

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**C.O. 49 of 2024
Bizmart Projects Private Limited & Ors.
versus
Bank of Baroda & Ors.**

For the Petitioners	: Mr. Nilesh Mishra, Advocate Mr. Arnab Saha, Advocate Mr. Debjit Mukherjee, Advocate
For the Respondent-Bank	: Mr. Tapas Paul, Advocate Mr. Mahim Sasmal, Advocate
Heard on	: 12.06.2024
Judgment on	: 21.06.2024

Bivas Pattanayak, J. :-

1. This civil revisional application under Article 227 of the Constitution of India has been preferred by the petitioners challenging the impugned order dated 4th March, 2024 passed and sale notice dated 24th January, 2024 issued by the learned Recovery Officer, Debts Recovery Tribunal, Siliguri in R.C. No. 4 of 2021.

2. The brief fact of the case is that the opposite party no.1-Bank of Baroda initiated a proceeding before the learned Debts Recovery Tribunal, Siliguri under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the 'RDB Act') being O.A. No. 4 of 2019 for recovery of the alleged debt assessed to the tune of Rs. 7,52,47,142.89/- against the petitioners and the *proforma* respondents. On 23rd March,

2021, the learned Presiding Officer, Debts Recovery Tribunal, Siliguri passed judgment and decree in the aforesaid O.A. Consequent thereto a recovery proceeding was initiated before the learned Recovery Officer, Debts Recovery Tribunal, Siliguri which has been registered as R.C. No. 4 of 2021. The learned Recovery Officer on 13th January, 2022 as per requirement directed the opposite party no.1-Bank to serve demand notice upon the petitioners. However, without service of demand notice, on the returnable date i.e. 24th February, 2022, the opposite party no.1-Bank prayed for attachment of the property of the petitioners. The learned Recovery Officer directed the opposite party no.1-Bank to submit the service report on substitution of the name of the bank and produce statement of accounts of the loan account of the petitioners on the next date of hearing. Direction passed by the learned Recovery Officer was not complied with by the opposite party no.1-Bank. Despite apparent non-compliance, the prayer of opposite party no.1-Bank for attachment of the property of the petitioners was unilaterally allowed by the learned Recovery Officer. The petitioner filed an application being I.A. No. 21 of 2023 praying *inter alia* for direction upon the opposite party no.1-Bank to provide certain information and documents to which the opposite party no.1-Bank was directed to file affidavit-in-opposition. After lapse of substantial period, the opposite party no.1-Bank served a copy of the affidavit-in-opposition through email. Soon thereafter on 6th June, 2023, submissions were advanced on behalf of the opposite party no.1-Bank for appointment of Receiver for attachment and taking over physical possession of the property of the petitioners. On 8th August, 2023, the learned Recovery

Officer directed that notice for settling of sale proclamation of the property of the petitioners be issued and served upon the petitioners. On 22nd December, 2023, the learned Recovery Officer directed the demand notice to be published in two newspapers. On 24th January, 2024, the opposite party no.1-Bank submitted service report on paper publication of the demand notice and on such date a sale notice was issued by the learned Recover Officer which was published in the newspapers “*The Telegraph*” and “*Anandabazar Patrika*” on 28th January, 2024. Thereafter the petitioners filed an application registered as I.A. No. 30 of 2024 praying *inter alia* for recall of the order dated 24th January, 2024 and setting aside of the impugned sale notice dated 24th January, 2024, precisely, on the grounds that the learned Recovery Officer did not have the requisite jurisdiction to take any steps in connection with a property which is outside the jurisdiction of the learned Tribunal and non-compliance of the order of the learned Recovery Officer by the opposite party no.1-Bank to serve a copy of the demand notice upon the petitioners. On 4th March, 2024, the application of the petitioners being I.A. 30 of 2024 was dismissed by the learned Recovery Officer, Debts Recovery Tribunal, Siliguri. Being aggrieved by and dissatisfied with the impugned order, the petitioners have preferred the present revisional application.

3. Mr. Nilesh Mishra, learned advocate for the petitioners submitted that learned Recovery Officer as an Executing Court was devoid of jurisdiction to deal with the property in question lying at Kolkata inasmuch as the same is situated outside the territorial jurisdiction of the learned Recovery Officer. The execution of the said property in question could only be

conducted by the learned Recovery Officer that has territorial jurisdiction over the said property in question. The learned Recovery Officer erred in observing that since the Recovery Certificate was issued by the learned Presiding Officer of Debts Recovery Tribunal, Siliguri, therefore, the learned Recovery Officer had exclusive jurisdiction to sell the property of the petitioners even though it is falling outside its jurisdiction which is an absolute erroneous assumption of law. Referring to Section 39 Sub-Section 4 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code'), he submitted that a Court which passed the decree is not authorised to execute such decree against any person or property outside the local limits of its jurisdiction. He further submitted that as per Section 19 of the RDB Act, where the Tribunal, which has issued a Certificate of Recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the Certificate of Recovery for execution to such other Tribunals where the property is situated. It is not in dispute that the property in question is located within Police Station-Purba Jadavpur, District-24 Parganas (South) and, therefore, the learned Recovery Officer, Siliguri ought to have sent the Certificate of Recovery issued by the learned Presiding Officer of Debts Recovery Tribunal, Siliguri to the Tribunal having territorial jurisdiction over the property in question. To buttress his contention, he relied on the following decisions:

- i. ***D. K. Modi versus Official Liquidator & Ors.*¹**

¹ **2017 SCC OnLine Del 9106**

ii. ***Harjinder Singh S/O Waryam Singh versus Recovery Officer-II and Others²***

In light of his aforesaid submissions, he prayed for setting aside the impugned order dated 4th March, 2024 passed and the sale notice dated 24th January, 2024 issued by learned Recovery Officer, Siliguri and also prayed that the RC proceeding be transferred to the appropriate Debts Recovery Tribunal having territorial jurisdiction over the property in question sought to be sold by the opposite party no.1-Bank.

4. On the contrary, Mr. Mahim Sasmal, learned advocate for opposite party no.1-Bank submitted that as per Section 22 of the RDB Act, the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, therefore, there is no manner of applicability of Section 39 of the Code as has been argued on behalf of the petitioners. Section 30 of the RDB Act in clear terms provides that any person aggrieved by an order of the Recovery Officer made under the Act may, within 30 days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal. The petitioners without exercising the right to appeal, which is an efficacious relief conferred under the RDB Act, has preferred the present revisional application which is not maintainable. The Debts Recovery Tribunal has the powers under the RDB Act to make an inquiry as it deems fit and confirm, modify or set aside the order made by the Recovery Officer in exercise of powers under Sections 25 to 28 (both inclusive) of the RDB Act. In view of the aforesaid provision of the RDB Act,

² **2020 SCC OnLine P&H 5220**

the only recourse of the petitioners was to challenge such order of the Recovery Officer by way of an appeal. To buttress his contentions, he relied on the following decisions:

- i. ***The Official Liquidator, U.P. and Uttarakhand versus Allahabad Bank and Others***³ (in Civil Appeal No. 2511 of 2013)
- ii. ***Pradip Kumar Agarwal versus State Bank of India***⁴
- iii. ***Pradip Kumar Agarwal versus State Bank of India***⁵

In light of his aforesaid submissions, he prayed for dismissal of the revisional application.

5. In reply to the aforesaid contentions advanced on behalf of the opposite party no.1-Bank, Mr. Mishra, learned advocate for the petitioners submitted that the language of Section 22 of the RDB Act, which says that the Tribunal should not be bound by the procedure laid down by the Code of Civil Procedure, 1908, does not mean that it will not have jurisdiction to exercise powers of a Court as contained in the Code of Civil Procedure, 1908. Rather the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Industrial Credit and Investment Corporation of India Ltd. versus Grapco Industries Ltd. and Others***⁶. He further submitted that an alternative remedy that is available under the Act was not to operate as a bar in at least three contingencies, namely,

³ (2013) 4 SCC 381

⁴ CO 1447 of 2017 (Decision of High Court at Calcutta)

⁵ CO 2223 of 2017 (Decision of High Court at Calcutta)

⁶ (1999) 4 SCC 710

where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged. By the action of the learned Recovery Officer, the right of the petitioners under Article 300A of the Constitution of India which confers right upon an individual to protect his property has been affected. Further the action of the learned Recovery Officer is wholly without jurisdiction. Therefore, the argument of opposite party no.1-Bank that the present revisional application is not maintainable on the ground of having an alternative remedy of appeal under Section 30 of RDB Act cannot be accepted. To buttress his aforesaid contentions, he relied on the following decisions:

- i. ***Whirlpool Corporation versus Registrar of Trade Marks, Mumbai and Others***⁷
- ii. ***Godrej Sara Lee Ltd. versus Excise and Taxation Officer-cum-Assessing Authority and Others***⁸

6. Having heard learned advocates for respective parties, the following issues that have fallen for consideration in the present revisional application.

- (i) Whether the Recovery Officer, Debts Recovery Tribunal, Siliguri is justified in issuing sale notice in respect of the property of the petitioners at Mouza-Chak Garia, J.L. No. 26, P.O.-Garia under Police Station-Purba Jadavpur, District-24 Parganas (South)

⁷ (1998) 8 SCC 1

⁸ 2023 SCC OnLine SC 95

within the limits of Kolkata Municipal Corporation, Ward No. 109, being Premises No. 1664, Chak Garia, Kolkata-700094 falling beyond its territorial jurisdiction?

- (ii) Whether the civil revision is maintainable despite availability of alternative relief of appeal provided under Section 30 of RDB Act?

7. It is not in dispute that a decree was passed by the learned Presiding Officer on 23rd March, 2021 in respect of an application under Section 19 of the RDB Act in O.A. No. 4 of 2019 for recovery of debts to the tune of Rs.7,52,47,142.89/- jointly against the petitioners and the *proforma* respondents. A recovery proceeding was initiated by the opposite party no.1-Bank for recovery of the decretal amount. The opposite party no.1-Bank prayed for attachment of the property which was allowed by the learned Recovery Officer. A sale notice was also issued by the learned Recovery Officer on 24th January, 2024. The petitioners filed an interlocutory application being I.A. 30 of 2024 on the ground that the learned Recovery Officer did not have the requisite jurisdiction to take any steps in connection with a property which is outside the territorial jurisdiction of the learned Recovery Officer and also on the ground of non-compliance of the order of the learned Recovery Officer by the opposite party no.1-Bank to serve a copy of the demand notice upon the petitioners. In the present revisional application, the petitioners have pressed into service the sole ground that the Recovery Officer of Debts Recovery Tribunal, Siliguri has no jurisdiction to direct for sale of the property lying beyond its territorial jurisdiction in an execution proceeding. In the impugned order while dismissing the interlocutory application of the

petitioners, the learned Recovery Officer, Debts Recovery Tribunal, Siliguri dealt with the aspect of jurisdiction as follows:

*“**Firstly**, Ld. Advocate for the CD submits that since the property which has been sought to be sold vide sale notice dated 24.01.2024, is located in Kolkata and the Recovery Officer of DRT-Siliguri has got no jurisdiction to sell the said property.*

It is pertinent to mention here that since it is attached mortgaged property related to the Original Application filed at DRT-Siliguri and the Hon’ble Presiding Officer has issued recovery Certificate in this matter and the Recovery Officer is duty bound to execute the Recovery Certificate and realize the certificate amount by selling the property on which the CHB has got paramount charge. In case, the CDs have any grievance, they can approach to the appropriate authority for necessary order as per law.”

7.1. Admittedly, the property is situated within the area of Housing Project of the New Garia Development Co-Operative Housing Society Ltd. of Mouza-Chak Garia, J.L. No. 26, P.O.-Garia under Police Station-Purba Jadavpur, District-24 Parganas (South) within the limits of Kolkata Municipal Corporation, Ward No. 109, being Premises No. 1664, Chak Garia, Kolkata-700094 which is outside the territorial jurisdiction of Recovery Officer, Debts Recovery Tribunal, Siliguri.

7.2. Now it is to be seen whether the learned Recovery Officer, Debts Recovery Tribunal, Siliguri had the jurisdiction in issuing direction for sale of a property lying beyond its territorial jurisdiction.

7.3. In order to appreciate the issue of jurisdiction raised by the petitioners, it would be profitable to reproduce Section 19 of the RDB Act as hereunder:

“19. Application to the Tribunal.—(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction,—

(a) the branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding, for the time being; or

(aa) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises:

x x x

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated:

Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it."

7.4. Section 19 of the RDB Act contains the procedure regarding the filing of the application to the Tribunal and the manner such application is to be dealt with by the Tribunal. Section 19(1) deals with the territorial jurisdiction of the Tribunal to entertain applications. Section 19(23) provides for sending the Certificate of Recovery for execution to the Tribunal where the property is situated, by the Tribunal which issued the Certificate of Recovery. Section 19(23) requires that in a situation where the property is situated within the local limits of the jurisdiction of two or more Tribunals, the Tribunal which issued the Certificate of Recovery may send the copies of the Certificate of Recovery for execution to such other Tribunals where the property is situated. The proviso to the Sub-Section provides that where the Tribunal to which the Certificate of Recovery is sent for execution finds that it has no jurisdiction to comply with the Certificate of Recovery, it shall return the same to the Tribunal which has issued it.

7.5. The proceeding, in the RDB Act, for recovery of debts culminates in a 'Certificate of Recovery' which is equivalent to money decree of a Civil Court. Just as a money decree of a Civil Court could be transferred for execution to another Court where the assets of the judgment debtor from which recovery was to be effected are situated, under Section 19(23) of the RDB Act also, where the property from which recoveries are to be effected, is situated outside the local limits of the jurisdiction of the DRT which has issued the Certificate, the DRT is required to send a copy of the Certificate for execution to the DRT within whose jurisdiction the property is situated. **(See *Amish Jain & Anr. versus ICICI Bank Ltd.*⁹).** Thus it is clear that under the scheme of the RDB Act where the assets of the judgment debtor from which recovery was to be effected are situated outside the jurisdiction of DRT which has issued the Certificate of Recovery, that DRT is required to send a copy of the Certificate of Recovery for execution to the DRT within whose jurisdiction the property is situated.

7.6. Relying on Section 39 sub-section (4) of the Code it has been argued on behalf of the petitioner that a Court which passed the decree is not authorised to execute such decree against any person or property outside the local limits of its jurisdiction and therefore the learned Recovery Officer acted without jurisdiction in entertaining the execution proceeding and passing order issuing sale notice. Such argument on the contrary has been opposed by opposite party no.1-Bank on the ground that as per Section 22 of the RDB Act the learned Tribunal is not bound by procedure laid down in the Code. In *Grapco Industries Ltd. (supra)* while dealing with the aspect

⁹ **2012 SCC OnLine Del 4818**

whether the Tribunal can exercise powers of a court contained in the Code the Hon'ble Supreme Court observed as follows:

“11. We, however, do not agree with the reasoning adopted by the High Court. When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, it does not mean that it will not have jurisdiction to exercise powers of a court as contained in the Code of Civil Procedure. Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice. Contrast Section 22 of the Act with Section 13(4) of the Consumer Protection Act, 1986 which vests certain powers on the authorities under the Act:

“13. (4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely,—

(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed. ”

7.7. Bearing in mind the aforesaid principles laid down by the Hon'ble Supreme Court, it goes without saying that the language of Section 22 of the RDB Act which says that the Tribunal should not be bound by the procedure laid down by the Code of Civil Procedure, 1908, does not mean that it will not have jurisdiction to exercise powers of a court as contained in the Code of Civil Procedure, 1908. Rather the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice. Therefore, Section 22 of RDB Act does not create a bar to the application of the provisions of Code by the Tribunal. As such the argument advanced on behalf of

opposite party no.1-Bank that the provisions of Section 39 Sub section (4) of the Code does not apply to the proceeding before the learned Recovery Officer fall short of merit.

Section 39 of the Code is reproduced hereunder for better appreciation.

“39. Transfer of a decree.—(1) *The Court which passed a decree may, on the application of the decree-holder, send it for execution to another court of competent jurisdiction,—*

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or*
- (b) if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or*
- (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or*
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.*

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.”

7.8. By Act 22 of 2002, Section 39 (4) has been introduced providing that nothing in the section shall be deemed to authorize the court which passed the decree to execute such decree against any person or property outside the local limits of its jurisdiction. Whether such newly added provisions prohibits the executing court from executing a decree against any person or property outside the local limits of its jurisdiction fell for consideration

before the Hon'ble Supreme Court in ***Salem Advocate Bar Association, T.N. versus Union of India***¹⁰, which observed as follows:

“22. Section 39(1) of the Code provides that the court which passed a decree may, on the application of the decree-holder send it for execution to another court of competent jurisdiction. By Act 22 of 2002, Section 39(4) has been inserted providing that nothing in the section shall be deemed to authorise the court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction. The question is whether this newly added provision prohibits the executing court from executing a decree against a person or property outside its jurisdiction and whether this provision overrides Order 21 Rule 3 and Order 21 Rule 48 or whether these provisions continue to be an exception to Section 39(4) as was the legal position before the amendment.

23. Order 21 Rule 3 provides that where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more courts, any one of such courts may attach and sell the entire estate or tenure. Likewise, under Order 21 Rule 48, attachment of salary of a government servant, railway servant or servant of local authority can be made by the Court whether the judgment-debtor or the disbursing officer is or is not within the local limits of the court's jurisdiction.

24. Section 39 does not authorise the court to execute the decree outside its jurisdiction but it does not dilute the other provisions giving such power on compliance with the conditions stipulated in those provisions. Thus, the provisions, such as, Order 21 Rule 3 or Order 21 Rule 48 which provide differently, would not be affected by Section 39(4) of the Code.”

7.9. In *Mohit Bhargava versus Bharat Bhusan Bhargava and Others*¹¹

while examining the question of jurisdiction of the Court which passed the decree to execute the same where the property was situated outside the local limits of its jurisdiction, it held that after introduction of Section 39(4) by the Amendment Act of 2002 the position is set at rest that the executing court which passed a decree had no jurisdiction to execute the decree against any person or property outside the local limits of its jurisdiction. The relevant observations of the Hon'ble Supreme Court are reproduced hereunder:

¹⁰ (2005) 6 SCC 344

¹¹ (2007) 4 SCC 795

“5. We shall first deal with the objection of the decree-holder to the transfer of the execution to the court at Indore having jurisdiction over the property sought to be brought to sale. The decree-holder who appeared in person as also the counsel who was appearing on his behalf in the petition for Special Leave to Appeal (Civil) No. 7742 of 2006 argued that Section 39(4) of the Code as amended in 2002, was not attracted since this was not a case to which Section 39(1) was applicable. It was contended that the court which passed the decree had the jurisdiction to execute the decree and the decree-holder had approached that court for execution of the decree. There was no defect in jurisdiction in seeking to enforce the decree through the court which passed the decree. It was submitted that the decree was being executed by the present court at Gwalior only because of the abolition of the court before which the execution petition was originally filed and the High Court misunderstood the factual position while coming to the conclusion that Section 39(4) was attracted. On behalf of the judgment-debtor it was pointed out that though normally it is correct to say that the court which passed the decree has the jurisdiction to execute the decree, the moment the decree-holder sought to execute such a decree against property lying outside the jurisdiction of that court, Section 39(4) of the Code was attracted and the court was obliged to transfer the decree for execution to the proper court. Section 42 of the Code was referred to. Counsel further contended that earlier, in terms of Section 39(1) of the Code, a discretion was vested in the court, either to proceed with the execution of the decree or to transfer the same to another court as understood by some of the decisions. There was a conflict of judicial opinion. The legislature had therefore stepped in with an amendment in the year 2002 curtailing that discretion and introducing sub-section (4) in Section 39 of the Code making it clear that any attempt of the court to proceed with the execution against a property outside the jurisdiction of that court, would be one without authority and this legislative intent had been properly understood by the High Court when it transferred the decree to another court. Both sides brought to our notice Salem Advocate Bar Assn. v. Union of India [(2005) 6 SCC 344] with particular reference to paras 22 to 24 dealing with Section 39 of the Code.

6. In that decision, clarifying the fields of operation of Order 21 Rule 3, Order 21 Rule 48 and Section 39 of the Code, this Court stated: (SCC p. 365, para 24)

“24. Section 39 does not authorise the court to execute the decree outside its jurisdiction but it does not dilute the other provisions giving such power on compliance with the conditions stipulated in those provisions. Thus, the provisions, such as, Order 21 Rule 3 or Order 21 Rule 48 which provide differently, would not be affected by Section 39(4) of the Code.”

7. There cannot be any dispute over the proposition that the court which passed the decree is entitled to execute the decree. This is clear from Section 38 of the Code which provides that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 42 of the Code indicates that the transferee court to which the decree is transferred for execution will have the same powers in executing that decree as if it had been passed by itself. A decree could be executed by the court which passed the decree so long as it is confined to

the assets within its own jurisdiction or as authorised by Order 21 Rule 3 or Order 21 Rule 48 of the Code or the judgment-debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment-debtor. But when the property sought to be proceeded against, is outside the jurisdiction of the court which passed the decree acting as the executing court, there was a conflict of views earlier, some courts taking the view that the court which passed the decree and which is approached for execution cannot proceed with execution but could only transmit the decree to the court having jurisdiction over the property and some other courts taking the view that it is a matter of discretion for the executing court and it could either proceed with the execution or send the decree for execution to another court. But this conflict was set at rest by Amendment Act 22 of 2002 with effect from 1-7-2002, by adopting the position that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the Code shall be deemed to authorise the court to proceed with the execution. In the light of this, it may not be possible to accept the contention that it is a matter of discretion for the court either to proceed with the execution of the decree or to transfer it for execution to the court within the jurisdiction of which the property is situate.”

7.10. Bearing in mind the aforesaid propositions and also considering the provisions embodied under the Section 19 (23) of RDB Act and Section 39 (4) of the Code, since admittedly the property in question lies within P. S. Puba Jadavpur, Kolkata which is beyond the territorial jurisdiction of the learned Recovery Officer, Siliguri it ought to have sent the ‘Certificate of Recovery’ to the Tribunal within whose jurisdiction the property i.e. area of Housing Project of the New Garia Development Co-Operative Housing Society Ltd. of Mouza-Chak Garia, J.L. No. 26, P.O.-Garia under Police Station-Purba Jadavpur, District-24 Parganas (South) within the limits of Kolkata Municipal Corporation, Ward No. 109, being Premises No. 1664, Chak Garia, Kolkata-700094 is situated. This court finds substance in the submissions of Mr. Mishra, learned advocate for the petitioners relying on *D. K Modi (supra)* and *Harjinder Singh (supra)*. Therefore, the finding of the learned Recovery Officer, Siliguri that since it is attached mortgaged property related to the Original Application filed at DRT-Siliguri and the

Hon'ble Presiding Officer has issued Recovery Certificate in this matter, as such he is duty bound to execute the Recovery Certificate and realize the certificate amount by selling the property on which the CHB has got paramount charge, is not sustainable in view of the discussion made hereinabove and the settled proposition of law.

8. The present revisional application is also opposed by opposite party no.1-Bank on the question of its maintainability. The contention of the opposite party no.1-Bank is that the civil revision is not maintainable since the impugned order under challenge is amenable to appeal under Section 30 of RDB Act. On the contrary the petitioner has contended that since the petitioner has challenged the jurisdiction of the learned Recovery Officer to entertain execution proceeding the civil revision is maintainable despite there being availability of alternative remedy of appeal under Section 30 of the RDB Act. In order to appreciate the aforesaid rival contentions it would be profitable to reproduce the relevant provisions of Section 30 of the RDB Act as hereunder as follows:

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

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

8.1. Upon bare reading of the aforesaid provisions there cannot be any quarrel that any person aggrieved by an order of the Recovery Officer made

under the RDB Act may within thirty days from the date, on which a copy of the order is issued to him, prefer an appeal to the Tribunal. Be that as it may, the court cannot be oblivious to the fact that by way of an interlocutory application being I.A 30 of 2024 the petitioners challenged the jurisdiction of the Recovery Officer to entertain the execution proceeding. From the discussion made in the foregoing paragraph it is found that the learned Recovery Officer, DRT-Siliguri did not have the jurisdiction to entertain execution proceeding for attachment and sale of immovable property lying beyond its local limits. Article 227 of the Constitution of India provides for power of superintendence over all Courts and Tribunals throughout the territory by the High Courts. The nature of superintendence is administrative as well as judicial. The Power under Article 227 of the Constitution of India is exercised to keep the subordinate courts within the bounds of their authority, thus the power is to be used sparingly. The scope and ambit of jurisdiction of Article 227 of the Constitution of India has been explained by the Hon'ble Supreme Court in the case of ***Estralla Rubber versus Dass Estate (P) Ltd.***¹², which is reproduced hereunder:

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law

¹² (2001) 8 SCC 97

or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

8.2. The proposition as above clearly manifest that the High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals under Article 227 of the Constitution of India. Exercise of the power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within such parameters. Reverting back to the fact of the case it is found that the learned Recovery Officer, Siliguri though not having jurisdiction to issue direction for sale in respect of the property falling beyond its territorial jurisdiction yet has issued such direction instead of sending the 'Certificate of Recovery' to the tribunal having territorial jurisdiction, which in the opinion of this court is a flagrant violation of fundamental principles of law or justice and if not interfered would remain uncorrected and unchecked. Therefore, the present revisional application is very much maintainable. Since the learned Recovery Officer acted wholly beyond its jurisdiction the availability of an alternative remedy under Section 30 of RDB Act cannot stand in the way of

invoking powers under Article 227 of the Constitution of India for setting at rest a situation which has led to violation of fundamental principles of law or justice.

8.3. The decisions in *Whirpool Corporation Ltd (supra)* and *Godrej Sara Lee Ltd (supra)* carve out exceptions on the existence whereof a writ court would be justified in entertaining a writ petition under Article 226 of the Constitution of India despite the party approaching it not having availed the alternative remedy provided by the statute. The aforesaid decisions do not deal with the scope and ambit of powers of High Court of Article 227 of the Constitution of India.

8.4. In *Official Liquidator, U.P and Uttarakhand (supra)*, the point of consideration before the Hon'ble Supreme Court is whether the Company Judge under the Companies Act has jurisdiction at the instance of the Official Liquidator to set aside the auction or sale held by the Recovery Officer under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 or whether the Official Liquidator is required to follow the route as engrafted under the RDB Act by filing an appeal assailing the auction and the resultant confirmation of sale. The Hon'ble Court in the said decision did not have occasion to deal with the consequence of an order passed by learned Recovery Officer in execution proceeding in the absence of having territorial jurisdiction.

8.5. The decisions of this Court in *Pradip Kumar Agarwal (supra)* and *Pradip Kumar Agarwal (supra)* are not with regard to any proposition relating to consequence of an order passed by learned Recovery Officer in the absence of having territorial jurisdiction.

9. Considering the facts and circumstances of the case, it would not be proper to opine as to whether the action of the learned Recovery Officer affected the right of the petitioners under Article 300A of the Constitution of India. Hence this Court recuses from making any observation.

10. In light of the aforesaid discussion, the civil revision being **C.O 49 of 2024** stands allowed. The impugned order dated 4th March 2024 passed and the sale notice dated 24th January, 2024 issued by learned Recovery Officer, Debts Recovery Tribunal, Siliguri in R.C No. 4 of 2021 is hereby set aside. The Debts Recovery Tribunal, Siliguri is directed to send the 'Certificate of Recovery' for execution to the Tribunal within whose jurisdiction the property of the petitioners comprised within the area of Housing Project of the New Garia Development Co-Operative Housing Society Ltd. of Mouza-Chak Garia, J.L. No. 26, P.O.-Garia under Police Station-Purba Jadavpur, District-24 Parganas (South) within the limits of Kolkata Municipal Corporation, Ward No. 109, being Premises No. 1664, Chak Garia, Kolkata-700094 is situated.

11. There shall be no order as to costs.

12. All connected applications, if any, stand disposed of.

13. Interim order, if any, stands vacated.

14. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)