IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.550 of 2024

Vimala Radhakrishnan ... Petitioner

Vs.

1.The Joint Secretary (PS) & CPO
Ministry of External Affairs
Patiala House, Tilak Marg
New Delhi 110 001.

2.The Passport Officer
First Floor, Commercial Complex Passage
Opp. Thandu Mariamman Temple
442, Avinashi Road
Coimbatore 641 018.

3.The Punjab National Bank
Assets Recovery Management Branch
No.448-A, Dr.Nanjappa Road
Coimbatore 641 018. ....Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent issued in the nature of writ calling for the records of the second respondent issued in file No.CB1074551404922 dated 07.12.2023, quash the same and consequently direct the second respondent to renew the petitioner's Passport bearing No.J8583919 immediately and handover the same to the petitioner within the time to be stipulated by this Court.

For Petitioner	:	Mr.R.Bharath Kumar
For Respondents	:	Mr.K.Gangadharan for R1 & R2 (CGSC) Ms.S.R.Sumathy for R3
Amicus Curiae	:	Mr.Prasad Vijayakumar

ORDER

This Writ Petition challenges the order dated 07.12.2023 made by the second respondent. In this order, the petitioner's application for passport renewal was declined. The operative portion of the order contested in the Writ Petition is extracted as follows:

> "**NOW THEREFORE,** I Shri.Sathish K S, Passport Issuing Authority after considering the facts and hearing the parties involved pass the following order;
>
> 1.The issuance of passport facilities to Smt.Vimala Radhakrishnan is refused under Section 6 of the Passport Act, 1967 based on the DRT order dated 04.05.2016.
>
> 2.The impounding of the passport of Smt.Vimala Radhakrishnan does not arise as the Passport No J8583919 was already expired on 13.09.2022.
>
> 3. The Passport renewal application of Smt.Vimala Radhakrishnan vide file no.CB1074551404922 dated 02.09.2022 will be closed.
>
> **However, the applicant can file an appeal to the Joint Secretary (PSP) & CPO, Ministry of External Affairs, Patiala House, Tilak Marg, New Delhi 110 001 against this order."**

2. The brief factual background of the Writ Petition is that it is alleged that dues exceeding Rs.68 crores are payable by the petitioner and others, including the corporate debtor. OA No. 308 of 2016 was filed by the third respondent Bank before the Debts Recovery Tribunal in Chennai under the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the RDB Act). While the Original Application was pending, the third respondent submitted an Interlocutory Application, I.A. No. 1239 of 2016, before the Debt Recovery Tribunal, Coimbatore, requesting a directive for respondents 2 and 3 to surrender their respective passports to the Registrar of the Debt Recovery Tribunal. In the event of non-compliance, the request was to impound their passports and instruct the Regional Passport Officer, Coimbatore, to make the necessary entries in the register accordingly. In this application, the Debt Recovery Tribunal issued the following order, and it is essential to extract the entire order dated 04.05.2017, which reads as follows:

> "I.A.No.1239/16: (Direction Petition to impound the Passport) This petition has been filed by the Petitioner/Applicant Bank to direct the Respondents 2 and 3 to handover their respect passports to the Registrar, DRT, failing which to impound their passports and direct the Regional Passport Officer. Coimbatore, to make necessary entries in the Register to that effect.
>
> The Ld. Counsel for the Petitioner/Applicant Bank submitted that the total outstanding amount due to the Applicant bank is Rs.48,82,48,583.65, together with interest and while so, the Applicant Bank apprehends that the Respondents / Defendants with an intention to delay and frustrate the recovery of debts are trying to dispose of the entire shares belonging to them to the third parties and

are making attempts to move away to foreign countries. The Ld. Counsel further submitted that the respondents are willful defaulters, who are making strenuous efforts to leave the territorial jurisdiction of this Tribunal and are frequently flying abroad and they are leaving the country, it would be impossible for the Applicant Bank to recover their dues and it would frustrate the recovery proceedings initiated by the Applicant Bank. The Ld. Counsel for the Applicant Bank further submitted that this Tribunal has power to pass order under S.19(7) of the Act and have incidental power to prevent a person from going abroad and also ordering arrest of the judgment debtor and his detention in prison under S.25(b) of the Act. The Representing Officer further submitted that under S.29 the IInd and IIIrd schedule of the Income Tax Act and the Income Tax (Certificate Proceedings) Rules, 1962, the Respondents be considered as a "judgment debtor" and the amount payable to be construed as "Tax due" under the Act and Clause 75 of the Schedule II empowers this Tribunal to detain the defaulter in jail for recovery of the amount under the Income Tax Act and therefore, the surrendering or impounding of Passport would restrain the Respondents to leave this country to avoid the legal proceedings. The Representing Officer sought an order to impound the Passports, which are more fully mentioned in the schedule in this Petition.

The Ld. Counsel for the Respondents strongly objected to the plea of the Petitioner/Applicant Bank.

The Hon'ble High Court in Writ Petition No. 19707 of 2011 in *ICICI Bank Ltd. vs. DRAT and Ors* in *CDJ 2011 MHC 5452*, has observed that there is no specific provision in the Act for impounding a Passport, but such power is inherent in the Tribunal conferred under S.19(25) of the RDDBFI Act and the power of the Tribunal to make such an order can be traced as well in S.22 of the RDDBFI Act and R.18 of the said Rules. The Hon'ble High Court hold that the power of the Tribunal or the Appellate Tribunal to impound the Pass port has not been either expressly or impliedly excluded by the provisions of the Passport Act. The Hon'ble High Court in support of its observations has relied upon the ruling rendered by the Hon'ble Supreme Court in Menaka Gandhi's case. The Hon'ble High Court further observed that. S. 19(25) cannot be exercised as a matter of routine and has to exercised in deserving cases and that too, sparingly and while issuing such order the Tribunal should satisfy itself that such actions are absolutely necessary in the given set of facts and to meet the end of justice. The Hon'ble High Court further observed that though the Passport Act and RDDBF1 Act are separate and special enactments, both had no overriding effect on each other and the provisions contained in both enactments are not inconsistent with each other.

Therefore, having taken into consideration of the liabilities, this Tribunal is of the view that the apprehensions expressed by the Applicant Bank have to be countenanced and it shall be dispelled. Hence, this Tribunal is of the view that if a limited conditional order is passed against the Respondents, it would meet the interest of justice and natural justice. Accordingly, the Petitioner / Applicant Bank is directed to approach the Regional Passport Officer of Chennai/Coimbatore, or any other office / officer, who are the competent authority to impound the passport of the Respondents as the case may be, and submit all the materials pertaining to the Respondents before such authority and explain the implications in detail and make a request to the Regional Passport Officer Chennai/Coimbatore or any other office / officer under S. 10(3)(h) of the Pass Port Act, 1967, and the Regional Passport officer in turn is required to peruse the materials placed before the authority, and to pass appropriate orders to impound the passports of the Respondents, which are more fully described in the schedule of this Petition, at their discretion on production of the copy of this Order so as to bring the Respondents to face the legal proceedings initiated against them for their liability / default, after taking into consideration of involvement of the public money in this proceedings. The Petitioner/Applicant Bank and the Regional Passport Authority / Passport officer/ Chennai/Coimbatore or any other Office/Officer, who are the competent <u>authority to impound the passport, as the case may be, are directed to act accordingly</u> and <u>**I.A. No.1239/2016**</u> is ordered accordingly. No costs. The Registry is directed to furnish the copy of the order to the Petitioner/Applicant Bank free of cost for the purpose of complying with the directions issued by this Tribunal supra.

> For filing Proof Affidavit by 08.06.2016. Petition to set aside ex-parte order against D-1 pending. The Registry is directed to check the petition and take it on file, if it is otherwise in order. Notice of hearing and counter by 08.6.2017. Written arguments also by then. Call on 08.06.2016."
>
> (emphasis supplied)

3. Subsequently, the petitioner filed an application for the renewal of a passport on 02.09.2022. When the matter was reviewed by the respondent, no orders were issued. Therefore, the petitioner approached this Court via W.P.No.13313 of 2023, and this Court ordered that the petitioner's application be considered and orders be issued on merits and in accordance with law within two weeks from the receipt of the copy of the order. Following this, the impugned order was issued, which led the petitioner to file the present Writ Petition.

4. Heard *Mr.R.Bharath Kumar,* learned counsel appearing on behalf of the petitioner, *Mr.K.Gangadharan*, learned Central Government

Standing Counsel appearing on behalf of the respondents 1 & 2, *Ms.S.R.Sumathy,* learned counsel appearing on behalf of the third respondent and *Mr.Prasad Vijayakumar,* learned *Amicus Curiae* appearing in this case.

5. Earlier, this Court addressed certain questions while considering the matter and, by an order dated 15.04.2024, appointed the amicus curiae to assist the Court. Accordingly, the learned amicus curiae has submitted a detailed report with an extensive survey of all relevant decisions.

6. *Mr.R.Bharath Kumar,* the learned counsel appearing on behalf of the petitioner, submits that the DRT directed the Passport Authority to consider the issue. The Passport Authority can only consider the issue per the provisions of the Passport Act of 1967. A reading of Section 10 of the Passport Act shows that no grounds for denying renewal exist in this case. The mere pendency of the Original Application before the Tribunal does not amount to a case pending before the Criminal Court. It is not a criminal case. The petitioner has a fundamental right to travel abroad, as authoritatively held by the Honourable Supreme Court of India in ***Maneka Gandhi vs Union of***

India[1]. Therefore, for reasonable medical necessity and to visit his daughter-in-law, this petitioner wants to travel abroad. When the petitioner already holds a passport and submitted an application for renewal, the Authority has no jurisdiction or grounds to refuse the renewal or to impound the passport. He would further submit that even from the compilation of judgments placed on record by the learned Amicus Curiae, and by taking this Court through the judgment of the ***Bombay High Court in Anurag vs Bank of India, Nagpur***[2]***,*** *he* points out that the Bombay High Court has categorically held that there is no express provision in the RDB Act or any Rules framed thereunder expressly conferring the power on the Debt Recovery Tribunal to order the impounding of passports or to refuse renewal, etc. The Bombay High Court has ruled that in the absence of an express provision, especially when the right to travel abroad is a fundamental right of citizens, the Tribunal cannot exercise such power by passing orders that restrain defendants from travelling abroad or issuing orders regarding the impounding of passports.

7. The learned counsel submits that this view is also followed by

1 ***1978 1 SCC 248***

2 ***2022 SSC Online, Bombay, 1160***

the *Kerala High Court*. Thereafter, taking this Court through the position held by the Division Bench in ***ICICI Bank Limited Vs. the Debt Recovery Tribunal***[3]**,** the learned counsel contends that our High Court recognizes that even though there is no express power, such power can be exercised sparingly and only in the rarest of occasions. Therefore, the DRT did not consider the mandate of this Court and failed to address whether the current case warrants such a limited exercise of power. The DRT's order is neither a positive direction nor within its jurisdiction, and the impugned order should be quashed. The learned counsel further notes that certain properties have already been auctioned, resulting in a sum of Rs.30 crores being realized. The petitioner, an ex-Director and currently a housewife, suffers from various ailments in her old age, requiring treatment. Additionally, she needs to visit family members abroad, but only for short durations. She has no intention of fleeing the jurisdiction permanently.

8. The learned counsel submits that she has also filed an affidavit of undertaking, and even if any specific undertaking is needed, the petitioner will file it. Therefore, for all the aforementioned reasons, the petitioner

3 ***2011 6 CTC 70***

requests that the Writ Petition be allowed.

9. The learned counsel representing the Passport Authority would submit that when an application for renewal is made, it should also be treated as a fresh application for a passport. The DRT, being a tribunal that issues directions, has passed an order in the aforementioned interlocutory application. The Passport Authority is required to comply with this order, and in light of the DRT's direction, the impugned order was issued, as clarified in the order itself.

10. The learned counsel representing Punjab National Bank submits that there are still huge dues exceeding Rs. 68 crores that are liable to be recovered. It is not uncommon in our country for individuals to obtain large loans and then flee the jurisdiction, often never returning. Many borrowers have left for abroad without returning, thereby making a mockery of judicial and recovery proceedings in our country. Given the changing times and the amount due in this case, an order of restraint is necessary. The defendant's presence is critical for the plaintiff to recover its dues.

Accordingly, when the plaintiff submitted an application to the Debt Recovery Tribunal, that tribunal is empowered to issue orders in the interest of justice to protect the bank's interests. The Bank manages funds belonging to the public of this country. The petitioner has not challenged the DRT's order by filing an appeal before the DRAT. The Passport Authority's order is solely based on the DRT's ruling. Moreover, the petitioner has an appellate remedy against the Passport Authority's order, thus he cannot maintain the current Writ Petition.

11. The learned *Amicus Curiae, Mr. Prasad Vijaykumar,* assisting this Court, submits that regarding whether the DRT has the power to restrain the defendants in the original applications under the *RDB Act* from visiting abroad or impounding their passports, two views have emerged. The Hon'ble Division Bench of this Court holds that in extraordinary circumstances, such orders can be issued by the DRT. Conversely, the Bombay and Kerala High Courts opine that in the absence of an explicit provision, the DRT should refrain from passing such orders, particularly since the right to travel abroad is a fundamental right. He further argues that additional questions arise, specifically whether the authorities can impound passports and whether the

DRT qualifies as a Criminal Court under the Act. He contends, based on the decisions presented before this Court, that the DRT cannot be deemed a Criminal Court. Therefore, it must be considered whether the Tribunal's status while a matter is pending before it serves as grounds for impounding a passport. The following judgments were submitted by him for the record:

S. No.	Case Law	Relevant Paras
Right to Travel as a Fundamental Right		
	Satwant Singh Sawhney v. D. Ramarathnam, 1967 SCC OnLine SC 21 [SC – 5J]	• (para 31) For the reasons mentioned above we would **accept the view of Kerala, Bombay and Mysore High Courts in preference to that expressed by the Delhi High Court. It follows that under Article 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. It is not disputed that no law was made by the State regulating or depriving persons of such a right**.
	Maneka Gandhi v. Union of India, (1978) 1 SCC 248 [SC	• (para 5) It will be seen at once from the language of Article 21 that

	– 7J]	the protection it secures is a limited one. **<u>It safeguards the right to go abroad against executive interference which is not supported by law; and law here means "enacted law" or "state law" (vide *A.K. Gopalan case*). Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad</u>**.
Power of DRT to Restrain Right to Travel Abroad		
	Karti P Chidambaram v Regional Passport Officer, Chennai WP. No. 1190 of 2024	• (para 75) My conclusion is thus, that, Section 5 applies to both new as well as renewal of passport, and the grounds for refusal set out under Section 6(2) would apply equally to both situations, issuance of new as

		well as renewal passports. There is thus **no merit in the submission of the petitioner that the grounds for refusal set out under Section 6(2) are unavailable in the case of passport renewals.** This issue is answered in favour of the respondent.
	ICICI Bank Limited v. Debts Recovery Appellate Tribunal, 2011 SCC OnLine Mad 1739 [Madras HC – 2J]	• (para 6) When the Banks and financial institutions experienced considerable difficulties in recovering loans and enforcement of securities charged with them from the borrowers, posing threat to Indian economy as a whole, especially when some of the borrowers who availed loans for development of their units, became sick and weak resulting in accumulated non-performing assets, the RDDBFI Act was enacted by virtue of the powers conferred on the Union of India under Entry 45 of List-I of Seventh Schedule. The Tribunals were established in terms of Section 3 of the RDDBFI Act to exercise jurisdiction, powers and authority conferred by the Act. Section 17 deals with the

		jurisdiction, powers and authority of the Tribunals. Sub-section (1) of Section 17 relates to the jurisdiction, powers and authority to entertain and decide Applications from the Banks and financial institutions for recovery of debts due to such Banks and financial institutions. Similar jurisdiction, powers and authority were also conferred on the Appellate Tribunal by virtue of sub-section (2) of Section 17. Those powers are exclusively conferred on the Tribunal and the Appellate Tribunal except the Supreme Court and the High Court in terms of Section 18 of the Act. **The provision is intended to confer wider power to the Tribunal/Appellate Tribunal to deal with the matters relating to various modes of recovery of unpaid loan or bad debts**. • (para 17) On the other hand, Mr. A.L. Somayaji, the learned Senior Counsel appearing for the Bank would rely upon the judgment of the Division Bench of Kerala High

		Court in *Annai Jayabharathi* v. *The Debt Recovery Tribunal*, The Division Bench, having referred to the Passport Act as well as the right conferred on the Passport holder under Article 21 of the Constitution of India, observed that there is no infraction of Article 21 of the Constitution of India in the event the Tribunal directs the borrower/guarantor to surrender Passport. The Division Bench has also held that the power of the Tribunal with reference to the provisions of Section 22 of the RDDBFI Act is wider than a Civil Court. For the reasons stated in our order, **<u>we are entirely in agreement with the decision of the Division Bench of the Kerala High Court and with great respect, we are not in agreement with the view taken by either the Karnataka High Court or the Delhi High Court</u>**. • (para 18) We are inclined to add further in support of our above view. The RDDBFI Act was

		enacted to provide for establishment of Tribunals, for expeditious adjudication and recovery of debts due to Banks and financial institutions with the powers to regulate their own procedure and therefore, it is regulatory in nature. Likewise, The Passport Act, 1967 was also enacted to issue Passports and travel documents to regulate the departure from India of citizens of India and other persons. Both are special enactments made by the parliament by virtue of the powers conferred under List I of Seventh Schedule. • (para 19) At the time when the Passport Act was enacted, the RDDBFI Act was not enacted and for that reason, there was no occasion for the Parliament to make a provision conferring on the Passport Authority to order impounding the Passport in case the borrower or the guarantor fails to repay the loan and the Bank anticipated or apprehended that such borrower/guarantor may leave

		the country thereby successfully evading payment. The Act underwent subsequent amendments during 1995, 2000 and 2004 as well. Even then, no specific power was conferred upon the Passport Authority to order impounding or revoke the Passport or the travel document of the defaulted borrower or guarantor, who is facing Recovery proceedings before the Debts Recovery Tribunal. Both the Acts being enacted under List I of Seventh Schedule, when the Passport Act deals with the issue of Passport and travel document in order to regulate departure from India of citizens of India and other persons, the RDDBFI Act is intended to recover the dues from the borrower or the guarantor with wide range of powers to pass interim orders in order to secure the interest of justice in realising the dues. **<u>Both the Acts are operating on different fields and the provisions of the Acts are to be considered keeping in mind the</u>**

		respective objects for which they were enacted. • (para 23) **there can be no doubt to hold that the Tribunal/Appellate Tribunal enjoy wider inherent power than an ordinary Civil Court which could be exercised to pass interim order to meet the ends of justice including an order to impound a Passport. The only limitation would be that such orders should relate only to ensure the implementation of the provisions of the RDDBFI Act, particularly to protect the interest of the Banks/financial institutions to recover the dues**. • (para 24) we will have to consider the next question as to whether the RDDBFI Act will override the Passport Act. The Passport Act falls within Entry 19 of List-I of the Seventh Schedule and the RDDBFI Act falls within Entry 45 of List-I of Seventh Schedule of the Constitution of India. Both are special laws which

		deal with respective entry. If, there is any inconsistency between these two laws, an occasion may arise for this Court to examine as to which will prevail upon the other. In the event, this Court finds no inconsistency between the two laws made by the Parliament, the question of one Act overriding the other does not arise. Insofar as the Passport Act is concerned, of course, it provides for impounding of Passport by following a set of procedure by the authority. As held by the Hon'ble Supreme Court, it will have overriding effect over the general law, namely, the Code of Criminal Procedure or Code of Civil Procedure so as to exclude the power of impounding by exercise of such inherent power. If we have to consider whether the inherent power of the Court under the Code of Civil Procedure will prevail upon the Passport Act, the answer will be an emphatic no, because the Passport Act is a special enactment which will naturally override the

		general law. But, insofar as RDDBFI Act is concerned, the inherent power of the Tribunal does not flow from the general law namely, Code of Civil Procedure, as it flows from another statute namely, RDDBFI Act, which is also a special enactment. **The Hon'ble Supreme Court has made it very clear that such inherent power flowing from RDDBFI Act is wider than the inherent power which would normally flow on a Civil Court. Therefore, the provisions of the Passport Act shall not exclude the inherent power of the Debts Recovery Tribunal to pass any interim order to meet the ends of justice for which power flows from the special enactment namely, RDDBFI Act**. • (para 26) Thus, we hold that **the power of the Tribunal or Appellate Tribunal to impound a Passport has not been either expressly or impliedly excluded by the provisions of the Passport**

		Act. Even while we hold so, having regard to the law laid down by the Apex Court in *Menaka Gandhi's case*, supra, holding that a right to hold Passport cannot be deprived as it may amount to infringement of Article 21 of the Constitution of India, the power under Section 19(25) cannot be exercised as a matter of routine and has to be exercised in deserving cases and that too sparingly. **While issuing such order, the Tribunal should satisfy itself as to whether such directions are absolutely necessary in the given set of facts and to meet the ends of justice since the satisfaction of the Tribunal is subject to judicial review.** • (para 29) The provisions of the RDDBFI Act must be interpreted by the Courts to give effect to the object for which such enactment was made. In order to ensure recovery of the dues to the Bank, and for that matter **such recovery is in the interest of sustained growth**

		<u>of economy of the country, measures like directing surrender of Passport and ordering the borrower/guarantor not to leave the country without the permission of the Tribunal would be well within the powers conferred on the Tribunal under Section 19(25) of the RDDBFI Act</u>.
	Ajay Kumar Bishnoi v. Debts Recovery Tribunal-I, 2017 SCC OnLine Mad 6535 [Madras HC – 2J]	• It is true in a subsequent decision in *RADHIKA VIJAY KUMAR* v. *DEBTS RECOVERY TRIBUNAL-II* [W.P. No. 2621 of 2014 dated 11.02.2014], a contrary view would appear to have been expressed. The earlier binding decision of the Division Bench in *ICICI BANK LIMITED* v. *THE DEBTS RECOVERY APPELLATE TRIBUNAL* [2011 (6) CTC 70] was not brought to the notice of the Court in the later case. We are in agreement with the view taken by the Division Bench in *ICICI BANK LIMITED* v. *THE DEBTS RECOVERY APPELLATE TRIBUNAL* [2011 (6) CTC 70]. The above ruling of the Division Bench

		will apply on all fours to the present case.
	Annai Jayabharathi v. Debt Recovery Tribunal (Kerala and Lakshadweep), Ernakulam, 2005 SCC OnLine Ker 80 [Kerala HC]	• (para 10) The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was brought into force from 27-8-1993 with an avowed object of expeditious disposal of debts due to Banks and financial institutions so to enable the fast Recovery of debts due to them, and for matters connected therewith or incidental thereto. The act is applicable if the debt is more that Rs. 10.00 lakhs. Up to the said limit, the common law Courts still continue to exercise jurisdiction, subject to such pecuniary limits of the Civil Courts, as may be fixed by the respective States. For debts which can be recovered by filing suits in the civil Courts up to the above pecuniary limit, the Code of Civil Procedure is applicable and, as a necessary corollary, all provisions therein including the attachment before judgment, Order XXXVIII and Rules made therein apply. Apart from that, Section 151 confers inherent power. A question

		arises as to whether for higher pecuniary jurisdiction, which is now taken off from the civil Courts and invested in the Tribunals, Tribunals are made less powerful than the common law Court, when the very purpose of setting up of. Tribunals under the Act is not only for fast adjudication, but, for effective and early recovery of debts, which was got vital role in economic stability of the country. In fact, a presumption can be raised very safely that the special Tribunals are vested with such powers so as to adopt such procedure, by which all effective measures can be taken not only for fast disposal of the cases, but, for fast recovery of the dues, as may be found to be payable after adjudication. It is specifically provided that after adjudication, a decree is passed, and, in execution thereof, under Section 25 of the Act, decree passed by the DRT can be enforced by (i) attachment and sale of movable or immovable

		property of the judgment debtor; (ii) arrest of the judgment-debtor and his detention in prison; and (iii) appointing Receiver for the management of the movable or immovable properties of the judgment-debtor. But, what happens if the judgment-debtor escapes from the country in order to evade and defeat the decree? Is the DRT so powerless to do anything is the question. If a power is given to arrest the judgment-debtor and to detain him in prison for enforcing the realization of a debt-ordered to be paid in decree by issuance of a Certificate under Section 19(7) of the Act, it carries with it an incidental power to prevent a person from going abroad, as an interim measure, so as to give effect to the power of ordering arrest of the judgment-debtor and his detention in prison conferred by Section 25(b) of the Act. Otherwise, the said provision becomes redundant and otiose. The arguments of the learned counsel

		for the appellant that Section 22 of the Act bars the application of CPC, excepting those which are enumerated in sub-section (2) thereof, and that power to impound the passport is not the one of such powers enumerated, and, therefore, the DRT has got no power to impound a passport cannot be acceded to, as Section 22(1) has to be read in a different perspective than understood by the learned counsel for the appellant. Section 22(1) of the Act relieves the DRT from the bondage of rigour of procedure laid down by the Code of Civil Procedure, leaving it to be guided by the Principles of Natural Justice, subject to other provisions of the Act and the Rules, and, **vests the DRT with such wide powers to regulate its own procedure including the place at which it can have sittings. As such, the powers of DRT have not to be read to have been truncated by Section 22(1), and, in fact, it has to be read and understood to**

		have been widened giving a free hand to the Tribunal to pass any such orders, which have got the effect of not only speedy trial, but, effective enforcement of the decree in the event of the same being passed. It cannot be denied that presence of the appellant in the country enables the smooth and speedy disposal of the case before the DRT, and, in the event of the decree being passed and a Certificate is issued under Section 19(7) of the Act, the same can be effectively executed. If there are no grounds to pass the impugned order, certainly, it is arbitrary as it violates not only the fundamental right under Article 21, but also Articles 14 and 19 too. But, the DRT is of the considered view that the security offered is far too meagre as compared to the debt to be realized, and, in that context, it cannot be said that the order of the tribunal is arbitrary. Under Section 22(2) of the Act, the DRT is

		vested with sqme powers as are vested in a civil Court under CPC while trying a suit, and, while such powers are enumerated in clauses (a) to (g), but clause (h) is residuary in nature, which empowers to adopt a procedure on any other matter, which may be prescribed. Further, under Section 29 of the Act, provisions of the II and III Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, are also made applicable by referential legislation to1 read the assessee as a 'judgment-debtor' and 'tax due' as 'the debt payable under the Act'. Under Clause 75 of Schedule II of the Income-tax Act, interim detention can be ordered pending enquiry relating to final detention in jail for recovery of the amount determined under the Income-tax Act. Section 34 gives overriding effect to the Act over other enactments. Section 36 confers rule-making power by virtue of which the Debts Recovery

		Tribunal (Procedure) Rules, 1993 were framed. Rule 18 of the Rules empowers the DRT to make such orders and to give such directions1 as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice and, certainly, the impugned order falls within this Rule read with Section 25(2) of the Act. The Karnataka High Court in *ICICI's case* (AIR 2002 Karnataka 118) (supra) did not deal with these aspects and, in our considered view, **<u>the order of the DRT sustains, as it is valid under law.</u>**
	ICICI Bank Ltd. v. Kapil Puri, 2017 SCC OnLine Del 7377 [Delhi HC – 2J]	• (para 23) From the reading of the aforesaid judgments, it is clear that the Supreme Court referring to Sections 19(6) (as existed) [presently Section 19(12)] and 22(1) has held that the Tribunal is not bound by the procedure laid by the Code of Civil Procedure. **<u>The Tribunal can travel beyond the Code of Civil Procedure and the only pre-condition is that it has to observe the principles of natural</u>**

		justice. The power of the Tribunal under subsection 6 of Section 19 to pass injunction or stay orders is not exhaustive but the width and amplitude of the powers can be gathered from Section 22(1). The Supreme Court also observed Rule 18 of the Tribunal enables the Tribunal to pass orders to secure ends of justice. • (para 28) No doubt, the Madras High Court has read the power of the Tribunal under Section 19 of the Act to include the power to impound a passport • (para 33) **The Debts Recovery Tribunal being a creature of statute would have power as conferred on these Tribunals by the statute. If the intention was to confer such power allowing the Tribunal to restrain a person from travelling abroad, it ought to have been so conferred on the Tribunal.** Here notice can be taken of the provisions of Section 19(17) of the RDDDBFI Act which empowers the Recovery Tribunal to

		order detention of a person in civil prison for a period not exceeding three months if such person is found guilty of disobedience or breach of any order made by the Tribunal. Apparent reason for not bestowing power to the Tribunal to restrain the borrower from travelling abroad may be because borrower is not needed to remain present in person before the Tribunal when the recovery proceedings are in progress. **It is his property only which is the security for recovery of the debt and his presence may be need at much later stage during the recovery proceedings as and when ordered if full amount is not recovered from the secured assets**. To justify passing of such order by invoking the provisions of Section 19(25) of the RDDBFI Act or Rule 18 of the Rules to urge that these would be available to ensure recovery may lead to creating or recognizing a right or liability or obligation which is not provided for

		in the Statute.
	Anurag v. Bank of India, 2022 SCC OnLine Bom 1160 [Bombay HC – 2J]	• (para 20) Under section 19(25), the Tribunal is empowered to make such orders and give such directions as may be necessary or expedient to give effect to its orders or prevent abuse of its process or secure the ends of its justice. Sub-section (12) of section 19 conferred the powers on Tribunal to pass interim orders during the pendency of proceedings by way of injunction or stay or attachment against the defendant restraining him from transferring, alienating or otherwise dealing with or disposing of any property and assets belonging to him without prior permission of the Tribunal. The Tribunal is also empowered under sub-section (13)(A) of section 19 to direct the defendant to furnish security or pass such order as specified therein on being satisfied that the defendant with an intent to obstruct or delay or frustrate the execution of any order or the recovery of debt passed against him, or is about to dispose

		of the whole or any part of the property, or is about to remove to whole or any of the part of the property, or is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest. **On careful consideration of the language of sub-section (12), (13)(A), (17) and (18) of section 19, we are of the considered view that the Tribunal is not conferred with specific power to restrain a person from leaving the country**. • (para 23) In the case of *ICICI Bank Ltd.*, the High Court of Delhi has considered both judgments and, by detailed judgment, has dissented from the views taken by Kerala and Madras High Court. A similar matter fell for consideration before a Division Bench of the Gujarat High Court in *State Bank of India* (supra), which held that the Debt Recovery Tribunal has no power to restrain a person from travelling abroad in the absence of specific powers to that effect.

		Special Leave to Appeal (Civil) No. 16714/2011 against the judgment of the High Court of Gujarat has been dismissed by the Hon'ble Supreme Court on 15-7-2011. **We fully agree with the views expressed by the Delhi High Court in the case of *ICICI Bank Ltd.* (supra) and Gujarat High Court in *State Bank of India* (supra) that the Debt Recovery Tribunal has no power to restrain a person from travelling abroad.**
	Nitin Shambhukumar Kasliwal v Debt Recovery Tribunal WP No. 26333 of 2023 [Karnataka HC – 1J]	• (para 11) **The Passport Act is a special enactment and is trite that it being a special enactment which would prevail over any power of even the civil court or criminal Court to retain or impound a passport.** The issue in the case at hand is, such an act being done by the Tribunal which undoubtedly has only the power of following the procedure of a civil Court in securing ends of justice. The civil Court or the criminal Court itself do not have the power to impound the passport. Section 102 or 104 of the Cr.P.C. empowers

		the Police to seize and the Court to impound any document. Impounding of any document produced before the Court cannot stretch to an extent that those Courts can impound the passport also. **The Court – either the criminal Court or the civil Court, issuing directions to deposit of a passport before it, till conclusion of trial are those orders which are without authority of law. The Tribunal – Debts Recovery Tribunal can hardly have such power. The very act of the Tribunal in directing surrender of the passport of a citizen or its detention before it, would amount to impounding of passport. Such power is unavailable to the Tribunal.**
	Suresh Nanda v. CBI, (2008) 3 SCC 674 [SC – 2J]	• (para 10) Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 CrPC authorises the court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that

		Act instead of general Act providing for the matter connected with the specific Act. **As the Passports Act is a special Act, the rule that "general provision should yield to the specific provision" is to be applied**. • (para 11) The **Act being a specific Act whereas Section 104 CrPC is a general provision for impounding any document or thing, it shall prevail over that section in CrPC as regards the passport. Thus, by necessary implication, the power of court to impound any document or thing produced before it would exclude passport**.
Difference between "civil" and "criminal" proceedings		
	S.A.L. Narayan Row v. Ishwarlal Bhagwandas, (1965) SCC OnLine SC 18 [SC – 5J]	• (para 8) The expression "civil proceeding" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief

		for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceedings as civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of court, and for exercise of disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of

		proceedings, civil or criminal. But there is no warrant for the view that from the category of civil proceedings, it was intended to exclude proceedings relating to or which seek relief against enforcement of taxation laws of the State. The primary object of a taxation statute is to collect revenue for the governance of the State or for providing specific services and such laws directly affect the civil rights of the tax-payer. If a person is called upon to pay tax which the State is not competent to levy, or which is not imposed in accordance with the law which permits imposition of the tax, or in the levy, assessment and collection of which rights of the tax-payer are infringed in a manner not warranted by the statute, a proceeding to obtain relief whether it is from the tribunal set up by the taxing statute, or from the civil court would be regarded as a civil proceeding. The character of the proceeding, in our judgment, depends not upon the nature of the

		tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if the claim is proved would result in the declaration express or implied of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status etc.
	Ram Kishan Fauji v. State of Haryana, (2017) 5 SCC 533 [SC – 3J]	• (para 30) It further held that a civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which, if the claim is proved, would result in the declaration, express or implied, of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property,

		enforcement of personal rights, determination of status, etc. • (para 31) The aforesaid authority makes a clear distinction between a civil proceeding and a criminal proceeding. As far as criminal proceeding is concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in imposition of (*i*) sentence, and (*ii*) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of peace and orders to bind down persons who are a danger to the maintenance of peace and order. The Court has ruled that the character of the proceeding does not depend upon the nature of the tribunal which is invested with the authority to grant relief but upon the nature of the right violated and the appropriate relief which may be claimed.

12. I have considered the rival submissions made on both sides and reviewed the relevant material records of this case. At the outset, I appreciate the efforts of the learned *Amicus, Mr. Prasad Vijayakumar*, in providing all the pertinent decisions and a note addressing the questions raised, and in assisting this Court.

13. Firstly, this impugned order is not a typical statutory exercise of power. The Passport Authority has not relied on the grounds enumerated under Section 10 or on the grounds available to it to reject the renewal of the passport. The operative portion, which is extracted (supra), makes it clear that it is based on the direction given by the Debts Recovery Tribunal. Therefore, the question of considering the grounds available under the Act for refusal, whether the action of impounding is proper as per the provisions of the Act, and whether the DRT is a Criminal Court under the Act would not arise. The refusal is made based on the orders of the Debts Recovery Tribunal. Whenever an interim or final order is issued by any court of law/tribunal, the appropriate authority to which the particular order is addressed is obligated to comply with that order. This position is also clarified by the Passport Act itself, by virtue of Section 10 (h), which stipulates that if any court order is brought to the attention of the Passport Authority, the authority must act upon it, prohibiting the departure of the individual. Furthermore, every authority or person who is subject to jurisdiction would be bound by the orders issued by the Courts or Tribunals.

14. The next question to consider is whether the DRT issued such a direction or merely instructed the authorities to consider the case. The entire order of the DRT is reproduced above. In the first paragraph of the order, the prayer made before the DRT is noted. Subsequently, the DRT assessed whether it has the power to restrain individuals from travelling abroad and to issue directions to the Passport Authority. The DRT examined the relevant provisions under the Act and the Income Tax Act, along with the rules enacted thereunder. Following this, the DRT relied upon the Division Bench judgment in *ICICI Bank Limited (cited above)* and concluded that it has the authority to act. The DRT explicitly acknowledged the bank's expressed apprehension. It then directed that the relevant papers be submitted to the authority, which has the power to impound passports, instructing them to review the materials presented and to act accordingly. Therefore, this is not a case where the authority is merely tasked with considering the representation or the application without expressing any view on its merits.

15. A reading of the DRT's order as a whole leads to the conclusion that it is a positive directive granted to the authority, and it cannot be said that the matter is left entirely to the passport authority. It cannot be interpreted in such a way because, admittedly, no other grounds exist according to the provisions of the Passport Act. Therefore, the order of a Court of law or Tribunal cannot be read in a manner that renders it without any substance. In light of this, I answer this question by stating that the Passport Authority has acted solely in accordance with the directions of the Debt Recovery Tribunal.

16. Since the Passport Authority acted only according to the directions of the Debt Recovery Tribunal, the only remedy available to the petitioner is to challenge the debt order of the DRT. The learned counsel for the petitioner submitted certain grounds on merit with reference to the DRT and argued that it need not even be challenged as it is without jurisdiction. It is true that the Bombay High Court in *Anurag v. Bank of India* (cited supra) has held that once the right to travel abroad is considered a fundamental right, the DRT cannot pass interim orders in restraint thereof unless there is an express provision. The Kerala High Court has also held similarly. However, this Court is bound by the dictum of the Division Bench in *Annai Jayabharathi v. Debt Recovery Tribunal (Kerala and Lakshadweep), Ernakulam (cited supra)*. The Division Bench has held that there is no inherent lack of power and the DRT can pass orders. Furthermore, Section 19(25) of the Act expressly vests the Tribunal with powers to make such orders and give such directions as may be necessary or expedient to give effect to its orders, prevent abuse of its process, or secure the ends of justice. The questions are whether the creditor bank should proceed solely against properties or, in the current scenario, where powerful and wealthy borrowers evade justice and manage their affairs from overseas, making it impossible for the creditors to take action, should they seek such restraining relief(s)? Whether the instant case falls within the necessity of such action. I am unable to accept the submission that the DRT is wholly without jurisdiction. Therefore, to agitate on the merits of the decision, the petitioner must challenge the Order of the DRT in the manner known to law. An effective appellate remedy is provided under the Act to approach the Appellate Tribunal.

17. Consequently, allowing the petitioner to challenge the DRT order in a manner known to law, this Writ Petition is disposed of. The period from 09.01.2024 until the receipt of the order copy will be duly considered for exclusion in computing the limitation when the petitioner opts to file an appeal before the appropriate forum against the DRT order. No costs.

05.02.2025

Neutral Citation : Yes
dna

To

1.The Joint Secretary (PS) & CPO
Ministry of External Affairs
Patiala House, Tilak Marg
New Delhi 110 001.

2.The Passport Officer
First Floor, Commercial Complex Passage
Opp. Thandu Mariamman Temple

442, Avinashi Road
Coimbatore 641 018.

3.The Punjab National Bank
Assets Recovery Management Branch
No.448-A, Dr.Nanjappa Road
Coimbatore 641 018.

D.BHARATHA CHAKRAVARTHY, J.
dna

W.P.No.550 of 2024

05.02.2025