

**P. Murugan Vs. The Registrar, Debts Recovery Appellate Tribunal and Others**

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**Court :** Chennai

**Decided On :** Jan-03-2017

**Judge :** S. Manikumar & M. Govindraj

**Appeal No. :** W.P. No. 28528 of 2014 & W.M.P. No. 1 of 2014

**Appellant :** P. Murugan

**Respondent :** The Registrar, Debts Recovery Appellate Tribunal and Others

**Judgement :**

(Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records relating to the order, dated 10.09.2014 made in RA(SA) No.49 of 2013, on the file of the Debts Recovery Appellate Tribunal, the first respondent herein and quash the same.)

**S. Manikumar, J.**

1. Challenge in this writ petition, is to an order made in RA(SA) No.49 of 2013, dated 10.09.2014, on the file of the Debts Recovery Appellate Tribunal, the first respondent herein, by which, the Appellate Tribunal has ordered the writ petitioner to pay the deficit court fee, and granted time, upto 03.12.2014.

2. According to the writ petitioner, he is the owner of the property comprised in Plot.No.69, Harita Enclave, Survey No.384 of 1A1 and 1A2 situated in Tambaram Village and Taluk, Kanchipuram District, admeasuring about 3160 sq.ft., having purchased the same from Mr.C.N.Embar and Mr.A.S.Ramanujam, both represented by power of Attorney Mr.V.Balasubramanian (Doc.Nos.950 and 951 of 1991 both dated 25.10.1991) and M/s.Blue Jagers Estates Ltd, rep, by its Managing Director V.Sampath, as their selling agent, by way of a registered sale deed, dated 22.01.1999, registered as Document No.249 of 1999, on the file of SRO, Tambaram.

3. It is also the contention of the petitioner that ever since the date of purchase, he has been in absolute possession and enjoyment of the land in question. Mutation of revenue records has been done and patta has been issued by the revenue authorities, in original patta No.2930. Since 1991, he was employed in Africa and living there, he used to come to India once in two years. When he came to India, he visited the property on 20.5.2009 and shocked to know that the abovesaid property was auctioned by Indian Bank, Asset Recovery Management Branch, Chennai, the third respondent herein, for certain alleged dues of M/s.Blue Jagers Estates Ltd.

4. The petitioner has further submitted that the third respondent-Bank, for certain alleged dues of M/s.Blue Jagers Estates Ltd., had initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") and proposed to auction the entire layout in Harita Enclave in Tambaram.

5. Aggrieved by the auction conducted by the Bank, the petitioner has filed S.A.No.95 of 2009, before Debt Recovery Tribunal-III (In short "DRT"), Chennai, on various grounds. The third respondent Bank has entered appearance and filed counter. Despite notice, Mr.S.R.Raja, 4th respondent herein, auction purchaser remained ex-parte. The said application was taken up along with another application in S.A.No.152 of 2008, filed by one Mrs.Vasantha Srinivasan, owner of Plot No.49, and another. According to the petitioner, though the facts leading to both the applications were identical, S.A.No.95 of 2009 filed by the Petitioner was

dismissed on 14.03.2013. Whereas, S.A.No.152 of 2008, filed by the said Vasantha Srinivasan, was allowed, by separate orders, dated 14.03.2013. Aggrieved by the dismissal of S.A.No.95 of 2009, dated 14.03.2013, the petitioner filed R.A(S.A)49 of 2013, before the Debt Recovery Appellate Tribunal (In short DRAT).

6. The petitioner has further submitted that he is neither a borrower nor a guarantor and he is a third party to the proceedings, initiated under the SARFEASI Act, but aggrieved by order of the Tribunal. Further, the subject property was never mortgaged by him, nor the alleged mortgagor, viz., Mr.V.Sampath or M/s.Blue Jagger Estates Limited, had any power to mortgage the property. According to him, the vendors of the petitioner viz. Mr.C.N.Embar and Mr.A.S.Ramanujam, have given the power of attorney, dated 25.10.1991, to Mr.V.Balasubramanian and M/s.Blue Jagger Estates Limited and they had only a limited role to play, as a selling agent and agent for getting approval from CMDA.

7. The petitioner has further submitted that he is not claiming through or under the alleged mortgagor and that the property purchased by him was, at no point of time, mortgaged by him with the Bank. It is also his submission that during the pendency of the application before the DRT, the Bank and Principal borrower have entered into a memo of compromise and that the same was recorded by the Hon'ble Supreme Court, in Criminal Appeal No.1524 of 2011 and 1525 of 2011 and as such, there was no outstanding amount, due to the Bank.

8. It is the further submission of the petitioner that the appeal in RA(SA) No.49 of 2013, preferred by him, was entertained and subsequently, without properly analysing the fact situation, DRAT has concluded that deficit court fee has to be paid and waiver application also has to be filed and taking such a view, the first respondent-Tribunal, by an order, dated 10.09.2014, has granted time to the petitioner to file an application for waiver, besides payment of deficit court fee, on or before 3.12.2014. As against the abovesaid order, the present writ petition has been filed.

9. Referring to second proviso to Section 18 of the SARFAESI Act, 2002, Mr.A.V.Arun, learned counsel appearing for the petitioner submitted that the said

provision obligates only the borrower to deposit with the Appellate Tribunal, 50% of the amount claimed by the secured creditor or as determined by the Debts Recovery Tribunal and not a person, other than the borrower. Reiterating that the petitioner is not a borrower, not claiming any right, under the mortgage, he submitted that DRAT has passed an erroneous order, dated 10.09.2014, on the grounds that a waiver application ought to have been filed.

10. Referring to Rule 13(2)(e) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "the Rules") and a Hon'ble Division Bench order of this Court in W.P.No.9604 of 2009, dated 01.07.2009 [P.Valmoorthy v. Authorized Officer, United Bank of India], Mr.A.V.Arun, learned counsel for the petitioner submitted that the case of the petitioner would fall under the abovesaid clause, as interpreted by the Hon'ble Division Bench in W.P.No.9604 of 2009 and that therefore, the order, dated 10.09.2014 of DRAT, directing the petitioner to pay the deficit court fee, is wholly erroneous and contrary to the said judgment.

11. It is also the submission of the learned counsel for the petitioner that Clauses (a) to (d) mentioned in Rule 13(2)(1) are applicable only to the borrower or an applicant, who is an aggrieved party, other than the borrower and according to him, though the petitioner may fall under the definition of "aggrieved party", as interpreted by the Hon'ble Division Bench of this Court in W.P.No.9604 of 2009, inasmuch as the petitioner was not at all concerned with the amount due from the borrower, he need not pay court fee, other than the one, prescribed under Rule 13(2)(1)(e) of the Rules.

12. Per contra, inviting the attention of this Court to Section 18 of the SARFAESI Act, 2002, Mr.Jayesh B. Dolia, learned counsel appearing for the 3rd respondent submitted that payment of court fee is a condition precedent for entertaining an appeal, under the SARFAESI Act, 2002 and the rules framed thereunder. He further submitted that when the writ petitioner filed S.A.No.95 of 2009, under Sub-Section (1) of Section 17 of the SARFAESI Act, 2002, before DRT-III, Chennai, the second respondent herein, Court fee prescribed under Rule 13 of the Rules, was paid by him. When the said appeal has been dismissed, by the DRT-III, vide order, dated 14.03.2013, the petitioner filed RA(SA) No.49 of 2013, under Section 18 of

the Act, before DRAT, without paying Court fee, on the amount determined by the Tribunal and that the petitioner cannot contend that his case would fall under Rule 13(1)(e) of the said Rules.

Heard the learned counsel appearing for the parties and perused the materials available on record.

13. Before advertng to the rival contentions of the learned Counsel for the petitioner, it is relevant to have a cursory look, at the provisions under Sections 17 and 18 of the SARFAESI Act, 2002,

17. Right to appeal (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation : For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured

creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application: PROVIDED that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.

18. Appeal to Appellate Tribunal:

(1) Any person aggrieved by any order made by the Debts Recovery Tribunal under Section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

PROVIDED that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

PROVIDED FURTHER that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal whichever is less:

PROVIDED ALSO that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty five percent of debt referred to in the second proviso.

14. What is challenged in S.A.No.95 of 2009, is the proceedings initiated by the Bank, against the schedule property, under the SARFAESI Act, 2002, including the sale certificate, dated 13.01.2009, on the grounds, inter alia, that no notice was given to the writ petitioner, under the SARFAESI Act, 2002, including the offer given to other owners, and release of the property, etc. Contentions that the property was purchased for valuable consideration from Mr.V.Sampath, Managing Director of M/s.Blue Jagers Estates Ltd, has been made. Besides filing counter affidavit, the 3rd respondent-Bank has filed written submissions, stating that,

"The Bank already filed O.A.No.1098 of 1998 and obtained Recovery Certificate. SARFAESI proceedings were initiated to recover its dues. The borrower, mortgagor has already filed an application, challenging the proceedings, initiated by the Bank in S.A.No.221/2007 and the same was dismissed on merits on 09.06.2008. Therefore, the present application (S.A.No.95 of 2009) is

unsustainable. The matter was taken up by the borrower by way of appeal before the Hon'ble DRAT and the High Court. The respondent filed SLP and the same was allowed by the order of the Hon'ble Supreme Court, dated 09.08.2010."

15. Before the Tribunal, Bank has contended that the erstwhile owner had already mortgaged the property with the Bank, as security for the loan availed and that the petitioner is the subsequent purchaser, during the subsistence of mortgage. After considering the submissions of the petitioner, counter affidavit and written submissions, made by the respondent-Bank, at Paragraph No.7, Debt Recovery Tribunal-III, Chennai, in S.A.No.95 of 2009, dated 14.03.2013, ordered as hereunder:

"The present application was filed challenging the SARFAESI proceedings initiated by the 1st respondent against the application Schedule properties, which is said to be owned by the applicant herein in the year 1999, from the erstwhile owner. But it is an admitted fact that the erstwhile owner already mortgaged the property with the respondent Bank as security for the loan availed by him. Under these circumstances, it is evident that the applicant is a subsequent purchaser during the subsistence of the mortgage. According to the respondent, they have already filed OA before the competent authority and obtained a Recovery Certificate. In order to recover its dues, SARFAESI proceedings were initiated against the borrower. Since the borrower made defaults in the repayment, the account was classified as NPA much earlier and issued Section 13(2) notice, dated 30.12.2006. Since the borrower has failed to make the payment, within the stipulated time, bank issued Possession Notice, dated 20.09.2008. Possession was also taken and then issued the Sale Notice, dated 30.09.2008. Applicant is a subsequent purchaser. No where in the application it is specifically stated that the purchase was made with the knowledge or consent of the mortgagee. His sale was never brought to the notice of the respondent. According to the learned counsel for the respondent, SARFAESI proceedings initiated by the bank was already challenged by the borrower by way of filing S.A.No.221 of 2007 and the S.A., was also dismissed on merits. Then, Sale Certificate was issued and the property was sold in public auction. No step was specifically challenged by the applicant herein. The relief sought in the applicant is not specific. Under these circumstances, the applicant is

not entitled to get any order as prayed for. The mortgage can be enforced and any encumbrance created after the creation of the mortgage will only be subservient to the mortgage. Point is found accordingly."

16. During the course of hearing of the present writ petition, Mr.A.V.Arun, learned counsel for the petitioner fairly admitted that the Court fee affixed on interim applications, pending disposal of the application, under Section 17 of the SARFAESI Act, before the DRT-III, Chennai or under Section 18 of the said Act, before DRAT, Chennai, as the case may be, is Rs.200/-.

17. Rule 13 of the Security Interest (Enforcement) Rules, 2002, which both the learned counsel for the parties, relied on, for the purpose of this case, as to whether, the writ petitioner has to pay Court fee or not, is extracted hereunder:

"13. Fees for applications and appeals under section 17 and 18 of the Act.- (1) Every application under sub section (1) of section 17 or an appeal to the Appellate Tribunal under sub-section (1) of section 18 shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal or the Court as the case may be, payable at the place where the Tribunal or the Court is situated.

(2) The amount of fee payable shall be as follows:

<b>No.</b>	<b>Nature of Application</b>	<b>Amount of fee Payable</b>
1	Application to a Debt Recovery Tribunal under sub-section (1) of section 17 against any of the measures referred to in sub-section (4) of section 13	

	(a) Where the applicant is a borrower and the amount of debt due is less than Rs.10 lakhs	Rs. 500 for every Rs.1 lakh or part thereof
	(b) Where the applicant is a borrower and the amount of debt due is Rs. 10 lakhs and above	Rs. 5,000 + Rs. 250 for every Rs. 1 lakh or part thereof in excess of Rs. 10 lakhs subject to a maximum of Rs. 1,00,000
	(c) Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is less than Rs.10 lakhs	Rs. 125 for every Rupees One lakh or part thereof
	(d) Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is Rs.10 lakhs and above	Rs. 1,250 + Rs. 125 for every Rs. 1 lakh or part thereof in excess of Rs. 10 lakhs subject to a maximum of Rs. 50,000

	(e) Any other application by any person	Rs. 200
2	Appeal to the Appellate Authority against any order passed by the Debt Recovery Tribunal under section 17	Same fees as provided at clauses (a) to (e) of serial number 1 of this rule

18. From the proceedings of DRAT, dated 03.01.2014, it could be deduced that when an appeal under Section 18 of the SARFAESI Act, was filed, the petitioner has paid some court fee. Along with RA(SA)No.49 of 2013, the petitioner has filed I.A.No.442 of 2013, for interim injunction. During the course of the proceedings, when the Bank raised a plea that Court fee has not been paid and that the Tribunal cannot entertain an appeal, vide proceedings, dated 10.09.2014, the appellate Tribunal has ordered as follows:

"It is seen that deficit Court fee has to be paid and also the waiver application has to be filed. Therefore, time is given to the appellant to pay the deficit court fee and also the waiver application upto 03.12.2014, failing which, this RA(SA) shall stand automatically dismissed."

19. In the interim application in I.A.No.442 of 2013, the Appellate Tribunal has ordered as follows:

"Orders have been passed in RA(SA). Await the outcome of the order"

20. As per Rule 13(1) of the Rules, 2002, every application under sub section (1) of section 17 or an appeal to the Appellate Tribunal, under sub-section (1) of section 18 shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal or the Court as the case may be, payable at the place where the Tribunal or the Court is situated.

21. While challenging the order made in S.A.No.95 of 2003, dated 14.03.2013, passed by the Debt Recovery Tribunal-III, Chennai, before the Debt Recovery Appellate Tribunal, Chennai, in RA(SA) No.49 of 2013, the petitioner has given the heading as, "Appeal under Section 18 of the SARFAESI Act, 2002". Relief sought for in Column No.VI, of the appeal, is as follows:

"For the reasons mentioned in Para V above, the appellant prays that this Honourable Tribunal may be pleased to set aside the order dated 14.03.2013 made in S.A.No.95 of 2009, on the file of the learned Debts Recovery Tribunal-III, Chennai, by allowing this appeal, consequently setting aside the sale certificates dated 13.01.2009 and 27.02.2009 registered as Doc.No.1097 of 2009, on the file of SRO, Tambaram, in favour of the second respondent and to pass such further or other orders as it may deem fit and proper in the facts and circumstances of the case and thus render justice."

22. Indisputably, the petitioner has filed an appeal to the Appellate Tribunal, under Sub-Section (1) of Section 18. According to the writ petitioner, he is not the borrower nor claiming any right under mortgage. As per Rule 13(1), such appeal shall be accompanied by a fee provided in the sub-rule (2) and such fee to be remitted, as stated supra. As per Rule 13(2), for an appeal to the appellate authority, against any order, passed by the DRT, under Section 17 of the SARFAESI Act, the fees provided under Clauses (a) to (e) to Sl.No.1, have to be paid. The amount of fee payable by the borrower, when an application to DRT, under sub-Section (1) of Section 17, against any of the measures, referred to in Sub-Section (4) of Section 13, depends upon the debt due. So also, the amount of fee, where an applicant is an aggrieved party, other than the borrower, the amount of fee payable varies depending upon the amount of debt.

23. We have already placed on record, the submissions of Mr.A.V.Arun, learned counsel for the petitioner that in respect of an interim application, the fee charged by the DRT or DRAT, as the case may be, is the same, ie., Rs.200/-. Rule 13(2) of the abovesaid Rules, makes it clear that in case of an application to a Debt Recovery Tribunal, under sub-section (1) of section 17 against any of the measures referred to in sub-section (4) of section 13, by the borrower or an

aggrieved person, other than the borrower, the amount of fee payable, varies depending upon the amount debt, but if, for any other application by any person, the amount of fee payable is Rs.200/-, which means that under Section 17 of the Act, there could be a main application and incidental or connected application/s, for any interim prayer.

24. Paragraph 9 of the judgment in W.P.No.9604 of 2009, dated 01.07.2009 [P.Valmoorthy v. Authorized Officer, United Bank of India], strongly relied on by Mr.A.V.Arun, learned counsel for the petitioner, is extracted hereunder:

"9. A perusal of the provisions makes it clear that the expression debtor includes guarantor. It is thus obvious that if a debtor or a guarantor is aggrieved by any section under Section 13 (4) of the SARFAESI Act, he has remedy to file an appeal as contemplated under Section 17(1) of the SARFAESI Act, against any such measures as referred to in sub-section (4) of Section 13. It is obvious that in such a case borrower or a guarantor is concerned with the entire debt payable to the secured creditor in respect of such application, the Court fees would be payable either under entry 1(a) or (b) of Rule 13 (2). Apart from the borrower, a third party who is not a borrower may also be aggrieved by any measure taken by the secure creditor as in the present case, where the petitioner claims that he is the absolute owner of the property in question and mortgaged by the borrower in favour of the Bank in respect of the property belonging to the present petitioner is of no consequence so far as he is concerned. He is not at all concerned with the amount of debt due of for that matter with the debt as such. He is aggrieved because he is the owner of the property totally unconcerned with the debt and yet his property is at peril. Therefore, court Fee cannot be assessed on his application by applying either Rule 13(2)(1)(a) to (d) but such an application would come under the residuary clause (e) relatable to any other application by any person . The dispute arises relating to the interpretation of expression where the amount of debt due as contained in Rule 13 (2) (c) and Rule 13 (2)(d) of the schedule. Though the petitioner can be considered as an aggrieved party other than the borrower as specified in entry (c) and (d), the expression the amount of debt due being less than or Rs.10 Lakhs as contemplated in entry (c) or being Rs.10 lakhs and above as specified in entry (d) does not arise at all so far as he is concerned.

In our considered opinion his application has to be construed as coming within residuary entry (e)."

25. In *United Bank of India v. Satyawati Tondon* reported in 2010 (8) SCC 110, the Hon'ble Apex Court considered the gamut of the mechanism for enforcement of security interest and held as follows:

"Sub-section

(1) thereof lays down that notwithstanding anything contained in Sections 69 or 69-A of the Transfer of 5 Property Act, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act. Sub-section

(2) of Section 13 enumerates first of many steps needed to be taken by the secured creditor for enforcement of security interest. This sub-section provides that if a borrower, who is under a liability to a secured creditor, makes any default in repayment of secured debt and his account in respect of such debt is classified as nonperforming asset, then the secured creditor may require the borrower by notice in writing to discharge his liabilities within sixty days from the date of the notice with an indication that if he fails to do so, the secured creditor shall be entitled to exercise all or any of its rights in terms of Section 13(4). Sub-section

(3) of Section 13 lays down that notice issued under Section 13(2) shall contain details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the bank or financial institution. Sub-section (3-A) of Section 13 lays down that the borrower may make a representation in response to the notice issued under Section 13(2) and challenge the classification of his account as non-performing asset as also the quantum of amount specified in the notice. If the bank or financial institution comes to the conclusion that the representation/ objection of the borrower is not acceptable, then reasons for nonacceptance are required to be communicated within one week. Sub-section

(4) of Section 13 specifies various modes which can be adopted by the secured creditor for recovery of secured debt. The secured creditor can take possession of

the secured assets of the borrower and transfer the same by way of lease, assignment or sale for realising the secured assets. This is subject to the condition that the right to transfer by way of lease, etc. shall be exercised only where substantial part of the business of the borrower is held as secured debt. If the management of whole or part of the business is severable, then the secured creditor can take over management only of such business of the borrower which is relatable to security. The secured creditor can appoint any person to manage the secured asset, the possession of which has been taken over. The secured creditor can also, by notice in writing, call upon a person who has acquired any of the secured assets from the borrower to pay the money, which may be sufficient to discharge the liability of the borrower. Sub-section

(7) of Section 13 lays down that where any action has been taken against a borrower under sub-section (4), all costs, charges and expenses properly incurred by the secured creditor or any expenses incidental thereto can be recovered from the borrower. The money which is received by the secured creditor is required to be held by him in trust and applied, in the first instance, for such costs, charges and expenses and then in discharge of dues of the secured creditor. Residue of the money is payable to the person entitled thereto according to his rights and interest. Sub-section

(8) of Section 13 imposes a restriction on the sale or transfer of the secured asset if the amount due to the secured creditor together with costs, charges and expenses incurred by him are tendered at any time before the time fixed for such sale or transfer. Sub-section

(9) of Section 13 deals with the situation in which more than one secured creditor has stakes in the secured assets and lays down that in the case of financing a financial asset by more than one secured creditor or joint financing of a financial asset by secured creditors, no individual secured creditor shall be entitled to exercise any or all of the rights under sub-section

(4) unless all of them agree for such a course. There are five unnumbered provisos to Section 13(9) which deal with pari passu charge of the workers of a company in liquidation. The first of these provisos lays down that in the case of a

company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of Section 529-A of the Companies Act, 1956. The second proviso deals with the case of a company being wound up on or after the commencement of this Act. If the secured creditor of such company opts to realise its security instead of relinquishing the same and proving its debt under Section 529(1) of the Companies Act, then it can retain sale proceeds after depositing the workmen's dues with the liquidator in accordance with Section 529-A. The third proviso requires the liquidator to inform the secured creditor about the dues payable to the workmen in terms of Section 529-A. If the amount payable to the workmen is not certain, then the liquidator has to intimate the estimated amount to the secured creditor. The fourth proviso lays down that in case the secured creditor deposits the estimated amount of the workmen's dues, then such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited with the liquidator. In terms of the fifth proviso, the secured creditor is required to give an undertaking to the liquidator to pay the balance of the workmen's dues, if any. Sub-section

(10) of Section 13 lays down that where dues of the secured creditor are not fully satisfied by the sale proceeds of the secured assets, the secured creditor may file an application before the Tribunal under Section 17 for recovery of balance amount from the borrower. Sub-section

(11) states that without prejudice to the rights conferred on the secured creditor under or by this section, it shall be entitled to proceed against the guarantors or sell the pledged assets without resorting to the measures specified in clauses (a) to (d) of sub-section

(4) in relation to the secured assets. Sub-section

(12) of Section 13 lays down that rights available to the secured creditor under the Act may be exercised by one or more of its officers authorised in this behalf. Sub-section

(13) lays down that after receipt of notice under sub-section (2), the borrower shall not transfer by way of sale, lease or otherwise (other than in the ordinary course of

his business) any of his secured assets referred to in the notice without prior written consent of the secured creditor. In terms of Section 14, the secured creditor can file an application before the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction the secured asset or other documents relating thereto are found for taking possession thereof. If any such request is made, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, is obliged to take possession of such asset or document and forward the same to the secured creditor."

26. While considering the remedy available to any person, including the borrower, who may have grievance against the action taken by the secured creditor under sub-section (4) of Section 13, at Paragraph 4 in Satyawati Tondon's case (cited supra), the Hon'ble Apex Court held as follows:

"Such an aggrieved person can make an application to the Tribunal within 45 days from the date on which action is taken under that sub-section. By way of abundant caution, an Explanation has been added to Section 17(1) and it has been clarified that the communication of reasons to the borrower in terms of Section 13(3-A) shall not constitute a ground for filing application under Section 17(1). Sub-section (2) of Section 17 casts a duty on the Tribunal to consider whether the measures taken by the secured creditor for enforcement of security interest are in accordance with the provisions of the Act and the Rules made thereunder. If the Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that the measures taken by the secured creditor are not in consonance with sub-section (4) of Section 13, then it can direct the secured creditor to restore management of the business or possession of the secured assets to the borrower. On the other hand, if the Tribunal finds that the recourse taken by the secured creditor under sub-section (4) of Section 13 is in accordance with the provisions of the Act and the Rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor can take recourse to one or more of the measures specified in Section 13(4) for recovery of its secured debt. Sub-section (5) of Section 17 prescribes the time-limit of sixty days within which an application made under Section 17 is required to be disposed of. The proviso to

this sub-section envisages extension of time, but the outer limit for adjudication of an application is four months. If the Tribunal fails to decide the application within a maximum period of four months, then either party can move the Appellate Tribunal for 10 issue of a direction to the Tribunal to dispose of the application expeditiously. Section 18 provides for an appeal to the Appellate Tribunal."

While considering the expression "any person" used in Section 17(1) of the SARFAESI Act, 2002, at Paragraph 17, the Hon'ble Apex Court, held as follows:

"The expression any person used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14."

27. Reverting to the case on hand, in W.P.No.9604 of 2009, dated 01.07.2009 [P.Valmoorthy v. Authorized Officer, United Bank of India], after arriving at the conclusion that the petitioner therein is also an aggrieved person, on the ground that he is the owner of the property, but unconnected with the debt, a Hon'ble Division Bench of this Court held that the application filed by him, under Section 17(1) of the SARFAESI Act, 2002, would fall under Rule 13(2)(1)(e), "any other application by any person".

28. In Rule 13(2)(1)(e) of the Security Interest (Enforcement) Rules, 2002, the legislature has used the expression, "any other application", meaning thereby, it would not be the same application, as referred to, in Section 17(1) of SARFAESI Act, 2002 and engrafted in Rule 13(2)(1)(e) of the Rules. The expression "application filed under sub-Section (1) of Section 17 of the SARFAESI Act, 2002", employed in Rule 13(2)(1)(a) of the Security Interest (Enforcement) Rules, 2002 and the expression "any other application" employed in Rule 13(2)(1)(e), should be given their plain meaning. While interpreting the provisions of a statute, each word employed in the statute should be given its plain meaning, unless there is any ambiguity. If the words "other application" in Rule 13(2)(1)(e), and the word "application under Section 17(1) of the SARFAESI Act" and in Rule 13(2)(1)(a), have to be given the same meaning, then there is no reason, as to why, the legislature, in Rule 13(2)(1)(e), has used the word, "other".

29. Meaning of the word "other", as per the Oxford Dictionary, is " Used to refer to a person or thing that is different or distinct from one already mentioned or known; additional; alternative of two; those not already mentioned." In Chamber's Dictionary, the word "other" refers to "second; alternate; different; different form or not the same as the one in question (often with than); nor the same; remaining; additional; one of two. In Cambridge Dictionary, the word "other" means, "as well as the thing or person already mentioned; used at the end of a list to show that there are more things, without being exact about what they are; different from the thing or person already mentioned.

30. In the process of interpreting a statute or a provision, it should also be kept in mind that it is the duty of the Court to conceive and perceive the true intention of the Legislature and in the words of Hon'ble Justice G.P.Singh, in his Book, Interpretation of Statutes , how far and to what extent each component part of the statute influences the meaning of the other part, would be different in each given case. Let us consider some judgments on the interpretation of statutes,

(i) Justice G.P. Singh states in Principles of Statutory Interpretation (Eighth Edition, 2001),

"It may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts with the premise that the words are plain, which is itself a conclusion reached after construing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed....

In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things' as it may be presumed 'that the Legislature should have used the word in that interpretation which least offends our sense of justice'.

"The courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative 'on the principle expressed in the maxim: ut res

magis valeat quam pereat'."

"If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results."

In Justice G.P. Singh's *Principles of Statutory Interpretation* (11th Edn., 2008), the learned author states (at pages 135 and 136) that: "Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument *ab inconvenienti*", said LORD MOULTON, "is one which requires to be used with great caution"."

(ii) In the words of Tindal, C.J., in *Sussex Peerage case* [(1844) 11 Cl and F 85], 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 so alone in such cases best declare the intent of the lawgiver.

(iii) In *Nairin v. University of St. Andrews* reported in 1909 AC 147, the Hon'ble Apex Court held that, Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice.

(iv) In *Ram Rattan v. Parma Nand* reported in AIR 1946 PC 51, the Hon'ble Mr. Justice S.R.Das, held as follows:

The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If,

however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction.

(v) In *Poppatlal Shah v. State of Madras* reported in AIR 1953 SC 274, the Supreme Court held that, It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself.

(vi) In *Rao Shive Bahadur Singh v. State*, reported in AIR 1953 SC 394, the Hon'ble Supreme Court held that, it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application.

(vii) What is the spirit of law, Hon'ble Mr. Justice S.R.Das in *Rananjaya Singh v. Baijnath Singh* reported in AIR 1954 SC 749, said that, The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the Sections of the Act.

(viii) In *Hari Prasad Shivashanker Shukla v. A.D.Divelkar* reported in AIR 1957 SC 121, the Hon'ble Apex Court held that, It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptance of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended, Where, within the framework of the ordinary acceptance of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.

(ix) In *Kanai Lal Sur v. Paramnidhi Sadhukhan* reported in AIR 1957 SC 907, the Supreme Court held that,

it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction.

It is only in such cases that it becomes relevant to consider the mischief and defect which the, Act purports to remedy and correct.

(x) In *Attorney-General v. HRH Prince Ernest Augustus of Hanover* reported in (1957) 1 All.ER 49, Lord Somervell of Harrow has explained unambiguous, as unambiguous in context .

(xi) In *M.Pentiah v. Veeramallappa* reported in AIR 1961 SC 1107, the Hon'ble Supreme Court observed :

"Where the language of a statute, in its ordinary meaning and grammatical construction leads to, a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

(xii) In *State of W.B., v. Union of India* reported in AIR 1963 SC 1241, the Hon'ble Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.

(xiii) In *State of Uttar Pradesh v. Dr. Vijay Anand Maharaj* reported in AIR 1963 SC 946, the Hon'ble Supreme Court held as follows:

But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p, 68, and in Crawford on "Statutory Construction" at p. 492, that it is the duty of the Judge "to make such construction of a statute as shall suppress the mischief and advance the remedy," and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason. But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p.68 of his book:

"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature.

The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature.

(xiv) In *Namamal v. Radhey Shyam* reported in AIR 1970 Rajasthan 26, the Court held as follows:

It was observed by Pollock C. B. in *Waugh v. Mid-dleton*, 1853-8 Ex 352 (356):--  
"It must, however, be conceded that where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document

that the apparent grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it." And substantially the same opinion is expressed by Lord Selborne in *Caledonian Ry, v. North British Ry.* (1881) 6 AC 114 (222):-- "The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which, that intention can be better effectuated." Again Lord Fitzgerald in *Bradlaugh v. Clarke*, (1883) 8 AC 354 at p. 384 observed as follows:-- "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statutes, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such an inconvenience, but no further." 11. Maxwell in his book on Interpretation of Statutes (11th Edition) at page 226 observes thus:--

"The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rule that that sense of the words is to be adopted which best harmonises with the context and promotes in the fullest manner the policy and object of the legislature. The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are indeed frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Sir Edward Cole's words, to suppress the mischief and advance the remedy.

(xv) In *S.Narayanaswami v. G.Panneerselyam* reported in AIR 1972 SC 2284, the Hon'ble Apex Court held that "where the statute's meaning is clear and explicit, words cannot be interpolated."

(xvi) In *Commissioner of Sales Tax v. M/s. Mangal Sen Shyamlal* reported in 1975 (4) SCC 35 = AIR 1975 SC 1106, the Hon'ble Apex Court held that, "A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it". From that function the court is not to resile. It has to abide by the maxim, *ut res magis valiat quam pereat* , lest the intention of the legislature may go in vain or be left to evaporate into thin air."

(xvii) In *C.I.T., Madras v. T. Sundram Iyengar (P) Ltd.*, reported in 1976 (1) SCC 77, the Hon'ble Supreme Court held that, if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.

(xviii) In *Union of India v. Sankalchand Himatlal Sheth* reported in 1977 (4) SCC 193, the Hon'ble Supreme Court held as follows:

"What is true of the interpretation of an ordinary statute is not any the less true in the case of a constitutional provision, and the same rule applies equally to both. But if the words of an instrument are ambiguous in the sense that they can reasonably bear more than one meaning, that is to say, if the words are semantically ambiguous, or if a provision, if read literally, is patently incompatible with the other provisions of that instrument, the court would be justified in construing the words in a manner which will make the particular provision purposeful. That, in essence is the rule of harmonious construction."

(xix) If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature. In *Ku. Sonia Bhatia v. State of U.P.*, and others reported in 1981 (2) SCC 585 = AIR 1981 SC 1274, the Hon'ble Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.

(xx) In *Philips India Ltd., v. Labour Court* reported in 1985 (3) SCC 103, the Hon'ble Apex Court, at Paragraph 15, held as follows:

(15) No cannon of statutory construction is more firmly, established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction *ex visceribus actus*. This rule of statutory construction is so firmly established that it is variously styled as 'elementary rule' (See *Attorney General v. Bastow* [(1957) 1 All.ER 497]) and as a 'settled rule' (See *Poppatlal Shall v. State of Madras* [1953 SCR 667 : AIR 1953 SC 274]). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: 'it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers' (Quoted with approval in *Punjab Breverages Pvt. Ltd. v. Suresh Chand* [(1978) 3 SCR 370 : (1978) 2 SCC 144 : 1978 SCC (LandS) 165]).

(xxi) In *Utkal Contractors and Joinery Pvt. Ltd., v. State of Orissa* reported in 1987 (3) SCC 279, at Paragraph 9, the Hon'ble Supreme Court held as follows:

"A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed

to legislate for the sake of legislation, nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important. For instance,

"the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute, and the context of an Act may well indicate that wide or general words should be given a restrictive meaning" (see Halsbury, 4th edn. Vol. 44 para 874).

(xxii) In *Nyadar Singh v. Union of India* reported in AIR 1988 SC 1979, the Hon'ble Apex Court observed that ambiguity need not necessarily be a grammatical ambiguity, but one of the appropriateness of the meaning in a particular context.

(xxiii) It is a well settled law of interpretation that when the words of the statute are clear, plain or unambiguous, ie., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. Reference can be made to the decision of the Hon'ble Apex Court in *Nelson Motis v. Union of India* reported in AIR 1992 SC 1981.

(xxiv) In *M/s.Oswal Agro Mills Ltd., v. Collector of Central Excise and others* reported in 1993 Supp (3) SCC 716 = AIR 1993 SC 2288, the Hon'ble Hon'ble Apex Court held that, where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation, which are merely presumption in cases of ambiguity in the statute. The Court would interpret them as they stand.

(xxv) At Paragraph 21, the Hon'ble Apex Court in *Pannalal Bansilal Pitti v. State of A.P.*, reported in 1996 (2) SCC 498, observed that the words are the skin of the language, which opens up the bay of the maker's mind. The legislature gives its own meaning and interpretation of the law. It does so employing appropriate phraseology to attain the object of legislative policy, which it seeks to achieve.

(xxvi) In *Nasiruddin v. Sita Ram Agarwal* reported in (2003) 2 SCC 577, the Hon'ble Supreme Court held as follows:

35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used.....But the intention of the legislature must be found out from the scheme of the Act.

(xxvii) In *Indian Dental Association, Kerala v. Union of India* reported in 2004 (1) Kant. LJ 282, the Court held that,

The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well-accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the language of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as found. It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are

adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected.

(xxviii) In *State of Jharkhand v. Govind Singh* reported in (2005) 10 SCC 437, the Hon'ble Supreme Court held that,

12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the language is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes *functus officio* so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so . (See Frankfurter: *Some Reflections on the Reading of*

Statutes in Essays on Jurisprudence, Columbia Law Review, p. 51.)

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duport Steels Ltd. v. Sirs* [(1980 (1) All.ER 529] (All ER at p. 542c-d):

It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest.

19. In *D.R. Venkatachalam v. Dy. Transport Commr.* [1977 (2) SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

(xxix) In *Vemareddy Kumaraswamy Reddy v. State of A.P.*, reported in (2006) 2 SCC 670, the Hon'ble Supreme Court held that,

12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous.

(xxx) In *A.N.Roy Commissioner of Police v. Suresh Sham Singh* reported in AIR 2006 SC 2677, the Hon'ble Apex Court held that,

It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to

futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions.

(xxxii) In *Adamji Lookmanji and Co. v. State of Maharashtra* reported in AIR 2007 Bom. 56, the Bombay High Court held that, when the words of status are clear, plain or unambiguous, and reasonably susceptible to only meaning, Courts are bound to give effect to that meaning irrespective of the consequences. The intention of the legislature is primarily to be gathered from the language used. Attention should be paid to what has been said in the statute, as also to what has not been said.

(xxxiii) In *State of Haryana v. Suresh* reported in 2007 (3) KLT 213, the Hon'ble Supreme Court held that,

One of the basic principles of Interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary, to or inconsistent with any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity.

(xxxiv) In *Visitor Amu v. K.S.Misra* reported in 2007 (8) SCC 594, the Hon'ble Supreme Court held that,

It is well settled principle of interpretation of the statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every of the statute should have effect. The legislature

is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.

(xxxiv) In *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, reported in (2008) 4 SCC 755, the Hon'ble Supreme Court, at Paragraphs 52 held as follows:

52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd.

(xxxv) At Paragraphs 99 to 102, the Hon'ble Supreme Court in *Central Bank of India v. State of Kerala* reported in 2009 (4) SCC 94, held as follows:

"99. In his famous work on Statutory Interpretation, Justice G.P. Singh has quoted Professor H.A. Smith in the following words:

"'No word', says Professor H.A. Smith 'has an absolute meaning, for no words can be defined in vacuo, or without reference to some context'. According to Sutherland there is a 'basic fallacy' in saying 'that words have meaning in and of themselves', and 'reference to the abstract meaning of words', states Craies, 'if there be any such thing, is of little value in interpreting statutes'. ... in determining the meaning of any word or phrase in a statute the first question to be asked is -- 'What is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase.' The context, as already seen in the construction of statutes, means the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy."

100. In *Poppatlal Shah v. State of Madras* [AIR 1953 SC 274], this Court while construing the word 'sale' appearing in the Madras General Sales Tax Act, 1939 before its amendment in 1947, observed: "it is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together, and each word, phrase or sentence is to be considered in the light of the general purpose of the Act itself".

101. In *RBI v. Peerless General Finance and Investment Co. Ltd.*, [(1987) 1 SCC 424], it was observed, "that interpretation is best which makes the textual interpretation match the contextual." Speaking for the Court, Chinappa Reddy, J. noted the importance of rule of contextual interpretation and held:-

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'prize chit' in *Srinivasa* [(1980) 4 SCC 507] and we find no reason to depart from the Court's construction."

102. In *R. v. National Asylum Support Services* [(2002) 4 All ER 654], LORD STEYN observed "the starting point is that language in all legal texts conveys

meaning according to the circumstances in which it was used. It follows that context must always be identified and considered before the process of construction or during it. It is, therefore, wrong to say that the court may only resort to the evidence of contextual scene when an ambiguity has arisen."

(xxxvi) In *Mohd. Shahabuddin v. State of Bihar*, reported in (2010) 4 SCC 653, the Hon'ble Supreme Court held that,

179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in *Ansal Properties and Industries Ltd. v. State of Haryana* [2009 (3) SCC 553]

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision.

(xxxvii) In *Satheedevi v. Prasanna* reported in (2010) 5 SCC 622, the Hon'ble Supreme Court held as follows:

12. Before proceeding further, we may notice two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such

hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise *Kanai Lal Sur v. Paramnidhi Sadhukhan* [AIR 1957 SC 907]

13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission - *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323] and *Shyam Kishori Devi v. Patna Municipal Corpn.* [AIR 1966 SC 1678]

(xxxviii) In *Sri Jeyaram Educational Trust and Ors., v. A.G.Syed Mohideen and Ors.* reported in 2010 CIJ 273 SC (1), the Hon'ble Apex Court held that,

"6. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

(xxxix) In Delhi Airtech Services (P) Ltd. v. State of U.P., reported in (2011) 9 SCC 354, the Hon'ble Supreme Court, while dealing with a provision under Section 17(3-A) of the Act, held that,

55. It is well settled as a canon of construction that a statute has to be read as a whole and in its context. In Attorney General v. Prince Ernest Augustus of Hanover [1957 AC 436], Lord Viscount Simonds very elegantly stated the principle that it is the duty of court to examine every word of a statute in its context. The learned Law Lord further said that in understanding the meaning of the provision, the Court must take into consideration not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy. (All ER p. 53 I)

(XL) In V.L.S.Finance Ltd., v. Union of India reported in 2013 (6) SCC 278, at Paragraph 18, the Hon'ble Supreme Court, held as follows:

"As is well settled, while interpreting the provisions of a statute, the court avoids rejection or addition of words and resort to that only in exceptional circumstances to achieve the purpose of Act or give purposeful meaning. It is also a cardinal rule of interpretation that words, phrases and sentences are to be given their natural, plain and clear meaning. When the language is clear and unambiguous, it must be interpreted in an ordinary sense and no addition or alteration of the words or expressions used is permissible. As observed earlier, the aforesaid enactment was brought in view of the need of leniency in the administration of the Act because a large number of defaults are of technical nature and many defaults occurred because of the complex nature of the provision."

(XLI) In Hardeep Singh v. State of Punjab reported in 2014 (3) SCC 92, at Paragraphs 43 and 44, the Hon'ble Supreme Court held as follows:

"43. The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel

to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot re-write, recast or reframe the legislation for the reason that it has no power to legislate.

44. No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the Statute. By construction, a provision should not be reduced to a dead letter or useless lumber. An interpretation which renders a provision an otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in an exercise in futility and the product came as a purposeless piece of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was most unwarranted besides being uncharitable. (Vide: Patel Chunibhai Dajibha etc. v. Narayanrao Khanderao Jambekar and Anr., AIR 1965 SC 1457; The Martin Burn Ltd., v. The Corporation of Calcutta, AIR 1966 SC 529; M.V. Elisabeth and Ors., v. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, VAsco-de-Gama, Goa, AIR 1993 SC 101; Sultana Begum v. Prem Chand Jain, AIR 1997 SC 1006; State of Bihar and Ors. etc. v. Bihar Distillery Ltd. etc. etc., AIR 1997 SC 1511; Institute of Chartered Accountants of India v. M/s.Price Waterhosue and Anr., AIR 1998 SC 74; and The South Central Railway Employees Co-operative Credit Society Employees Union, Secundrabad v. The Registrar of Co-operative Societies, AIR 1998 SC 703).

At Paragraph 45, the Hon'ble Supreme Court considered the decision made in Rohitash Kumar v. Om Prakash Sharma reported in 2013 (11) SCC 451, wherein, the Hon'ble Supreme Court, at Paragraphs 27 to 29, held as follows:

"27. The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word A section is to be

interpreted by reading all of its parts together, and it is not permissible, to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act

28. The Statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The Courts have to administer the law as they find it, and it is not permissible for the Court to twist the clear language of the enactment, in order to avoid any real, or imaginary hardship which such literal interpretation may cause.....

29. .under the garb of interpreting the provision, the Court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation.

31. In the light of the judgment of the Hon'ble Supreme Court in Satyavati Tondon's case (cited supra) and the decisions, stated supra, the expression, "any person", occurring in Rule 13(2)(1)(e) of the Security Interest (Enforcement) Rules, 2002, for the purpose of challenge, against an action, under Section 13(4) of the Act, has to be interpreted in such a way, to give effect to other clauses in Rule 13(2)(1)(a) to (d), of the abovesaid Rules, thereby, "any person" means, an applicant other than the borrower or guarantor or an aggrieved person, who may be affected, by the action under Section 13(4) of the SARFAESI Act, 2002. At this juncture, it is pertinent to extract sub-Section (4) of Section 13 of the Act, 2002, which empowers the secured creditor to take recourse to one or more of the following measures, to recover his secured debt, in case the borrower fails to discharge his liability in full, within the period specified in sub-Section (2) of Section 13 of the Act.

"13. Enforcement of security interest:-

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt: PROVIDED FURTHER that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

32. As per Section 17(1) of the Act, any person (including borrower), aggrieved by any of the measures, referred in sub-Section (4) of Section 13, taken by the secured creditor or his authorised officer, may make an application, along with such fee, as may be prescribed to the Debts Recovery Tribunal. At this juncture, this Court deems it fit to consider, as to how, Courts have interpreted the meaning of the word, "any", in the statutes.

(i) In *Ashiq Hasan Khan v. Sub-Divisional Officer, Sadar, Monghyr* reported in AIR 1965 Patna 446, a learned Single Judge of the Patna High Court, with reference to the word, any , held as follows:

...it is clear that the use of the expression "any" would be equal to the word "all" in certain contexts and as has been referred to in Stroud's Judicial Dictionary (3rd Edition, page 150), the word "any" excludes limitation or qualification. Referring to *Liddy v. Kennedy*, (1871) 5 HL 134, Stroud has quoted the following passage "So, a power in a lease, enabling the lessor to resume possession of any portion of the premises demised; enables him to resume aft." Even in the Oxford Dictionary "any has been taken to mean "all."

(ii) The word 'any' may have one of the several meanings according to the circumstances, it may mean 'all', 'each', 'every', 'some', or 'one' or more out of several, whether the expression 'any' used in the statute is indicative of singular or the plural will depend upon the context of each case. [*Pashupati Nath Singh v. State* 1978 Pat. LJR 578 (581); 1978 BLJ 593].

(iii) In Wharton's Law Lexicon, the word 'any' means some; one of many; and indefinite number. One indiscriminately or whatever kind or quantity. Word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute. It is often synonymous with 'either', 'every' or 'all'. Its generality may be restricted by the context;' [Black's Law Dictionary, 5<sup>th</sup> Edn.,]. [Ref. *Shri Balaganesna Metals v. M.N.Shanmugham Chetty*, (1987) 2 SCC 707 (718) ; AIR 1987 SC 1668].

(iv) In *Lucknow Development Authority v. M.K.Gupta* reported in AIR 1994 SC 787, the Supreme Court held as follows:

The word 'any' dictionaryly means 'one or some or all'. In Black's Law Dictionary it is explained thus, "word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject- matter of the statute". The use of the word 'any' in the context it has been used in clause (o) indicates that it has been used in wider sense extending from one to all.

(v) In *Indian Medical Association v. V.P.Shantha* reported in AIR 1996 SC 550, the Supreme Court held that,

The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionaryally means; one or some or all', In Black's Law Dictionary it is explained thus, "word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute". The use of the word 'any' in the context it has been used in clause (o) indicates that it has been used in wider sense extending from one to all.

33. We have noticed that in W.P.No.9604 of 2009, dated 01.07.2009 [P.Valmoorthy v. Authorized Officer, United Bank of India], a Hon'ble Division Bench has held that the petitioner therein was an aggrieved person. Therefore, the main condition to be satisfied for preferring an application, under Section 17(1) of the SARFAESI Act, 2002, is that the applicant must be an aggrieved person. Expression "any person" employed in Section 17(1) of the Act and Rule 13(2) of the Security Interest (Enforcement) Rules, 2002, can have reference, only to the borrower or guarantor or any person aggrieved or affected by any action taken under Section 13(4) of the SARFAESI Act, 2002 and that law is not designed, enabling all the persons to challenge the proceedings of the SARFAESI Act, 2002.

34. Therefore, with due respect, we are of the considered view that the interpretation of the Hon'ble Division Bench of this Court in W.P.No.9604 of 2009, dated 01.07.2009 [P.Valmoorthy v. Authorized Officer, United Bank of India], that any person, not being a borrower, but owner of the property, totally unconnected with the debt, but his property at peril, would fall within the residuary clause (e) of Rule 13(2)(1) of the Rules,relatable to any other person, would not be a proper interpretation to the words, "any person", occurring in Rule 13(2)(1)(e) of the Rules.

35. The Hon'ble Supreme Court in Satyavati Tondon's case (cited supra), has interpreted that the expression "any person" used in Section 17(1) of the SARFAESI Act, 2002, is of wide import and the same has to be applied to Rule 13(2) of the abovesaid rules also, when there is any challenge to any of the measures, under Section 13(4) of the Act, 2002. Court cannot add words to a Section nor delete. There could be a cause to file any other application, by any

person, other than the challenge to any of the measures taken by the secured creditor, under sub-Section (4) of Section 13 of the Act and in such circumstances, there could be a scope to contend that the Court fee payable, as per Rule 13(2)(1)(e) would be Rs.200/-.

36. Yet another factor to be considered is that when the expression "any person" used in Section 17 of the SARFAESI Act, 2002, has been interpreted in Satyavati Tondon's case (cited supra), to mean, the borrower, guarantor or any other person, affected by any action, under Section 13 or 14 and who can avail the remedy, under Section 17(1) of the Act, then Rule 13 of the Security Interest (Enforcement) Rules, 2002, framed in exercise of the powers conferred by sub-section (1) and clause (b) of sub-section (2) of Section 38 read with subsections (4), (10) and (12) of section 13 of the Act, has to be interpreted in tune with Section 17(1) of the Act.

37. Rules framed under a statute will not have the effect of overreaching the main provision and ordinarily, the same meaning has to be given, wherever similar expression is used, unless the context differs. In relation to a challenge against the measures taken by the secured creditor, the expression "any person" used in Section 17(1) of the SARFAESI Act, 2002 and the rules, framed thereunder, can have only the same meaning. What is referred to in Rule 13(2)(1)(e) of the Security Interest (Enforcement) Rules, 2002, is "any other application" and not "any other person".

38. In *A.L.Shah v. The Authorised Officer, State Bank of Hyderabad, Pondicherry* reported in 2016(2) CTC 593 : 2016 (2) LW 81 : 2016 (2) MLJ 274 : AIR 2016 MAD 98 : 2016 (2) MWN (Civil) 113, the petitioner therein, claiming himself to be the lawful owner of the subject property, filed three applications under Section 17 of the SARFAESI Act, 2002, before the Debt Recovery Tribunal-I, Chennai, questioning the legality and validity of the notices, issued under Section 13(4) of the SARFAESI Act, 2002, by the respondent Bank, on the ground that the second respondent therein had mortgaged the property in question without having legal title over the property in question.

39. In O.S.No.7 of 2006, the learned III Additional District Judge, Puducherry, vide judgment and decree, dated 19th December, 2014, declared that the petitioner therein, as the absolute owner of the property. Against which, three applications in S.A.Nos.55 to 57 of 2012 were preferred by the petitioner therein and the Debts Recovery Tribunal-I, Chennai, has considered all the three applications and passed a common order, dated 13th February, 2015, holding that the respondent Bank has initiated proceedings to recover public money, under SARFAESI Act, 2002, which is not vitiated.

40. Aggrieved by the same, the petitioners therein preferred three appeals before the Debt Recovery Appellate Tribunal, Chennai. Office has raised an objection, regarding payment of court fee. The learned Chairperson of the DRAT held that the petitioner therein is liable to pay the full court fee, under Rule 13(2)(1)(c) and (d), not under Rule 13(2)(1)(e) of the Security Interest (Enforcement) Rules, 2002. Accordingly, the appeals were returned for compliance of the office objection, by impugned order, dated 9th April, 2015. Challenging the same, revision petitions have been filed.

41. A Hon'ble Division Bench has framed a question of law, as to whether, a person, who is neither a borrower nor guarantor nor transferee from the borrower or guarantor in respect of the secured asset, but is the owner of the secured asset, is required to pay court fee, as stipulated under Rule 13(2)(1)(a) to (d) or under Rule 13(2)(1)(e) of the Rules, 2002?

42. In A.L.Shah's case (cited supra), a contention has been made that the petitioner therein was covered under fee schedule prescribed under Rule 13(2)(1)(e) of Rules, 2002, i.e., any other application by any person. The petitioner therein was neither a borrower nor a guarantor nor has mortgaged the property in question. According to the revision petitioner, the property in question, legally owned by him, had been mortgaged by the second respondent therein, to obtain financial assistance on the basis of false sale deeds, which have been held as null and void. Thus, the petitioner therein contended that he was not liable to pay the court fee, as prescribed under Rule 13(2)(1)(a) to (d) of the Rules, 2002.

43. In the above reported case, an Amicus Curiae was engaged by the Hon'ble Division Bench, who had contended that a conjoint reading of Section 13(4) and 17 of the SARFAESI Act, r/w. Rule 13 of the Rules, 2002 makes it clear that fee is payable in respect of the property, as the value of the fee is determined on the basis of the amount of debt recoverable and the provisions do not distinguish between borrower and guarantor or any other person, claiming to be aggrieved by the action of the bank for recovery of its money. Amicus Curiae has contended that the petitioner therein is liable to pay the court fee as specified under Rule 13(2)(1)(c) and (d) of Rules 2002, depending on the amount of debt due.

44. After considering the rival submissions and taking assistance of the Amicus Curiae, decisions of the Hon'ble Apex Court in Tara Chand and others Vs. Gram Panchayat, Jhupa Khurd and others reported in 2012 (13) SCC 269 and Jagdish Singh v. Heeralal reported in 2014 (1) SCC 479, at Paragraphs 26 to 30, in A.L.Shah's case (cited supra), a Hon'ble Division Bench, held as follows:

"26. In the case on hand, we are concerned with the fee payable by the petitioner. Indisputably, the petitioner was neither borrower nor guarantor, but any other person under the SARFAESI Act. Section 17 of the SARFAESI Act does not distinguish between borrower, guarantor or any other person, who is aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the SARFAESI Act. The proviso to Section 17 of the SARFAESI Act prescribes payment of fee by the borrower and the person other than the borrower.

27. The Central Government, in exercise of its power conferred by sub-section (1) and clause (b) of sub-section (2) of Section 38 read with sub-sections (4), (10) and (12) of Section 13 of the SARFAESI Act, framed the Security Interest (Enforcement) Rules, 2002. As aforesaid, Rule 13 of the Rules, 2002 prescribes for two kinds of person. One is the borrower and the other is the person other than borrower. For borrower, fee prescribed is under Rule 13(2)(1)(a) and (b) of the Rules 2002. For person other than the borrower, the fee is prescribed under Rule 13(2)(1)(c) and (d) of the Rules 2002. Rule 13(2)(1)(e) is for any other application by any person.

28. A bare perusal of Clause (e) of Rule 13(2)(1) of Rules 2002 makes it clear that the expression any other application by any person means for any application other than the main application filed under Section 17 or Section 18 of the SARFAESI Act by any person, including the borrower, the fee payable is fixed at Rs.200/-. But, in the main application, invoking the jurisdiction under Section 17(1) or Section 18(1) of the SARFAESI Act, the fee schedule is one and the same. The fee payable by any person in the main application is determined under Amount of fee payable, prescribed in Rule 13(2)(1)(c) and (d) of the Rules 2002, depending on the amount of debt due.

29. The petitioner is deriving the benefit under the main application or main appeal and there is no contemplation of payment of different set of fee for any other person. The petitioner is other than the borrower and also is aggrieved. Thus, he is competent to make application under Section 17 as well as appeal under Section 18 of the SARFAESI Act. The fee payable is same, as payable for application under Section 17 or appeal under Section 18 of the SARFAESI Act.

30. In such view of the matter, we are of the considered view that the petitioner is liable to pay fee as prescribed under Rule 13(2)(1)(c) and (d) of the Rules 2002, depending on the amount of debt due."

45. It is also worthwhile to extract Paragraph 8 in Tara Chand and others Vs. Gram Panchayat, Jhupa Khurd and others reported in 2012 (13) SCC 269, considered in A.L.Shah's case (cited supra),

"The word, any person has to be understood in the context that was intended by the legislature with respect to the tenancy Act, keeping in mind the purpose for which, the statute was enacted. The provisions of the Act, thus, have to be construed to achieve the purpose of its enactment. The Court has to adopt a constructive approach not contrary to attempted objective of the enactment. The Court must examine and give meaning to the said words, in view of the statute of which it is a part, considering the context and the subject of the said statute. (Vide: Shri Balaganesan Metal v. M.N.Shanmugham Chetty and Ors., AIR 1987 SC 1668; and Sahakari Sakhar Karkhana Ltd., v. Collector of Central Excise, Pune (2003) 3 SCC 506)."

46. In P.Valmoorthy v. Authorized Officer, United Bank of India], rendered on 01.07.2009, the Hon'ble Division Bench, at Paragraph 10, held that,

"It is well settled proposition of law that payment of Court Fees being a fiscal measure, the provision would be strictly construed and if there is any scope for any doubt, it should be interpreted in favour of the subject rather than in favour of the state. (See State Of Maharashtra V. Mishri Lal ( AIR 1964 S.C., 457; Gujarat State Financial CORPN. V. Natson MFG. Co. (AIR 1978 S.C., 1765)."

47. A.L.Shah's case (cited supra), has been decided on 02.02.2016, by another Hon'ble Division Bench of this Court, taking note of the interpretation of the expression "any person", occurring in Section 17(1) of the SARFAESI Act, 2002 and Jagdish Singh's case (cited supra), wherein, the Hon'ble Supreme Court has considered the earlier decision in Satyavati Tondon's case (cited supra). A.L.Shah's case, the Hon'ble Division Bench of this Court also considered a decision of the Hon'ble Apex Court in Tara Chand's case (cited supra), as to how, the word, any person has to be understood in the context that was intended by the legislature.

48. In P.Valmoorthy's case (cited supra), decided on 01.07.2009, the Hon'ble Division Bench has not interpreted the expression "any person", employed in Section 17 of the Act, but held that, "court Fee cannot be assessed on the application of the owner of the property, by applying either Rule 13(2)(1)(a) to (d), but such an application would come under the residuary clause (e) relating to any other application by any person .

49. But both in the statute and rules framed thereunder, the Legislature has used the expression, "any person" only. The Hon'ble Division, while deciding P.Valmoorthy's case (cited supra), has construed the expression, "any person" in Rule 13(2)(1)(e), as a residuary clause, applicable to "any other person", other than the borrower or guarantor and a person, not connected with debt, but whose property was at peril, thereby, introducing a new expression, "any other person" to Rule 13(2)(1)(e) of the said Rules. Such construction may apply to cases, where any other application is filed, not against the measures taken under Section 13(4) of SARFAESI Act, 2002. In the light of the decisions stated, with due respect,

construing the words, "any person" in Section 13(2)(1)(e), as "any other person", would be an addition to an expression, by interpretative process. At this juncture, this Court deems it fit to consider some of the judgments of the Hon'ble Apex Court, as to whether, any word can be substituted, added or deleted by such interpretative process,

(i) In *CIT v. Badhraj and Company* reported in 1994 Supp (1) SCC 280, the Hon'ble Apex Court held that the object oriented approach, however, cannot be carried to the extent of doing violence to the plain meaning of the Section used by rewriting the Section or substituting the words in the place of actual words used by the legislature.

(ii) In *Dadi Jagannadham v. Jammulu Ramulu* reported in (2001) 7 SCC 71, the Hon'ble Supreme Court held that,

13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.

(iii) In *Institute of C.A. of India v. Ajit Kumar Iddya* reported in AIR 2003 Kant. 187, the Karnataka High Court held that, So far as the cardinal law of interpretation is concerned, it is settled that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. In other words, it is not proper to use a sense, which is different from what the word used ordinarily conveys. The duty of the Court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends

upon the facts of its own.

(iv) In *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, reported in (2008) 4 SCC 755, the Hon'ble Supreme Court, at Paragraphs 52, 54, 55 and 56, held as follows:

52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd.

54. Thus, in *Surjit Singh Kalrav. Union of India*, this Court has observed that sometimes courts can supply words which have been accidentally omitted.

55. In G.P. Singh's *Principles of Statutory Interpretation*, 9th Edn., 2004 at pp. 71-74 several decisions of this Court and foreign courts have been referred to where the court has added words to a statute (though cautioning that normally this should not be done).

56. Hence we have to add the aforementioned words at the end of Section 175 otherwise there will be an irreconcilable conflict between Section 174 and Section 175.

(v) In *Phool Patti v. Ram Singh* reported in (2009) 13 SCC 22, the Supreme Court held that,

9. It is a well-settled principle of interpretation that the court cannot add words to the statute or change its language, particularly when on a plain reading the meaning seems to be clear.

50. Though Mr.A.V.Arun, learned counsel for the petitioner submitted that the decision in *P.Valmoorthy's case* (cited supra), is squarely applicable to the case on hand and that if this Hon'ble Court desires to deviate from the same, the matter requires reference to a larger bench of this Court, we are not inclined to accept the said contention, for the reason that the expression "any person" occurring in Section 17(1) of the SARFAESI Act, 2002, has been explained by the Hon'ble

Supreme Court in Satyavati Tondon's case (cited supra) and followed in Jagdish Singh's case (cited supra) and it is also a well settled law that when there is a subsequent decision of the Hon'ble Supreme Court, on the point of law, the same is binding on this Court and there is no need to follow the judgment of a co-ordinate bench, which had no occasion to consider the judgment of the Hon'ble Supreme Court, explaining what, "any person", occurring in Section 17(1) of the SARFAESI Act, 2002, means.

51. Yet another reason, as to why, we are not inclined to accept the contention of the learned counsel for the petitioner is that when there are two decisions, on the point of law, the judgment rendered at a later point of time, proximate and which has considered the decisions of the Hon'ble Apex Court, will prevail over the former. Reference can be made to few decisions,

(i) In D.V. Lakshmana Rao Vs. State of Karnataka reported in 2001(4) KAR.L.J. 185, the Karnataka High Court has held thus:

"It is now well-settled that if there are two conflicting judgments of the Supreme Court, of Benches with equal number of Judges, then the latter will prevail over the earlier. But where the earlier judgment is of a larger Bench and the latter judgment is of a smaller Bench, then the decision of the larger Bench will be binding..... When there is divergence between decisions of two co-ordinate Benches of the Supreme Court, the latter decision should prevail. The exception arises where the first decision specifically considers a particular question and lays down the principles relating to the question and the subsequent decision, without noticing the earlier decision or the principles laid down therein, and without examining the question, renders an assumptive decision. In such a situation, the earlier decision which considered the question and lays down the principle will apply."

(ii) A Full Bench of this Court in R.Rama Subbarayalu Reddiar v. Rengammal (AIR 1962 Madras 45) has examined the question with regard to High Court decisions. At Paragraph 4 of the judgment, this Court held that,

"4. Before we deal with the question, involved in the appeal, it is necessary to examine the propriety of the procedure adopted by the learned District Judge, The

normal rule as to the precedents is that Subordinate Courts are bound in the absence of any decision of the Supreme Court to follow the decision of the High Court to which they are subordinate. Where, however, there is a conflict between two decisions of the High Court, the rule to be adopted is as follows : where the conflict is between the judgment of a Single Judge and a Bench or between a Bench and a Larger Bench, the decision of the Bench or Larger Bench as the case may be, will have to be followed. But where the conflict is between two decisions both pronounced by a Bench consisting of the same number of Judges and the subordinate Court after a careful examination of the decision came to the conclusion that both of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one."

(iii) A Full Bench decision of Allahabad High Court in *U.P. State Road Transport Corporation v. State Transport Appellate Tribunal, U.P., Lucknow and Ors.* (AIR 1977 Allahabad 1), held that,

"12. It is noteworthy that the Supreme Court's decision in *Mysore State Transport Corporation* is later in time. Even if there is some conflict in the two Supreme Court decisions, we have to follow the law as declared in the later case of *Mysore State Transport Corporation*."

(iv) In *Vasant Tatoba Hargude and Ors. v. Dikkaya Muttaya Pujari* (AIR 1980 Bom. 341), it is held that in case of conflict between earlier and later decisions of Supreme Court, each consisting of equal number of Judges, later decision prevails. A Full Bench of Karnataka High Court (Five Judge Bench) in *Govindanaik G. Kalaghatigi v. West Patent Press Company Limited and Anr.* (AIR 1980 Karnataka 92), at Paragraph 5, held that-

"If two decisions of the Supreme Court on a question of law can not be reconciled and one of them is by a Larger Bench while the other is by a Smaller Bench, it is earlier or later in point of time, should be followed by High Courts and other Courts. However, if both such Benches of the Supreme Court consist of equal number of Judges, the later of the two decisions should be followed by High Courts and other Court."

52. Indisputably, the writ petitioner has filed an application, under Section 17 of the SARFAESI Act, 2002, challenging sale certificate and vide order, dated 14.03.2013, DRT-III, Chennai, has dismissed the same. As stated supra, the contention of the Bank that while preferring an application under Section 17(1) of the SARFAESI Act, 2002, the writ petitioner has paid the requisite court fee, has not been disputed.

53. We have also extracted the heading, under which, the writ petitioner has pursued his further remedy, under Section 18 of the SARFAESI Act, which is an appeal. As per Rule 13 of the Rules, 2002, the amount of fee payable to an appeal to the appellate authority, against any order, passed by the DRT, the same has to be accompanied with the fees, provided at Clauses (a) to (d) to Rule 13(2)(1). In the light of the decisions and discussion, case of the writ petitioner would squarely falls under Rule 13(2)(1)(c) and (d) of the Rules, 2002. The writ petitioner is required to pay the prescribed Court fee.

54. According to the 3rd respondent-Bank, the writ petitioner has to pay the maximum fee of Rs.50,000/-, for entertaining the appeal, under Section 18 of the SARFAESI Act, 2002. As observed, the writ petitioner seemed to have paid deficit court fee and therefore, vide order, dated 10.09.2014, the DRAT, Chennai, has directed the writ petitioner to pay the balance court fee. At this juncture, the reasoning of the DRAT that waiver application has not been filed, may not arise. First, the petitioner has to pay the required court fee. The question, whether he is entitled to seek for waiver, is another issue, if any application is filed. But payment of court fee cannot be avoided by the writ petitioner, who claims to be the owner of the property and aggrieved by the action, under Section 13(4) of the SARFAESI Act, 2002. In the light of the discussion and decisions, we find no force in the contention of the petitioner.

55. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

56. After the dismissal of the writ petition, Mr.A.V.Arun, learned counsel for the petitioner submitted that since the time granted by the tribunal for payment of deficit Court fee had already expired and inasmuch as, the writ petitioner has

tested the correctness of the order made by the Tribunal in RA(SA)No.49 of 2013, dated 10.09.2014 and filed the instant writ petition, before the expiry of the time granted by the tribunal for payment of deficit Court fee, at this juncture, even if prescribed Court fee is paid, the tribunal would not entertain the regular appeal filed under Section 18 of the SARFAESI Act, 2002, and therefore, requested this Court to grant adequate time for payment of deficit Court fee.

57. Now that the petitioner has come forward to pay the deficit court fee, request of the writ petitioner is reasonable and therefore, we are inclined to grant two weeks time to pay the deficit Court fee required under Section 18 of the SARFAESI Act, 2002, read with rule 13(2)(1) of the Security Interest (Enforcement) Rules, 2002 and represent the appeal papers. On such payment and representation, the Tribunal shall entertain the appeal subject to other requirements to be complied with.

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