the Second Schedule read with Section 60(1)(ccc) of the

Code, since BRD (CD-3) did not have any other residential property apart from the said property, and even she does not have any other property apart from the said property after her purchase on 29.11.2006. She raised several other objections with which we are presently not concerned, since they have been rejected by the authorities below and have not been urged before us.

22. The respondent UBI filed their reply to the objections, *inter alia*, stating that the transfer of the said property in favour of the petitioner vide sale deed dated 29.11.2006 was *null & void*, since the same was in contravention of Rule 2, read with Rule 16 of the Second Schedule to the I.T Act, as well as in contravention to the attachment made, *inter alia*, vide order dated 25.08.2011 passed by the Recovery Officer under Rule 48 of the Second Schedule to the Income Tax Act. The UBI referred to the affidavit filed by BRD (CD-3) vide Diary No.3060 dated 28.09.2004, wherein he had stated that he was possessing the said property as his self-acquired property. It also stated that on the date when the demand notice was served, *inter alia*, on BRD (CD-3), the said property was in possession of BRD (CD-3) and he could not have parted with its possession, or alienated the same. The bona fides of the petitioner were also challenged, since she claimed transfer of the said property in her favour on 29.11.2006 from her father-in-law BRD (CD-3), while, at the same time, stating that she had estranged relationship with her husband Vivek Dougall. The stand taken by the petitioner that she had no knowledge of the outstanding liability owed to UBI was also disputed and challenged on the ground that she was the family member of BRD (CD-3) and Vivek Dougall. The UBI contended that the transfer of the said

property in favour of the petitioner was also hit by Section 52 of the Transfer of Property Act.

23. The Recovery Officer rejected the objections preferred by the petitioner vide order dated 13.05.2016. He took note of the fact that as per the record, the demand notice dated 15.03.2002 was issued to the certificate debtor's – including BRD (CD-3), and all the CDs were served at their recorded addresses in March 2002. BRD (CD-3) appeared, for the first time, before the Recovery Officer on 11.10.2002 through counsel and he appeared in person on 16.12.2002. He filed his affidavit of assets on 24.08.2004, which disclosed the said property as his self-occupied property. On the same day, i.e. 24.08.2004, the CDs, including BRD (CD-3) were restrained from creating third party interest whatsoever to the detriment of the CH Bank UBI in the immovable assets which was a part of the record. BRD (CD-3) filed an additional affidavit vide Diary No.3060 dated 29.09.2004, wherein he again disclosed that he was the owner of the said property, which was self-occupied by him. The Recovery Officer notes that on the date of service of demand notice/ certificate dated 15.03.2002, as also on the date of the restraint order dated 24.08.2004, BRD (CD-3) was the owner in possession of the said property. He sought to execute the sale deed qua the said property in favour of the petitioner/ objector on 29.11.2006. The Recovery Officer rejected the contention of the petitioner/ objector that the sale of the property in her favour was not a private sale. He drew reference to Rule 2 and 16 of the Second Schedule to the I.T Act. He observed:

“Therefore, by virtue of the operation of Rules 2 and 16 of Second Schedule of Income Tax Act read with Section 25 and

28 of the RDDBFI Act and in view of the specific restraint order dated 24.08.2004 passed by the then Ld. recovery Officer, CD#3 was barred from creating any third party interest in relation to any of his movable/immovable estates, including property in question, from March 2002 onwards, after service of demand notice in the present R.C. The Transfer of the property in question by CD#3 in favour of the objector by Sale Deed registered on 29.11.2006 is hit by Rule 16 of the Second Schedule of Income Tax Act, 1961 and on this ground alone, the present objection application is liable to be dismissed.” (emphasis supplied)

24. The petitioner had sought to place reliance on an earlier order dated 22.02.2007 passed by the Recovery Officer – to claim that attachment of the said property had been declined on the said date, since the same was the only residential property of BRD (CD-3). This submission was also rejected by the Recovery Officer in paragraph 9.3 of his order. The petitioner’s submission premised on Section 64 CPC read with Order XXXVIII Rule 10 CPC was also rejected by the learned Recovery Officer in paragraph 9.4 of his order.

25. The petitioner then preferred an appeal under Section 30 of the Act before the DRT, being Appeal No.39/2016. The DRT rejected the same vide order dated 21.09.2016. In her appeal, the petitioner claimed that she was a victim of fraud. She claimed that the order of attachment of the said property, and the notice to settle the terms of proclamation, are contrary to law. She claimed that the sale in her favour was to redeem the mortgage in favour of the IOB by BRD (CD-3), and that she was a bona fide purchaser without notice for valuable consideration. She claimed that the property had been sold to her prior to its attachment. She placed reliance on *Hamda*

Ammal Vs. Avadiappa Pathar & 3 Others, (1991) 1 SCC 715. The respondent UBI defended the order passed by the learned Recovery Officer. The DRT dismissed the appeal of the petitioner on 21.09.2016. It rejected the petitioner's reliance on *Hamda Ammal* (supra), since the demand notice in the present case had been issued on 15.03.2002; BRD (CD-3) was served with the same in March, 2002; BRD (CD-3) had appeared before the Recovery Officer of the DRT through counsel on 11.10.2002 and in person on 16.12.2002, and also filed his affidavits disclosing his assets – including the said property as his self-acquired property of which he was in possession on 24.08.2004; he had filed an additional affidavit on 29.09.2004 also to the same effect; the attachment – by virtue of Rule 51 of the Second Schedule of the I.T Act related back to the date of service of notice under Rule 2, and; therefore, the attachment made in 2011 related back to the year 2002. Transfer of the said property by BRD (CD-3) in the year 2006 was in the teeth of Rule 16 of the Second Schedule to the Income Tax Act.

26. The petitioner preferred a further appeal before the DRAT, which has been dismissed by the impugned order.

27. The learned DRAT after referring to the decisions in *Gangadhar Vishwanath Ranade Vs. Income – Tax Officer*, 1989 177 ITR 163 Bom, and *The Tax Recovery Office II, Sadar, Nagpur Vs. Gangadhar Vishwanath Ranade (dead) through Mrs. Shobha Ravindra Nemiwant*, AIR 1999 SC 427, *inter alia*, observed: “.... upon receipt of a Recovery Certificate from the Presiding Officer of DRT, the Recovery Officer is expected to serve upon the certificate – debtors a demand notice as provided under Rule 2, requiring them to make payment within a period of 15 days.

In case of default in payment by the CDs, the CH Bank can request the Recovery Officer to attach any movable or immovable assets of the CDs and in case of attachment order is passed and some third party feels aggrieved by that attachment, he or she can file objections before the Recovery Officer under Rule 11 and if upon investigation of the claim of the objector the Recovery Officer finds that on the date of service of demand notice under Rule 2, the property attached was in occupation of the CD in his or her own right, the attachment will not be lifted and the sale, if conducted, will not be set aside. Further, in case the objector is able to show that on the date of service of demand notice under Rule 2 he or she was in possession in his or her own right and his or her possession was not on behalf of CD, then the Recovery Officer will lift the attachment or set aside the sale.”

28. The learned DRAT proceeded to examine the facts of the case in the aforesaid light and observed: *“In the present case, undisputedly, demand notice under Rule 2 of the Rules was served upon the deceased CD Mr. B.R. Dougall in March 2002. At that time, he undisputedly was in possession of the property in question in his own right as its owner and not on behalf of any third party including the present appellant – objector. Therefore, the appellant – objector being not in possession of the property in question on the date of service of demand notice under Rule 2 upon the deceased CD, she could not have asked for lifting of the attachment order passed by the Recovery Officer in April 2011 despite the fact that she claims to have purchased the property in question from the CD Mr. B.R. Dougall in the year 2006. The crucial date is the date when the concerned CD is served with a demand notice as provided under Rule 2, which admittedly in the*

present case was served in March, 2002, and not the date of attachment. Therefore, even if it is accepted that the appellant – objector was in possession of the property in question in April, 2011 when the learned Recovery Officer had attached the property which she was claiming to be her matrimonial home also that possession and even the sale deed allegedly executed in her favour by her father - in - law before that attachment order of the Recovery Officer will not confer any interest upon her for the purpose of getting an order of withdrawal of attachment under Rule 11”.

29. The learned DRAT rejected the submission of the petitioner that the sale executed by BRD (CD-3) in her favour of the said property was to redeem the mortgage with the IOB and, therefore, the prohibition against the sale of any property belonging to the CD by him after he has been served with a demand notice under Rule 2 of the Second Schedule is not attracted, by observing “*However, I do not find any substance in the above argument of Mr. D.K. Malhotra. In the present case Rule 2 notice stood served upon the deceased Mr. Dougall in March, 2002 and thereafter on 18th November, 2006 the Indian Overseas Bank had released the property in dispute from its charge after it had been paid its full dues by late Mr. B.R. Dougall as per the settlement between the Bank and the borrower Firm through its proprietor, who is his son. The property in question then became free from the charge of the mortgagee Bank but since Rule 2 demand notice had already stood served upon Mr. Dougall in March, 2002 he was not competent to execute the sale deed in favour of his daughter-in-law and for that matter in favour of anybody in view of the prohibition contained in Rule 16(1)(which Rule has been extracted by the DRT in its impugned order). In*

the grounds of appeal it has been pleaded that the deceased Mr. Dougall had in fact redeemed his property. If that was so it becomes all the more a more strong reason to reject the story cooked by the appellant because redemption could be by the mortgagor with his own money may be mustered by taking money from the in-laws of his son, as is the case of the appellant. ”

30. The learned DRAT observed that the sale in favour of the petitioner had been executed by BRD (CD-3) after the mortgage had been redeemed by making payment to IOB, so the sale transaction between BRD (CD-3), the father-in-law and the petitioner daughter-in-law could not be said to have been entered into by a mortgager in order to discharge pre-existing contractual liability towards the mortgagee Bank. The learned DRAT also noticed the fact that a private sale was made between the father-in-law and the daughter-in-law, who claimed that she had estranged relations with her husband and her in-laws.

31. We may observe that on behalf of the petitioner, no submission has been advanced on the findings returned by the learned Recovery Officer; the learned DRT, and the learned DRAT. Even otherwise, it is clearly evident from the facts of the case that BRD (CD-3) had been served with the demand notice under Rule 2 of the Second Schedule in March, 2002. He appeared, firstly, through his counsel and thereafter in person before the Recovery Officer on 11.10.2002 and 16.12.2002. He had filed his affidavit of assets on 24.08.2004, which disclosed the said property as his self acquired property. On the same day, he had been restrained from creating third party interest whatsoever to the detriment of the C.H. Bank, UBI, in the immovable assets which were part of the record. The said property was also

a part of the record of the Recovery Officer, since the same was disclosed by BRD (CD-3) as his personal assets in his occupation in his affidavit dated 24.08.2004. He had filed an additional affidavit on 29.09.2004 to the same effect. We may observe that, though the Authorities/ Tribunals below have proceeded on the basis that orders for attachment were passed on 18.04.2011 and 26.05.2011, to us, it appears that the attachment orders were issued in respect of the said property, firstly, on 24.08.2004 – when the C.D.s, including CD-3 (BRD) was restrained from creating any third party interest whatsoever, to the detriment of the CH-UBI. We state so, since the manner of attachment of immovable property of the defaulter under Rule 48 of the Second Schedule is made “*by an order, inter alia, prohibiting the defaulter (which CD-3/ BRD was) from transferring or charging the property in any way*”. However, even if the attachment of the said property is taken to have been ordered on 18.04.2011 and 26.05.2011, it makes no difference, since the same relates back to, and takes effect from the date on which the notice to pay the arrears, issued under the Schedule, was served upon the defaulter (See Rule 51). In this case, the notice to pay the arrears was served on the defaulter/ CD-3/ BRD in March 2002. Thus, the attachment related back to March, 2002.

32. Undisputedly, as on 24.08.2004, there was a binding restraint order against BRD (CD-3) from creating any third party interest in respect of the said property. BRD (CD-3) could not have transferred the said property to the third party, including to the petitioner without permission of the Recovery Officer, not only by virtue of Rule 2 read with Rule 16 of the Second Schedule to the IT Act, but also in the light of the express restraint

order passed against him on 24.08.2004. Pertinently, the said property was not sold to the petitioner in execution of the recovery certificate obtained by IOB. It was not a sale “*made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment*”. The said sale was a private sale, and merely because the IOB did not object to the said sale (because their One Time Settlement Offer was honoured), it does not mean that the sale of the said property by BRD (CD-3) in favour of the petitioner attains legality or legitimacy. It was a sale made in complete breach of Rule 16 read with Rule 51 of the second schedule to the Income Tax Act. It was in complete defiance of, and in violation of the order dated 24.08.2004 passed by the Recovery Officer. It was not saved by Section 64 (2) of the code, since it was not made in pursuance of an agreement made prior to the attachment of the said property under Rule 16 read with Rule 51 of the Rules. The attachment related back to March, 2002, whereas the sale took place in 2006. Consequently, the petitioner cannot claim a legitimate, much less better title to the said property than BRD/CD-3. Her claim of being a bonafide purchaser without notice for valuable consideration has not been accepted by the DRAT, and for good reasons. The same does not insulate her from the action that the CH Bank-UBI may take to recover their dues under the Recovery Certificate by going after the said property of CD-3/BRD. If the petitioner claims that she has been defrauded by BRD, it is for her to sue the estate of BRD. We also find that the Recovery Officer, the Tribunal and the DRAT rightly rejected the reliance placed by the petitioner on *Hamda Ammal* (supra), keeping in view the facts of the present case. We, therefore, do not find any reason to interfere with the impugned order on any aspect raised before the DRAT and decided by it.

33. A perusal of the impugned order shows that the petitioner actually did not even urge before the learned DRAT the issue raised by learned counsel for the petitioner before us, namely, that the said property could not be sold in execution i.e. for recovery of the amount due under the recovery certificate, since the same was the only residential property of BRD (CD-3) till the time that he transferred the same to the petitioner, and, thereafter the same is the only residential property of the petitioner.

34. However, when the writ petition was taken up for initial hearing on 11.03.2019, learned counsel for the petitioner sought to advance the submission taken note of in paragraph 3 hereinabove. Learned counsel for the petitioner sought an adjournment to address the Court on the aspect whether Section 60(1)(ccc) of the Code, as applicable to Delhi, is attracted in the facts of the present case. The matter was, thereafter, heard at length and judgment reserved.

35. To begin with, we may extract the opening words of Section 60 of the Code, *de hors* the State Amendments applicable to Delhi. Insofar as they are relevant, they read as follows:

“60. Property liable to attachment and sale in execution of decree.—(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit,

whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following properties shall not be liable to such attachment or sale, namely:—

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

*(c) **houses and other buildings** (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) **belonging to an agriculturist or a labourer or a domestic servant and occupied by him;***”
(emphasis supplied)

36. Thus, it would be seen that the main provision of Section 60 CPC, describes, *inter alia*, lands, houses and other buildings belonging to the Judgment Debtor as properties which are liable to attachment and sale in execution of a decree. The proviso to Section 60(1), however, carves out exceptions of properties which are not liable to attachment and sale. At this stage itself, we may observe that by State amendments applicable to Delhi, *inter alia*, Clause (c), as extracted above, has been modified, and Clause (cc) and (ccc) have been added, which are relevant and shall be taken note of hereinafter. Nevertheless, even the unamended clause (c) in the proviso exempts houses and other buildings with the material and the sites thereof

and the land immediately appurtenant thereto and necessary for their enjoyment “*belonging to an agriculturist or a labourer or a domestic servant*” and occupied by him, from attachment and sale in execution of a decree. Evidently, the Parliament granted exemption in Clause (c) of the proviso to Section 60(1) in respect of the poorer classes of persons comprising of agriculturists, labourers, and domestic servants.

37. Amendments to, *inter alia*, section 60 (c), and the introduction clauses (cc) and (ccc) [with which we are specifically concerned] were introduced by the Punjab Relief of Indebtedness Act, 1934 [Punjab Act No. VII of 1934] (PRI Act for short), which was extended in its application to Delhi.

38. Before coming back to the relevant clause of Section 60 CPC, we may now turn our attention to the PRI Act. The PRI Act was enacted even prior to the coming into force of the Government of India Act, 1935 and Parts thereof were extended to the whole of Punjab (as then defined). The PRI Act was described as “*An act to provide for the relief of indebtedness in the Punjab*”. With a view to fulfill the stated object of the PRI Act, under the umbrella of the PRI Act, various provisions/ sections of other enactments in force, which had a bearing on the aspect of indebtedness in the Punjab, were amended. The Legislature – with a view to achieve the object of the PRI Act, viz. to provide relief of indebtedness in the Punjab, inserted or modified sections/ clauses in other enactments. For instance, Section 3 of the PRI Act inserted Clause (aa) in Section 10(1) of the Provincial Insolvency Act, 1920. Similarly, Section 4 of the PRI Act amended/ substituted the words found in Section 74 of the Provincial Insolvency Act, 1920. Section 5 of the PRI Act amended Section 3 of the Usurious Loans Act, 1918. Section 33 of the PRI

Act introduced amendments to Section 1(3)(a) of the Redemption of Mortgages (Punjab) Act, 1913. Section 35 of the PRI Act introduced an amendment in Section 60(1)(c) of the CPC. The words “*occupied by him*” were substituted by the words “*not let out on rent or lent to others or left vacant for a period of a year or more*”. Thus, the strict condition – that the “*house or other building*” should be “*occupied by him*”, to entitle the “*agriculturist or a labourer or a domestic servant*”, the protection against attachment and sale was somewhat relaxed to cover even cases where such property may have been let out or left vacant for less than a year. Similarly, Section 36 of the PRI Act amended Order 21 Rule 2 of the CPC by omitting Sub-rule (3) thereof.

39. Section 7 of the PRI Act contained the definitions of the expressions “Debt” and “Debtor”. The said Section reads as follows:

*“7. (1) **"Debt"** includes all liabilities of a debtor in cash or in kind, secured or unsecured, payable under a decree or order of a civil court or otherwise, whether mature or not, but shall not include debts incurred for the purposes of trade, arrears of wages, land revenue or anything recoverable as an arrears of land revenue, or any debt which is barred by the law of limitation, or debts due to co-operative banks or to co-operative societies or to the Imperial Bank of India or to any banking company registered under the Indian Companies Act, 1913, or the law relating to companies for the time being in force in British India*

*(2) **"Debtor"** means a person who owes a debt, and*

(i) who both earns his livelihood mainly by agriculture, and is either a landowner, or tenant of agricultural land, or a servant of a land owner, or of a tenant of agricultural land, or

(ii) who earns his livelihood as a village menial paid in cash or kind for work connected with agriculture.

Provided that a member of a tribe, notified as agricultural under the Punjab Alienation of Land Act, 1900, shall be presumed to be a debtor as defined in this section until it is proved that his income from other sources is greater than his income from agriculture.

Explanation. – (i) A debtor shall not lose his status as such through involuntary unemployment or an account of incapacity, temporary or permanent, by bodily infirmity, or, if he is or has been in service of His Majesty's Military or Naval Forces, only on account of his pay and allowances or pension exceeding his income from agricultural sources.

(ii) A debtor shall not lose his status as such by reason of the fact that he makes income by using his plough cattle for purposes of transport.

(iii) A debtor shall not lose his status as such only because he does not cultivate with his own hands.

If any question arises in proceedings under this part of the Act, whether a person is a debtor or not, the decision of a Debt Conciliation Board shall be final.

(3) "Agriculture" shall include horticulture and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables and the like.

(4) "Prescribed" means prescribed by rules made under this part of the Act." (emphasis supplied)

40. Thus, the "Debtor" under the PRI Act is defined, primarily, as an agriculturist, or one who earns his livelihood as a village menial paid in cash, or kind, for work connected with agriculture. It is in respect of such a debtor, that the expression "Debt" has been defined. However, even in

respect of such a debtor, debts incurred, *inter alia*, for the purposes of trade are not covered by the expression “Debt”, meaning thereby, that even in respect of an agriculturist, debts which arise out of, or in connection with trading activities, are not covered within the scope of the PRI Act.

41. Section 8 of PRI Act provides for setting up of Debt Conciliation Boards by the local government for the purpose of amicable settlement between debtors and the creditors. Section 9 provides that the debtor or any of his creditors may apply to the Board to effect the settlement between the debtor and his creditors. Section 9 contains a proviso, which states that “*no application shall be made if the debtor’s debts exceed ten thousand rupees or such larger sum as the Local Government may prescribe for any particular area.*”

42. The proviso to Section 9 shows that the defined debts of debtors (as defined under the PRI Act), if they exceed Rs.10,000/-, or such larger sum as the Local Government may prescribe for any particular area, shall not be put up for settlement before the Debt Conciliation Board. The legislature, evidently, intended small debtors covered by the PRI Act with greater protection, than others.

43. On 30.05.1939, i.e. after the coming into force of the Government of India Act, 1935, the Central Government exercised its powers conferred by Section 7 of the Delhi Laws Act, 1912, to extend to the province of Delhi, the enactments specified in the Schedule. The relevant extract of the said notification published in the Gazette of India dated 03.06.1939 being Notification No. 189/38 reads as follows:

“No. 189/38. – In exercise of the powers conferred by section 7 of the Delhi Laws Act, 1912 (XIII of 1912), and in supersession of all previous notifications under that section extending Punjab Acts to the Province of Delhi or any part thereof, except the notification of the Government of India in the Department of Education, Health and Lands, No. F. 117/32-L. & O., dated the 26th January, 1933, the Central Government is pleased to extend to the Province of Delhi or such part thereof as is specified in the second column of the Schedule annexed hereto, the enactments specified in the corresponding entry in the first column thereof, subject to the restrictions and modifications, if any, specified in the corresponding entry in the third column, and to the following provisions, namely :—

(i) references in the first column of the said Schedule to an Act shall be deemed to be references to that Act as in force in the Punjab on the date of this notification, and

(ii) references in the said enactments to the Provincial Government shall be construed as references to the Chief Commissioner of Delhi, and references to the Punjab shall be construed as references to the Province of Delhi.

Provided that all notification, orders, bye-laws, rules and regulations made or issued under any of the enactments extended to the Province of Delhi or any part thereof by the notifications hereby superseded, shall continue to be in force as if made or issued under the corresponding enactment extended by this notification; and all proceedings taken under any of the enactments extended by the superseded notifications shall be continued as if taken under the corresponding enactment extended by this notification.” (emphasis supplied)

44. The relevant extract of the schedule to this notification reads as follows:

“SCHEDULE

<i>Name of the Act.</i>	<i>Area to which extended.</i>	<i>Restrictions and modifications</i>
.....		
<i>41. The Punjab Relief of Indebtedness act, 1934 (Punjab Act VII of 1934).</i>	<i>The Province of Delhi</i>	
.....		”

45. Thus, by virtue of the said notification dated 03.06.1939, *inter alia*, the PRI Act was extended to, and became applicable to the province of Delhi. Consequently, the enactments amended by the PRI Act – which, and to the extent that they were applicable to Delhi, stood amended. By virtue of Section 35 of the PRI Act, clause (c) to the proviso to Section 60(1) also stood amended as noticed hereinabove in paragraph 38.

46. On 05.10.1940, the Punjab Relief of Indebtedness (Amendment) Act, 1940, as amended by the Provincial Legislature, came into force. Several provisions of the PRI Act were amended, including Section 35 thereof (by virtue of Section 16 of the Punjab Relief of Indebtedness (Amendment) Act, 1940). Section 16 of the PRI (Amendment) Act reads as follows:

“Amendment 16. For section 35 of the said Act, the of section 35 following section shall be substituted, namely:- of Act VII of 1924.

Amendment “35. In section 60 of the Code of Civil

of section 60 Procedure, 1908-

of the Code

of Civil (a) in subsection (1) –

*Procedure,
1908.*

(i) in clause (c), for the words “occupied by him” the following words shall be deemed to be substituted, namely :-

not proved by the decree-holder to have been let out on rent or lent to persons other than his father, mother, wife, son, daughter, daughter-in-law, brother, sister or other dependents or left vacant for a period of a year or more;

(ii) after clause (c), the following clauses shall be deemed to be inserted, namely:-

(cc) Milch animals, whether in milk or in calf, kids, animals used for the purposes of transport or draught carts, and open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts, or stacking fodder or manure;

(ccc) one main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him: Provided that the protection afforded by this sub-section shall not extend to property which has been mortgaged;

(b) after subsection (2), the following subsections shall be deemed to be inserted namely:-

(3) Notwithstanding any other law for the time being in force an agreement by which a debtor

agrees to waive any benefit of any exemption under this section shall be void.

(4) For the purposes of this section the word “agriculturist” shall include every person whether as owner, tenant, partner or agricultural labourer who depends for his livelihood mainly on income from agricultural land as defined in the Punjab Alienation of Land Act, 1900.

(5) Every member of a tribe notified as agricultural under the Punjab Alienation of Land Act, 1900, and every member of a scheduled caste shall be presumed to be an agriculturist until the contrary is proved.

(6) No order for attachment shall be made unless the Court is satisfied that the property sought to be attached is not exempt from attachment or sale.”(emphasis supplied)

47. The PRI Act was further amended vide the Punjab Relief of Indebtedness (Amendment) Act, 1942. Insofar as it is relevant, Section 5 of this Amendment Act reads as follows:

“5. Amendment of section 35 of Act VII of 1934. – In section 35 of the said Act –

In clause (a) –

(i) after the words, brackets and figure “in sub-section (1)” the words “in the proviso” shall be inserted:

(ii) in sub-clause (ii) for the proviso to paragraph (ccc), the following proviso shall be substituted, namely: –

“Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered.””

48. Post the enforcement of the Constitution of India, on 08.06.1956, the Central Government issued a Notification bearing S.R.O. 1354 in exercise of the powers conferred by Section 2 of the Part C States (Laws) Act, 1950, extending to the State of Delhi, the enactment specified in the First Column of the Schedule thereto annexed, subject to the modifications specified in the corresponding entry in the Second Column of the Schedule. The said Notification dated 08.06.1956 bearing S.R.O. 1354, insofar as it is relevant, reads as follows:

“New Delhi -2, the 8th June 1956

S.R.O. 1354 – In exercise of the powers conferred by section 2 of the Part C States (Laws) Act, 1950 (XXX of 1950), the Central Government hereby extends to the State of Delhi the enactments specified in the first column of the Schedule hereto annexed subject to the modifications, if any, specified in the corresponding entry in the second column thereof, and to the following provision, namely:—

References in the Punjab Relief of Indebtedness (Amendment) Act, 1940 (Punjab Act XII of 1940) to the State Government shall be construed as references to the Chief Commissioner of Delhi.

THE SCHEDULE

<i>Name of Act</i>	<i>Modifications</i>
<i>1</i>	<i>2</i>
<i>The Punjab Relief of Indebtedness (Amendment) figures</i>	<i>1. In section 2 for the words and figures “the Punjab Relief of</i>

Act, 1940 (Punjab Act XII Indebtedness Act, 1934”, the words and figures “the Punjab Relief of Indebtedness Act, 1934, as extended to the State of Delhi” shall be substituted.

2. In Section 3 –

(i) for the words “Imperial Bank”, the words “State Bank” shall be substituted; and

(ii) for the words and figures “the Co-operative Societies Act, 1912” the words and figures “the Bombay Co-operative Societies Act, 1925, as extended to the State of Delhi” shall be substituted.

3. In section 14, in clause (b) for the words, figures and brackets “commencement of the Punjab Relief of Indebtedness (Amendment) Act, 1940”, the words, figures and brackets “date of the extension of the Punjab Relief of Indebtedness (Amendment) Act, 1940, to the State of Delhi” shall be substituted.

4. In section 16, in clause (b), the words and figures “as defined in the Punjab Alienation of Land Act, 1900” and “every member of a tribe notified as agricultural under the Punjab Alienation of Land Act, 1900, and” shall be

omitted.

*The Punjab Relief of
Indebtedness (Amendment)
Act, 1942 (Punjab Act VI of
1942)*

49. Resultantly, Section 35 of the PRI Act, as amended and extended for application in the State of Delhi, reads as follows:

“35. Amendment of section 60 of the Code of Civil Procedure, 1908 – In section 60 of the Code of Civil Procedure, 1908-

(a) in sub-section (1) [in the proviso],

(i) in clause (c), for the words "occupied by him" the following words shall be deemed to be substituted, namely :-

“not proved by the decree-holder to have been let out on rent or lent to persons other than his father, mother, wife, son, daughter, daughter-in-law, brother, sister or other dependants or left vacant for a period of a year or more.”

(ii) after clause (c), the following clauses shall be deemed to be inserted, namely :-

“(cc) Milch animals, whether in milk or in calf, kids, animals used for the purposes of transport or draught cart and open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts, or stacking fodder or manure;

(ccc) one main residential house and other buildings attached to it (with the material and the

sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him:

[Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered.]”

(b) after sub-section (2), the following sub-sections shall be deemed to be inserted, namely :-

“(3) Notwithstanding any other law for the time being in force an agreement by which a debtor agrees to waive any benefit of any exemption under this section shall be void.

(4) For the purposes of this section the word "agriculturist" shall include every person whether as owner, tenant, partner or agricultural labourer who depends for his livelihood mainly on income from agricultural land.

(5) Every member of a scheduled caste shall be presumed to be an agriculturist until the contrary is proved.

(6) No order for attachment shall be made unless the court is satisfied that the property sought to be attached is not exempt from attachment or sale.” (emphasis supplied)

50. For the sake of completeness, we may also notice the Punjab Moneylending and Debtors’ Protection Laws (Extension and Amendment) Act, 1960, whereby, *inter alia*, the PRI Act, 1934 and all Rules, Notifications and Orders made, and all directions or instructions issued thereunder, which were in force immediately before the commencement in

the territories, and which immediately before 01.11.1956 were comprised in the State of Punjab, were extended to and came in force in the transferred territories i.e. the territories comprised in the State of Patiala and East Punjab States Union before 01.11.1956.

51. Section 3 of the Punjab Moneylending and Debtors' Protection Laws (Extension and Amendment) Act, 1960 reads as follows:

“3. Extension of certain moneylending, and debtors' protection laws to transferred territories – (1) The following Acts, namely, –

- (i) the Punjab Regulation of Accounts Act, 1930 (I of 1930),*
- (ii) the Punjab Relief of Indebtedness Act, 1934 (VII of 1934),*
- (iii) the Punjab Debtors' Protection Act 1936 (II of 1936), and*
- (iv) the Punjab Registration of Moneylenders Act, 1938 (IV of 1938),*

and all rules, notifications and orders made, and all directions or instructions issued, thereunder, which are in force immediately before the commencement of this Act in the territories which, immediately before the 1st November, 1956, were comprised in the State of Punjab, are hereby extended to and shall be in force in, the transferred territories.

(2) With effect from the commencement of this Act, the amendments specified in column 4 of the Schedule shall be made in the Acts specified against them in column 3 thereof.”

52. The Schedule to this Act, however, does not make any reference to the PRI Act, 1934. In fact, the aforesaid Punjab Moneylending and Debtors'

Protection Laws (Extension and Amendment) Act, 1960 is of no relevance for our purpose.

53. The submission of Mr. Gupta, learned senior counsel for the petitioner, firstly, is that Section 2(g) of the Act defines the expression “debt” to mean *“debt means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil Court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or”*. (emphasis supplied)

54. Learned counsel submits that the expression “debt” used in Section 60(1)(ccc) CPC, as applicable to Delhi has to be read and understood as the “debt” defined in Section 2(g) of the Act. He submits that Rule 10 of the Rules provide that all such property, as is by the Code of Civil Procedure, 1908 exempted from attachment and sale in execution of a decree of a Civil Court, shall be exempted from attachment and sale under the Schedule. Thus, the said property cannot be attached and sold to recover the “debt” due to the respondent UBI, since Section 60(1)(ccc) is specifically made

applicable in respect of debts due to Banks and Financial Institutions. Learned counsel has placed reliance on ***C.N. Paramshivam and Ors. v. Sunrise Plaza Tr. Partner and Ors.***, (2013) 9 SCC 460, wherein the Supreme Court dealt with the issue of legislation by incorporation. The Supreme Court in paragraph 17 of its decision referred to ***Principles of Statutory Interpretation*** by Justice G.P. Singh, and quoted the following text from the said book, which reads:

“ *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 just as if they had been actually written in it with the pen, or printed in it....’ [Wood’s Estate, In re, ex p Works and Buildings Commissioners, (1886) 31 Ch D 607 (CA) at p. 615]

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 which 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 Portsmouth Corpn. V. Smith, (1885)10 A.C. 364 (HL) at p371 ‘
(emphasis supplied)

55. Learned counsel for the petitioner submits that the provisions of the Act have overriding effect. He refers to Section 34(1) of the Act, which provides “*Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*”

56. Thus, the expression “debt”, as defined in the Act would override the meaning of the expression “debt” in any other law, including the PRI Act as extended to Delhi. Learned counsel for the petitioner places reliance on *The Tax Recovery Officer II, Sadar, Nagpur V. Gangadhar Vishwanath Ranade (dead) through Mrs. Shobha Ravindra Nemiwant*, AIR 1999 SC 427, to submit that the Recovery Officer is bound to examine who is in possession of the property, and in what capacity. He can only attach property in possession of the assessee in his own right, or in possession of a tenant or a third party on behalf of/ for the benefit of the assessee. He cannot declare any transfer made by the assessee in favour of a third party as void. If the department finds that a property of the assessee is transferred by him to a third party with the intention to defraud the Revenue, it will have to file a suit under Rule 11(6) to have the transfer declared void under Section 281.

57. Learned counsel submits that this Court has examined the scope of the exemption granted under Section 60(1)(ccc), and has even applied the same in several cases relating to the recovery of debt under the Act. In this regard, he places reliance on the decision of a Division Bench of this Court in ***S.C. Jain v. Union of India***, AIR 1983 Delhi 367 (DB). In this decision, the question determined by the Division Bench was whether Clause (ccc) inserted in the proviso to Section 60(1) of the Code by means of Section 35 of the PRI Act, as amended and extended to Delhi, stands repealed after the passing of the Amendment Act 104 of 1976, amending the Code, specially in the light of Section 97(1) of the amendment Act of 1976. Section 97(1) of the Amendment Act of 1976, whereby the Code was amended, reads as follows:

“97(1) Any amendment made, or any provision inserted in the Principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

58. Learned counsel submits that in paragraph 4 of this decision, the Division Bench set out the consequence of the amendments to the PRI Act, as applicable to the State of Punjab by observing *“that though under the Code there was no exemption from attachment and sale of a main residential house of judgment-debtor yet by virtue of these Punjab Amendments the code, in so far as in its application to the State of Punjab was concerned, clause (ccc) exempted from attachment one main residential house belonging to a judgment-debtor.”*

59. The Division Bench observed, in respect of the Notification dated 08.06.1956, issued in exercise of the power conferred by Section 2 of Part C State Laws Act, 1950 that *“The result was that the protection of clause (ccc) in proviso to Section 60(1) of the Code also became available in Delhi from this date onwards.”*

60. The case of the petitioner in **S.C. Jain** (supra) was that he was one of the joint owners of the house which was the main residential house of the petitioner and the same was, therefore, exempted from attachment and sale under Clause (ccc) of proviso to Section 60(1) of the Code, as applicable to Delhi. This argument of the petitioner was countered by the respondent by placing reliance on Section 97(1) of the Amendment Act 104 of 1976, whereby the Code was amended. The submission of the respondent taken note of by the Division Bench in paragraph 8 of the decision reads as follows:

“.....The contention is that clause (ccc) was inserted in the Code by State Legislature of Punjab and that it is not consistent with the provisions of the Code as amended in 1976, because there is no exemption from attachment of a main residential house to be found in the Principal Act, the result being that clause (ccc) in proviso to Section 60(1) of the Code, as applicable in Delhi stands repealed. This contention of counsel for the revenue finds support from a decision of Luthra, J. in S. Rau's I.A.S. Study Circle v. Smt. Sushila Nanda, 1981 Delhi Law Times 174, (1) and Sultan Singh, J. in Tikkan Lal v. Govind Lal, 1983 Rajdhani Law Reporter (Note) 9 (2), where both the learned Judges have held that clause (ccc) in proviso stands repealed and exemption for a main residential house is no longer available in Delhi.”

61. Another submission of the petitioner considered by the Division Bench was that clause (ccc) of proviso to Section 60(1) was not inconsistent with the main provision of Section 60 of the Code, and that it was only an additional and beneficial provision giving extra benefits that are covered by the main provision of Section 60(1)(c) of the Code and, thus, no question of repugnancy arises. The Division Bench rejected the view taken by the two learned Single Judges of this Court, that Clause (ccc) was no longer available in Delhi. In paragraph 10 of its decision, the Division Bench observed:

*“10. Now Section 97(1) of 1976 Act only purports to repeal amendments in stated circumstances but only if inserted by Act of legislature or a High Court. The contention of Mr. Tikku is that the insertion of clause (ccc) in proviso to Section 60(1) of the Code, though effected by Punjab Amendment Act XII of 1940 and Punjab Act VI of 1942 a State amendment, cannot be treated to be so, when extended to Delhi by a notification of 1956 issued by the Central Government as mentioned above. The extension in Delhi, it is claimed is by an Act of Parliament and thus is outside the ambit of Section 97(1) of 1976 Act. So far as Punjab is concerned, there is no dispute that the insertion of clause (ccc) in proviso is by virtue of a legislation by the State Legislature. If the view of Luthra, J. and Sultan Singh, J. that the provision of the Code as amended by 1976 are inconsistent with clause (ccc) (of which we express no opinion) is correct the result undoubtedly would be that clause (ccc) may no longer be available so far as the State of Punjab is concerned. **But the same consequence does not follow in the Union territory of Delhi.**” (emphasis supplied)*

62. The Division Bench held that the extension of PRI Act to the Union Territory of Delhi was an exercise of the authority conferred by an Act of Parliament. In paragraph 13, the Division Bench observed;

“.....In this view of the matter it is indisputable that Punjab Act XII of 1940 and Punjab Act VI of 1942, which inserted clause (ccc) in proviso to sub-section (1) of Section 60 of the Principal Act (namely the Code) when extended to the Union territory of Delhi, by means o(sic of) Central Government's notification of June, 1956, must be deemed to be, in so far as Delhi is concerned, insertions made not by the State Legislature but by the Parliament itself, if so, obviously Section 97(1) of 1976 Act is inapplicable because it only applies, if any amendment is made by the State Legislature or a High Court.”

63. The conclusion drawn by the Division Bench is contained in paragraph 14, which reads as follows:

“14. In that view it has to be held that Section 97(1) of 1976 Act is of no assistance to the Revenue. Thus the benefit of clause (ccc) in proviso to Section 60(1) of the Code, as applicable to Delhi, continues to be available to a judgment-debtor provided he satisfies the conditions mentioned therein. We must therefore over rule the decisions of Luthra-Sultan Singh, JJ mentioned above though on different grounds, as not laying correct law.” (emphasis supplied)

64. In paragraph 16 of the decision, the Division Bench clarified that *“By our judgment all that we are holding is that clause (ccc) in proviso to Section 60(1) of the Code has not been repealed, so far as Delhi is concerned, but nothing said in our judgment should be taken even remotely to suggest whether the case of the petitioner is covered by clause (ccc) or not. Our decision only relates to the question of law. The question whether it is the main residential house and other requirements of clause (ccc) are satisfied or not, has to be decided by the Tax Recovery Officer. ”*

65. Learned counsel for the petitioner has placed heavy reliance on the observations made by the Division Bench on paragraph 20 of its decision, which reads as follows:

“20. The next contention of Mr. Wazir Singh was that as clause (ccc) was brought in by the Punjab Relief of Indebtedness Act, it would be available only in proceedings under 1934 Act, as amended. The argument is not understandable. Part IV of 1934 Act sets up Debt Conciliation Boards for settlement of particular kinds of debts. Section 35 of 1934 Act, as amended, inserted clause (ccc) in proviso to Section 60(1) of the Code. Under Section 222 read with Rule 10 of the Second Schedule to the Income-tax Act, all such property as is by the Code of Civil Procedure, 1908, exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule. Hence in proceedings before the Tax Recovery Officer, in Delhi the provisions of clause (ccc) in proviso to Section 60(1) of the Code are applicable.” (emphasis supplied)

66. Premised on the aforesaid observation, the submission of learned counsel for the petitioner is that the Division Bench rejected the submission of the respondent/ revenue, that clause (ccc) of the Proviso to Section 60(1) would be available only in respect of proceedings under the PRI Act 1934, as amended.

67. Learned counsel for the petitioner submits that Clause (ccc) of the proviso to Section 60(1) should be construed and read plainly, and that there is no occasion for this Court to expand or restrict the meaning and scope of that provision. In this regard, he places reliance on ***Centre for Public Interest Litigation v. Union of India and Others***, 139 (2007) DLT 289 (DB), wherein the Division Bench held:

*“42. We are not able to find much substance in the contention raised on behalf of the private respondents. It is a settled rule of interpretation that **whenever a provision is amended, the amendment must be construed and read on its simple language and there is no occasion before the Court to expand the meaning and scope of that provision. The ‘Doctrine of Plain Meaning’ is a primary and often applied principle to the rule of interpretation. The author says that it may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule that plain words require no construction, start with the premise that words are plain, which itself is a conclusion reached after construing the words. When the words of a statute are clear, plain and unambiguous, i.e. they are reasonably susceptible to only one meaning, the Courts would give effect to that meaning and not influenced by consequences.. The rule stated by TINDAL, C.J. in Sussex Peerage case is in the following form:***

“If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver.”

This doctrine is a first principle of rule of interpretation and it requires the Court to interpret the provisions on their simple and plain reading without any addition or deletion. Maxim A pactis privatorum publico juri non derogatur is an accepted principle of interpretation of provisions in England as well as in India. From the words of law, there should not be any departure. When the precise and unambiguous words are used in a rule or instruction, then, they must be understood and expound limited to their natural and ordinary sense. The words used best declare the intention of the rule maker.” (emphasis supplied)

68. On the same aspect, he places reliance on **Commercial Tax Officer and Ors. v. M/s. Biswanath Jhunjhunwala and Anr**, AIR 1997 SC 357.

69. Learned counsel for the petitioner has also placed reliance on ***Gurudev datta VKSSS Maryadit and Ors. v. State of Maharashtra and Ors.***, AIR 2001 SC 1980 to submit that the statement of object and reasons of the PRI Act – taken note of hereinabove, cannot be relied upon to examine the scope of the amendment to Section 35 of the PRI Act, whereby Section 60 of the CPC, as applicable to the State of Punjab was amended, which was later on extended and made applicable to Delhi. In this decision, the Supreme Court quoted its observations in ***Ashwini Kumar Ghose and Anr. v. Arabinda Bose and Anr.***, AIR 1952 SC 369, wherein Patanjali Sastri, CJ had observed in paragraph 32:

“32. As regards the propriety of the reference to the statement of objects and reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of Members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the legislature for they do not form part of the Bill and are not voted upon by the members. We, therefore, consider that the Statement of objects and reasons appended to the Bill should be, ruled out as an aid to the construction of a statute.” (emphasis supplied)

70. Learned counsel for the petitioner has submitted that the exemption contained in Clause (ccc) of the Proviso to Section 60 (1) of the Code is in recognition of the basic need of all human beings, one of which is shelter.

In this regard, he places reliance on *M/s Shantistar Builders v. Narayan Khimalal Totame and Ors.*, AIR 1990 SC 630, wherein the Court observed:

“9. Basic needs of man have traditionally been accepted to be three — food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect— physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.”

71. In this regard, he has also placed reliance on *Chameli Singh & Ors. v. State of U.P. & Anr.*, (1996) 2 SCC 549.

72. Learned counsel for the petitioner has cited *Indo Foreign Commercial Agency (Produce) Pvt. Ltd. & Ors. Vs. Punjab and Sind Bank*, 183 (2011) DLT 682 (DB), as an instance where the Court invoked Clause (ccc) of proviso to Section 60(1) of the Code, as applicable to Delhi, to set aside the order of restraint against the petitioner from selling, transferring, disposing of, creating any third party interest in respect of a residential property of the petitioner – it being the only residential property of the petitioner/ debtor under the Act.

73. We have considered the submissions advanced by Mr. Ravi Gupta learned senior counsel for the petitioner, and those advanced by Mr. Malhotra as well. The decision of the Division Bench of this Court in *S.C. Jain* (supra) only examined the issue whether Clause (ccc) of proviso to Section 60(1) of the Code stood repealed, so far as Delhi is concerned, by virtue of Section 97(1) of the Amendment Act, 1976, whereby the Code was amended. The scope of, and the meaning to be ascribed to Clause (ccc) of proviso to Section 60(1) of the Code was not considered by the Division Bench in that case. Even while dealing with the submission of the Revenue (advanced by Mr. Wazir Singh, Advocate) – that Clause (ccc) of proviso to Section 60(1) of the Code having been introduced by the PRI Act, 1934, it was available in proceedings under the PRI Act, 1934, as amended, the Court did not examine the scope and meaning to be ascribed to Clause (ccc) of proviso to Section 60(1) of the Code. Thus, *S.C. Jain* (supra) cannot be considered to be a binding precedent on the issue that has arisen for our consideration, namely, as to what is the meaning and scope of Clause (ccc) of the proviso to Section 60(1) of the Code; Is the expression “judgment-debtor” found in Clause (ccc) to be understood as any and every “judgment debtor” against whom a “debt” – as generally understood has been determined in a judicial/ quasi-judicial proceeding, or, whether the expression “judgment debtor” used in Clause (ccc) of the proviso to Section 60(1) of the Code has to be understood as a judgment debtor who is a “debtor” as defined and understood under the PRI Act in respect of a “debt” as defined in the PRI Act?

74. The decision in *Indo Foreign Commercial Agency* (supra) is also not an authority on the proposition which we are considering, since it merely proceeded on the basis that a debtor under the Act would enjoy the protection under Clause (ccc) of proviso to Section 60(1) of the Code, without examining the meaning and scope of Clause (ccc) of proviso to Section 60(1) of the Code.

75. As noticed hereinabove, the PRI Act was enacted in Punjab in 1934 “to provide for the relief of indebtedness in Punjab”. We have examined the nature and structure of the PRI Act. It defines the expression “debt” in Section 7(1) of the Act, *inter alia*, to exclude from the meaning of the said expression “debts incurred for the purpose of trade, arrears of wages, land revenue or anything recoverable as arrear of land revenue, debts due to cooperative banks or to cooperative societies or to any banking company registered under the Indian Companies Act, 1913 or the law relating to companies for the time being in force in British India”. Thus, the expression “debt” used in the PRI Act is defined in a restricted way. It specifically excludes debts due to banking companies registered under the Indian Companies Act, 1913 or the law relating to companies in force for the time being in British India.

76. Similarly, the expression “debtor” defined in Section 7(2) is defined narrowly, *inter alia*, to mean a person who owes a debt, i.e. a debt of the kind defined in Section 7(1), and who earns his livelihood mainly by agriculture and is either a landowner, or tenant of agricultural land, or a servant of a land owner, or a tenant of agricultural land, or who earns his

livelihood as a village menial paid in cash or kind for work connected with agriculture.

77. The statement of objects and reasons for enactment of the PRI Act, contained in the Bill moved in the Legislature, also throws light on the background in which the PRI Act was passed. The relevant extract thereof reads as follows:

*“Statement of objects and reasons – In 1929 the total volume of **agricultural debt** in the Punjab was estimated by the Provincial Banking Enquiry Committee at 135 crores of rupees. Since that date the sharp fall in the prices of agricultural produce has made the **pressure of debt on the cultivator** even heavier than these figures indicate, and the problem of finding some relief has now become a very acute one. At the end of March, 1932, the Punjab Government appointed a committee of members of the Legislative Council to consider this problem and to submit proposals for its solution. The Report of the Committee has been debated in the Legislative Council, and has been for some time under the careful and detailed consideration of Government, which have also been studying the steps taken in other provinces for the relief of indebtedness. In formulating the legislative measures embodied in this Bill, the Punjab Government have endeavoured to hold the balance fairly between the debtor and creditor and to give the former such relief as is possible without making any change in the law which might have the effect of destroying or seriously impairing the whole system of rural credit.”*
(emphasis supplied)

78. Thus, the entire focus and thrust of the Bill moved– which came to be enacted as the PRI Act, was to ameliorate the miseries of small agriculturists, while balancing the rights of such debtors and creditors.

79. When one looks at the definitions of the expressions “debtor” and “debt” in the light of the objects of the PRI Act, it becomes clear that the focus of the PRI Act was to grant relief from indebtedness in the Punjab to particular class of debtors as defined in the Act and, even in respect of such debtors, in respect of a particular kinds of debts that such debtors may owe. The purpose of the Act was not to grant relief from indebtedness to all debtors – of whatever kind, and in respect of all debts – of whatever nature, and to whomsoever owed.

80. Section 9 of the PRI Act – taken note of hereinabove, brings out that even in respect of a debtor covered by the PRI Act – who owes a debt of the kind defined in Section 7(1) of the Act, different treatment is meted out to debtors who owe debts exceeding the particular threshold, from those who owe debts lesser than the threshold limit. This is evident from Section 9 of the PRI Act which enables the debtor, or any of his creditors, to approach the Debt Conciliation Board, if the debt does not exceed Rs.10,000/- or such larger sum as the Local Government may prescribe for any particular area. Section 9 of the PRI Act, therefore, again shows that the intendment of the PRI Act was not to paint all debtors, in respect of all debts owed by them – to whatever limit, with the same brush.

81. We have also noticed from the structure of the PRI Act, that under the umbrella of the said Act, i.e. for the purpose of attainment of the objectives of the PRI Act, various provisions in other laws/ enactments were introduced/ amended, as taken note of hereinabove. In the same vein, Section 35 of the PRI Act sought to introduce, *inter alia*, Clause (ccc) of proviso to Section 60(1) of the Code, with which we are concerned. *Inter*

alia, Clause (ccc) of proviso to Section 60(1) of the Code was initially introduced in the PRI Act as applicable in the Punjab. As noticed hereinabove, eventually, PRI Act, as amended, was extended to Delhi and with it, *inter alia*, Clause (ccc) to the proviso to Section 60(1) of the Code came to be inserted in the CPC as applicable to Delhi vide Central Government notification dated 08.06.1956 bearing SRO No.1354 in exercise of powers conferred by Section 2 of the Part-C States (Laws) Act, 1950. It is pertinent to note that by the said notification dated 08.06.1956, the Central Government extended to the State of Delhi the PRI Act, as amended, and it is not that the Parliament, *de hors* the provisions of the PRI Act, introduced amendments in the CPC so as to include, *inter alia*, Clause (ccc) in the proviso to Section 60(1) of the Code, as applicable to Delhi.

82. Aforesaid being the position, in our considered view, the expression “judgment debtor” used in Clause (ccc) of proviso to Section 60(1) of the Code has to be read and understood in the context of the meaning ascribed to the expression “debtor” in the parent Act, i.e. the PRI Act as amended, and the expression “judgment debtor” cannot be understood to mean any “judgment debtor”, as generally understood.

83. Pertinently, the extracts from the ***Principles of Statutory Interpretation*** by Justice G.P. Singh relied upon by the Supreme Court in ***C.N. Paramsivam & Ors.*** (supra) support our view. The learned author has observed that “*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”. The learned author quotes Lord Blackburn, where he observes:

“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.”

84. The Supreme Court quoted with approval the same text from ***Principles of Statutory Interpretation***, 7th Edition 1999 by Justice G.P. Singh in ***Surana Steels Pvt. Ltd Vs. Deputy Commissioner of Income Tax and Others***, (1999) 4 SCC 306, while construing explanation Clause (iv) to Section 115J of the Income Tax Act. The question that arose for consideration before the Supreme Court was: Whether the term “loss” as appearing in Section 205(1) first Proviso, Clause (b) of the Companies Act, 1956, read with Section 115-J of the Income Tax Act, 1961 means “including depreciation”. Explanation to Section 115-J and Clause (iv) reads:

“Explanation.—For the purposes of this section, ‘book profit’ means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (1-A), as increased by—

* * *

and as reduced by,—

* * *

(iv) the amount of the loss or the amount of depreciation which would be required to be set off against the profit of the relevant

previous year as if the provisions of clause (b) of the first proviso to sub-section (1) of Section 205 of the Companies Act, 1956 (1 of 1956), are applicable.”

85. While answering the said question, the Supreme Court, *inter alia*, observed as follows:

“11. Section 115-J explanation clause (iv), is a piece of legislation by incorporation. Dealing with the subject, Justice G.P. Singh states in Principles of Statutory Interpretation (7th Edn., 1999)—

“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.’ (p. 233)

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. ’ ’ (p. 244)

12. Once we have ascertained the object behind the legislation and held that the provisions of Section 205 quoted hereinabove stand bodily lifted and incorporated into the body of Section 115-J of the Income Tax Act, all that we have to do is to read the provisions plainly and apply rules of interpretation if any ambiguity survives. Section 205(1) first proviso clause (b), of the Companies Act brings out the unabsorbed portion of the amount of depreciation already provided for computing the loss for the year. The words “the amount provided for depreciation” and “arrived at in both cases after providing for depreciation” make it abundantly clear that in this clause “loss” refers to the amount of loss arrived at after taking into account the amount of depreciation provided in the profit and loss account... ..” (emphasis supplied)

86. Thus, clause (iv) was read and understood in the context of Section 205 of the Companies Act, 1956. Similarly, the expression “judgment debtor” used in Clause (ccc) of proviso to Section 60(1) of the Code has to be read and understood in the context of the expression “debtor” used in the PRI Act, lest it leads to wholly unintended benefits being showered upon “debtors” for whose benefit the said clause was not introduced, and causes injustice to creditors against whom it was never intended to be used as a shield.

87. Interestingly, while construing the provisions of Section 35 of the PRI Act – by which the proviso to Section 60(1) were amended, the Lahore High

Court on various occasions construed the exemption contained in the provisos to Section 60(1) of the Code strictly. We may refer to the following decisions in this regard:

- (i) ***Choudhury Muhammad Ali Vs. Lala Ram Dass***, 1937 171 I C 932;
- (ii) ***Thakar Das Vs. Ram Rakha Mal***, 1938 173 I C 497;
- (iii) ***Bhola Singh Vs. Raman Mal***, AIR 1941 Lahore 28.

88. Pertinently, even in ***S.C. Jain*** (supra) while agreeing with the view taken by ***Rajindar Sachar, J.*** on the issue whether Clause (ccc) of proviso to Section 60(1) of the Code continued to be available even after enactment of Section 97 (1) in the Amendment Act, 1976, whereby the Code was amended, ***D.R. Khanna, J.*** lamented the exploitation of Clause (ccc) of proviso to Section 60(1) of the Code by persons with large undisclosed incomes. The learned Judge observed in paragraphs 28 and 29 of this decision as follows:

“28. The controversy which has given rise to the present writ petitions is about the attachability of property bearing No. 7, Kasturba Gandhi Marg, New Delhi in realisation of the tax arrears. It is situated over a plot of land measuring 5000 sq. yds., and if the price of land around Connaught Place can moderately be taken as ranging between rupees 4000 and rupees 5000 per sq. yd., the land underneath the property should itself be worth above rupees two crores. The contention of the petitioners is that this property constitutes as their main residential house, and is therefore, exempt in terms of the provision contained in clause (ccc) of the proviso to Section 60 of the Code of Civil Procedure.

29. *It will be relevant here to trace the history of how this provision was introduced in the Code of Civil Procedure. A series of radical fiscal legislations for the amelioration of the plight of poorer sections and agriculturists was set into motion during the Thirties in the erstwhile Province of Punjab by that remarkable legislator Sir Chhottu Ram. One such was the Punjab Relief of Indebtedness Act, 1934. Thereby considerable reliefs were provided to the debtors, and the primary object was to give protection to those debtors who had fallen to unfortunate days, and were likely to be thrown in the wilderness in case their only residential houses were as well attached and sold. It is unfortunate that that progressive measure in the then existing State of social conditions is being now sought to be exploited by persons with such large undisclosed incomes (which are the bane of our economic and social structure), and with regard to properties worth crores of rupees. Be that as it may, we have to consider what protection is available to the petitioners under the law as it exists at present.*” (emphasis supplied)

89. Unfortunately, the meaning and scope of, *inter alia*, clause (ccc) of the Proviso to Section 60(1) – in the context of the PRI Act, was not placed before the Court and, thus, it was not examined in the light of the object and purpose of the PRI Act and in the light of the Rule of interpretation taken note of hereinabove.

90. Reliance placed on ***Gurudev datta VKSSS Maryadit*** (supra) and ***Ashwini Kumar Ghose*** (supra) to submit that the Statement of Objects & Reasons of the PRI Act cannot be looked into for the purpose of construing the scope of the amendment introduced in the Code by Section 35 of the PRI Act is also erroneous.

91. In *Workmen of Dimakuchi Tea Estate Vs. Management of Dimakuchi Tea Estate*, AIR 1958 SC 353, the Supreme Court quoted the following extract from Maxwell's Interpretation of Statutes, 9th Edition, p.55:

“The words of a Statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained.”

92. The Courts have declined *“to be bound by the letter, when it frustrates the patent purposes of the Statute”*. *Cabell Vs. Markham*, 148 F 2d 737 (2d cir 1945), (Judge Learned Hand). (See *Principles of Statutory Interpretation* by Justice G.P. Singh 12th Edition 2010 page 119).

93. In *M/s Doypack Systems Pvt. Ltd Vs. Union of India & Others*, (1988) 2 SCC 299, the Supreme Court observed in paragraph 42 as follows:

“42. It has to be reiterated, however that the Objects and Reasons of the Act should be taken into consideration in interpreting the provisions of the statute in case of doubt. This is the effect of the decision of this Court in K.P. Varghese v. ITO [(1981) 4 SCC 173 : 1981 SCC (Tax) 293 : AIR 1981 SC 1922 : (1982) 1 SCR 629] where this Court reiterated that the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill could certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation was enacted. It has been reiterated that interpretation of a statute being an

exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. See in this connection the observations of this Court in Chern Taon Shang v. Commander S.D. Baijal [(1988) 1 SCC 507 : 1988 SCC (Cri) 162]” (emphasis supplied)

94. In the present context, it is essential to refer to the Objects & Reasons of the PRI Act to construe the meaning of the amendment introduced in the CPC by Section 35 of the PRI Act, to prevent absurd results of the kind lamented about by *D.R. Khanna, J.* in *S.C. Jain* (supra). The intention of the Legislature could never have been to provide protection against attachment and sale in execution of a decree, of the residential property owned by a judgment debtor - irrespective of the nature and extent of the residential property that the judgment debtor may own, and irrespective of the standing/ avocation/ background of the debtor, or the creditor. The interpretation of Clause (ccc) of proviso to Section 60(1) of the Code in a plain and grammatical way, *de hors* the context in which the said Clause came to be introduced by the extension of the PRI Act as amended to Delhi, in the Code as applicable to Delhi, would continue to throw up completely absurd results, where debtors occupying extremely large and valuable properties – the value whereof far exceeds the debt owed to the decree holder/ certificate holder, would get away without discharging their adjudicated liability. Such an interpretation would strike at the very foundation of the Rule of Law. It would provide a convenient escape to a person who obtains a loan from a bank, or other financial institution, or person, or otherwise incurs a financial liability, by simply investing the loan amount or the debt due in buying a residential property for himself, while ensuring that he has no other such property, and when the time to repay the

same comes, to block the recovery by resort to Clause (ccc) of proviso to Section 60(1) of the Code, even after the liability is determined upon adjudication. The interpretation sought to be canvassed by the petitioner in respect of Clause (ccc) of proviso to Section 60(1) of the Code would encourage fraudulent contrive by debtors to evade their liability which, certainly, would not be conducive to the preservation of the Rule of Law. Therefore, in our view, reliance placed by the petitioner on the aforesaid decisions in ***Gurudev datta VKSSS Maryadit*** (supra) and ***Ashwini Kumar Ghose*** (supra) is misplaced.

95. Reliance placed by learned counsel for the petitioner on Section 34(1) of the Act is also misplaced, and does not advance the submission of learned counsel that while construing the meaning of Clause (ccc) of proviso to Section 60(1) of the Code, the expression “debt” should be understood as the debt defined in Section 2(g) of the Act. The definition of the expression “debt” contained in Section 2(g) is for the purpose of the Act. Section 2 opens with the words “*In this Act, unless the context otherwise requires, –*”. Therefore, the word “debt” is defined in Section 2(g) in the Act, for the purpose of the Act. Even that definition may not be adopted, if the context otherwise requires. Clause (ccc) of proviso to Section 60(1) of the Code has to be viewed in the context of the PRI Act since, it is by virtue of the PRI Act and, to fulfill the purpose & object of the said PRI Act, namely, to grant relief against indebtedness to agriculturists etc., that the said Clause (ccc) was introduced in the proviso to Section 60(1) of the Code.

96. Reliance placed by the petitioner on ***Gangadhar Vishwanath Ranade (dead) through Mrs. Shobha Ravindra Nemiwant*** (supra) is of no avail.

This decision has no concern with the issue examined by us. The petitioner has sought to place reliance on the observation made by the Supreme Court in paragraph 9 of this decision, which reads as follows:

“9. The Tax Recovery Officer, therefore, has to examine who is in possession of the property and in what capacity. He can only attach property in possession of the assessee in his own right, or in possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the assessee in favour of a third party as void. If the Department finds that a property of the assessee is transferred by him to a third party with the intention to defraud the Revenue, it will have to file a suit under Rule 11(6) to have the transfer declared void under Section 281.”

97. The said property was attached while the same was in possession of the BRD (CD-3) in his own right. The Recovery Officer has had no occasion to declare the transfer made by the BRD (CD-3) to be void, since the property was already attached even prior to the said transfer.

98. Reliance placed by learned counsel for the petitioner on the ***Centre for Public Interest Litigation*** (supra) is not apposite. This is for the reason that Clause (ccc) of proviso to Section 60(1) of the Code has not been introduced by the Parliament by the normal route of amendment of the Code. The said provision, along with others, has been incorporated in the Code as applicable to Delhi by the extension of the PRI Act, as amended, to Delhi. Therefore, the context in which the said amendment has been brought about in the Proviso to Section 60(1) of the Code is extremely pertinent and cannot be lost sight of.

99. For the same reason, reliance placed on *M/s. Biswanath Jhunjhunwala* (supra) is also misplaced.

100. The submission of the petitioner premised on *M/s Shantistar Builders* (supra) and *Chameli Singh* (supra) needs only to be noticed to be rejected. The basic need of all human beings, *inter alia*, of shelter, does not mean that debtors, irrespective of their background, can be granted blanket protection under Clause (ccc) of proviso to Section 60(1) of the Code. The Right to Shelter stems from Article 21 of the Constitution of India, which provides that “*No person shall be deprived of his life or personal liberty except according to a procedure established by law*”. Thus, even this fundamental right is not absolute, and in accordance with the procedure established by law it may be curtailed. The Legislature, in its wisdom, sought to carve out exceptions to Section 60(1) only in exceptional cases of agriculturists, labourers and domestic servants (under Clause (c) of proviso to Section 60(1) of the Code). Other Clauses contained in the Proviso, similarly, provide protection against attachment and sale in execution of a decree. Clause (ccc) has also to be viewed in the light of the other Clauses contained in the Proviso to Section 60(1). If the submission of the petitioner premised on the basic needs of a man for shelter were to be accepted, there would be no justification to allow the attachment and sale in execution of a decree of any residential property, of any person whatsoever. However, that is not the intendment of the law.

101. We, therefore, reject the submission of learned counsel for the petitioner that the said property is exempted from attachment and sale in execution of a decree of a Civil Court under the Code. Reliance placed by

the petitioner on Rule 10 of the Rules is, therefore, of no avail and the same is rejected.

102. The writ petition is, accordingly, dismissed.

C.M. No. 53294/2019

103. This application has been preferred by the petitioner to bring on record subsequent facts relating to settlement/ OTS arrived at by the petitioner with the respondent Union Bank of India. The petitioner seeks leave to withdraw the writ petition, as not pressed, in view of the said settlement/ OTS communicated vide letter dated 31.07.2019. In the alternative, the petitioner seeks protection of its interest in view of the said settlement/ OTS with the respondent bank, while passing the final judgment in the petition.

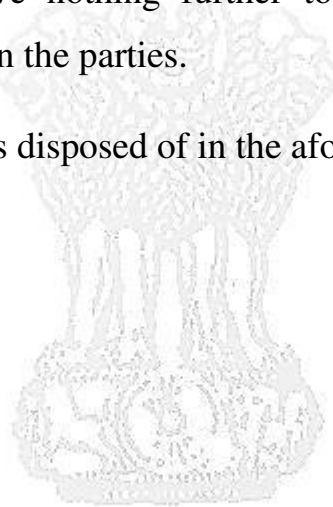
104. The petitioner states that after the judgment was reserved in the present petition on 02.04.2019, the petitioner had approached respondent Union Bank of India with a settlement offer. The petitioner's settlement offer of Rs. 41 lakhs against total dues of Rs. 3,24,17,653.36/- (as on 30.06.2019) was accepted by the respondent Union Bank of India vide letter dated 31.07.2019.

105. Learned counsel for the petitioner submits that the petitioner deposited Rs. 8 lakhs in terms of the settlement, and has sought extension of time to comply with the settlement by 15.12.2019. In this regard, the petitioner has placed on record the communications dated 31.07.2019 and 22.10.2019 issued by the Union Bank of India.

106. At the time when the arguments were heard and the judgment reserved, there was no such development. We heard learned counsel for the petitioner on serious questions of law which directly arose in the present case, and the legal question raised by the petitioner – which we have considered in detail, would affect a large number of recovery cases.

107. In these circumstances, at this stage, when the arguments were fully heard and judgment reserved, we are not inclined to permit the petitioner to withdraw the writ petition despite its settlement arrived at with the respondent bank. We have nothing further to add with regard to the settlement arrived at between the parties.

108. The application stands disposed of in the aforesaid terms.



(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

DECEMBER 12, 2019