**M/S Super Sales Corporation and Others Vs. the Debt Recovery Tribunal and Others**

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**SooperKanoon Citation** : sooperkanoon.com/953045

**Court** : Karnataka

**Decided On :** Oct-08-2012

**Judge** : The Honorable Chief Justice Mr. Vikramajit Sen &Amp;amp; the Honourable Mrs. Justice B.V. Nagarathna

**Appeal No.** : W.P.No.14711 of 2003 (GM-DRT)

**Appellant** : M/S Super Sales Corporation and Others

**Respondent** : The Debt Recovery Tribunal and Others

**Judgement** :

(Prayer: THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY R-4 DT.25-3-2003 VIDE ANN. Q.)

**NAGARATHNA J.**

1. In this writ petition, the petitioners have assailed the order dated 25.03.2003 passed in M.A.No.55/2003 (Annexure-Q) by the Debt Recovery Appellate Tribunal (hereinafter referred to as ‘DRAT’ for the sake of convenience). By the said order DRAT directed the respondent-Bank to receive the balance amount of Rs.63.00 lakh and release the title deeds related to the scheduled property to the 3rd respondent-institution which was to discharge the entire amount due to the Bank.

The 3rd respondent-institution was directed to deposit before the Debt Recovery Tribunal (hereinafter, referred to as "DRT"), at Bangalore, a sum of Rs.20.00 lakh due to the borrower within two weeks from the date of the impugned order with a further direction to the Presiding Officer DRT to return the said amount to the borrower i.e., the petitioners herein. It was also declared that if the amount due to the Bank was paid the recovery certificate was discharged. DRT Bangalore was directed to issue a sale certificate in favour of the 3rd respondent herein on being satisfied that it had discharged the entire loan liability to the Bank i.e., on receipt of Rs.63,01,825/- and also making deposit of Rs.20.00 lakh due to the petitioner herein before the DRT.

2. The relevant facts are that the 1st Petitioner is a firm consisting of five partners. The 2nd Petitioner is the exclusive owner of the property which is the subject matter of the Order. That the 2nd Respondent - Bank, is a nationalized Bank, and had sanctioned credit facility limit of Rs.50 Lakhs to the 1st Petitioner firm on 5/1/1988, Bill Purchase Discount facility limit of Rs.5 Lakhs dated 23/5/1988 and Cash Credit facility limit of Rs.15 Lakhs were accorded and the immovable property comprised in Sy.No.43/1, of Jakkasandra Village, Koramangala, Bangalore, measuring about 1 Acre 13 guntas (hereinafter referred to as "Scheduled property") was furnished as collateral security for the loan borrowed by the 1st Petitioner firm by the 2nd petitioner as a guarantor. Since the 1st Petitioner committed default in repayment of the said loan, the Bank had instituted a dispute before the Debt Recovery Tribunal, Bangalore (herein after referred to as ‘DRT’) in O.A.No.1260/1996. In the said application the Bank sought for a decree by way of grant of Certificate of Recovery of the amount which was due in favour of the 1st Petitioner. The DRT passed an Order dated 31/8/1998. Pursuant there to a Recovery Certificate was issued in favour of the Bank for recovery of Rs.1.13 Crores. It appears that in the meanwhile the Reserve Bank of India had promulgated certain guidelines and norms regulating non-performance accounts known as "One-Time Settlement Scheme" in Banking business. The case of the Petitioner was considered by the Bank and sanction was accorded under One-Time Settlement Scheme and accordingly a sum of Rs.49 Lakhs, was accepted as a full and final settlement, payable by the 1st Petitioner firm to the 2nd Respondent Bank under certain terms and conditions. This acceptance by the Bank was

intimated to the Petitioner firm on 31/8/2000.

3. The 1st Petitioner however failed to comply with the instructions of the Bank which ultimately led to the issuance of a proclamation for the sale of the schedule property by the Bank on 26/12/2000. The proclamation was assailed by the petitioners in W.P.No.4212/2001 in which an Interim Order staying the sale subject to deposit of Rs.30 Lakhs on or before 15/2/2001 was granted by this Court with a direction to the Bank to reconsider its earlier decision pertaining to One-Time Settlement as requested by the Petitioner. Later on, the said Writ Petition came to be disposed of relying upon a decision in connected matters.

4. In the meanwhile on behalf of the 1st Petitioner one more Writ Petition was filed in W.P.No.26266/2001 but same came to be dismissed on 29.10.2001 and against that an appeal was filed. The 3rd respondent herein, had filed an application for impleadment in the said Writ Petition which was dismissed on the ground that since the 3rd respondent was not having any interest in respect of the property mortgaged it could to work out its remedy before an appropriate forum.

5. During this period, a sum of Rs.51,11,333/- was paid as on 5/9/2001 as against One Time Settlement of Rs.49 Lakhs as agreed to by the Petitioner to the Bank by the 3rd respondent.

6. That when the matter stood thus, the 2nd Respondent Bank intended to execute the Certificate of Recovery. This action constrained the Petitioner to approach this Court in W.P.No.2490/2002, wherein this Court was pleased to granted an Interim Order staying the same until further orders and an application made by the Bank for vacating of the same was also rejected on the ground that a sum of Rs.51 Lakhs was deposited.

7. The 3rd respondent herein has also filed a Writ Petition before this Court in W.P.No.39646/2001 in which it claimed to be in possession of the schedule property pursuant to the Memorandum of Understanding dated 10/02/2001 and sought certain reliefs. This Court granted an Interim Order on 19/10/2001. The 3rd respondent filed one more Writ Petition in W.P.No.3772/2002 in which it sought for the relief of certiorari, quashing the paper publication, published in the daily

newspaper, ‘Deccan Herald’ dated 20/1/2002, proposing the auction of the schedule premises on 31/1/2002 at 3 P.M. by the Bank and a direction to the Bank to cancel the auction proposed to be held on 31/1/2002.

8. When the matter stood thus, the 3rd respondent filed an application before the DRT on 6/12/2001, under Section 27 of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('the Act' for short). In the said application the 3rd respondent sought for a prayer to withdraw the Recovery Certificate for the reasons stated in the affidavit. In the affidavit the 3rd respondent had contended that as per the One-Time Settlement as agreed to by the Bank and the Petitioner the amount had already been paid, the Certificate issued in favour of the Bank, was one without authority of law. After contest the application filed by the 3rd respondent came to be rejected by an Order dated 30/1/2002. The 3rd respondent preferred an appeal before the Appellate Authority, DRAT under Section 20 of the Act. The DRAT allowed the appeal and granted the relief to the 3rd respondent. Being aggrieved by the said order, these Writ Petitions have been filed.

9. The 3rd respondent has filed Statement of objections by contending that the petition is liable to be dismissed in limine as the Petitioners have not approached this Court with clean hands and have made false statements and concealed facts before this Court, which are totally contrary to facts on record.

10. The 3rd respondent is said to be an educational institution offering several courses and carrying on educational activity in the scheduled property bearing Sy.No.43/1, Koramangala, Bangalore, pursuant to an agreement of lease entered into with the 2nd petitioner dated 18/08/1988, prior to which the 3rd respondent had entered into an agreement in the year 1985. Subsequently, the 3rd respondent entered into a lease agreement dated 01/08/94 wherein the Petitioner, herein permitted the 3rd respondent to put up construction in the said property in order to facilitate the running of the educational institute. 3rd respondent is said to have advanced a sum of Rs.12,00,000/= as refundable deposit to the 2nd Petitioner.

11. It is averred that the 3rd respondent entered into an agreement dated 10/02/2001, to purchase the above mentioned property for a sum of Rs.1,30,00,000/= and as per the said agreement, it is entitled to collect the original documents from the Respondent Bank and including the payment made to one Sri Yellappa, the petitioner herein has paid a total sum of Rs.1,14,01,825/= to the Bank and has paid a further sum of Rs.10 Lakhs to one Sri.Yellappa under the agreement dated 10/02/2001. According to this Respondent even though the sale agreement was for a sum of Rs.1,30,000/=, it has spent more than Rs.1,36,01,825/= and deposited a sum of Rs.20,00,000/= before the DRT, Bangalore. The 3rd respondent has paid a sum of Rs.50,00,000/= to the Bank pursuant to the Order passed by this Court and at the request made by the Petitioner herein. It is stated that a sum of Rs.1,11,333/= by way of rent due to the 2nd Petitioner was also deposited by the 3rd respondent with the Bank.

12. While adverting to the proceedings before the DRT it is averred that the Petitioner herein had borrowed a sum of Rs.25,00,000/= from the Bank. The Petitioner herein undertook to settle the dues to the Bank at Rs.49,70,000/=. The DRT passed an order dated 31/08/1998, in O.A.No.1260/1996, issuing an order for recovery of Rs.63,49,009/- pursuant to which a proclamation was issued by the Recovery Officer of the DRT, by means of order dated 20/12/2000, the same was challenged by the petitioners herein in W.P.No.4212/2000, this Court was pleased to pass an interim order dated 15/02/2001, directing the Petitioners to pay a sum of Rs.30 Lakhs. It is stated that the Petitioners directed the 3rd respondent to pay a sum of Rs.30 Lakhs pursuant to which the 3rd respondent herein paid a sum of Rs.30 Lakhs by means of pay order vide No.000252 dated 15/02/2001, drawn in favour of the Bank. A letter issued by the Advocate for the Petitioners dated 27/03/2001, issued to the General Manager, Bank of Baroda, requested for a one-time settlement, wherein the Petitioner has admitted that the 3rd respondent herein has entered into an Agreement of sale with the 2nd Petitioner pursuant to which the 3rd respondent paid a sum of Rs.30 Lakhs.

13. That the request made by the Petitioners for a one-time settlement was rejected by the Bank, which came to be challenged by the Petitioners in W.P.No.26266/2001, in which the 3rd respondent had filed an impleading

application which also came to be rejected. This Court observed that if the 3rd respondent had suffered any loss on account of the breach of contract by the Petitioners, it was open to the 3rd respondent herein to approach the Civil Court or any other forum for appropriate relief. That this Court passed an interim order dated 10/07/2001, and directed the Petitioners herein to deposit a sum of Rs.20 Lakhs, the Advocate, for the petitioners herein issued a legal notice dated 14/7/2001, to the 3rd respondent to deposit a sum of Rs.20 Lakhs in accordance with the agreement entered into with the petitioners, pursuant to which the 3rd respondent paid Rs.20 Lakhs by means of a pay order dated 31/7/2001, in favour of the Bank.

14. Pursuant to the order dated 29/2/2001, in W.P.No.26266/2001, the 3rd respondent applied to the DRT for withdrawal of the Recovery Certificate which was rejected by order dated 30/01/2002, on the premise that the 3rd respondent is a third Party. Being aggrieved by the said order an Appeal was filed before the DRAT, Chennai in M.A.No.55/2003, and by order dated 25/3/2003, the appeal was allowed and DRAT directed DRT, Bangalore, to issue a Sale Certificate in favour of the 3rd respondent herein on satisfying itself that it had discharged the entire loan liability to the Bank, and also directed the 3rd respondent to pay a sum of Rs.20 Lakhs due to the petitioner before the DRT, pursuant to which the 3rd respondent has deposited a sum of Rs.20 Lakhs in favour of the Petitioners before the DRT. The Respondent Bank has also issued the original documents to the 3rd respondent herein pursuant to the order dated 25/03/2003, by the DRAT and in compliance with the order passed by the DRAT, DRT Bangalore, has also issued the sale certificate in favour of the 3rd respondent. That the Petitioners remained ex-parte before the DRT, and has not paid any amount towards clearing its liability to the Respondent Bank.

15. That when the 3rd respondent filed W.P.No.39646/2000, seeking a direction not to hand over the documents pertaining to the scheduled land to the petitioner, this Court by order dated 19/10/2000, directed the Respondent-Bank not to hand over the documents to the petitioners.

16. It is further stated that the order passed by the DRAT, is on the basis that the 2nd petitioner has entered into an agreement to sell the said property to the 3rd respondent herein. The DRAT, directed the DRT, Bangalore to issue sale certificate in favour of the 3rd respondent, taking into account that the 3rd respondent had paid a sum of Rs.50 Lakhs, to the respondent-Bank, and the 3rd respondent herein was ready to pay a sum of Rs.63,01,825/= towards the total liability of the petitioners herein to the Bank and directed the Bank to hand over the original documents to the 3rd respondent.

17. The 3rd respondent herein had filed an application under Section 27 of the Debt Recovery Act 1993 for withdrawal of the Certificate, pursuant to the order passed by this Court, to approach any other forum and as the same came to be dismissed, the appeal to the DRAT was filed as any person who is been aggrieved by an order made or deemed to have been made by the DRT is entitled to maintain such an appeal. As the 3rd respondent had entered into a Memorandum of Understanding to purchase the schedule property and had paid substantial sums of money to the Respondent Bank, pursuant to the said Memorandum of Understanding, it was entitled to maintain an appeal being aggrieved by the order of the DRT, dismissing its application for withdrawal of the Recovery Certificate. That the DRAT, in view of Section 20, as well as taking into consideration Section 22 of the Act subject to other provisions of the Act and Rules has passed an order taking various facts into consideration including the fact that the 3rd respondent herein had also paid a sum of Rs.51,11,333/= and further offered to pay a sum of Rs.63,01,825/=.

18. That the 3rd respondent had filed a suit for permanent injunction restraining the petitioners herein or any of their representatives from interfering with the schedule property, in O.S.No.22/1995, before the City Civil Court, Bangalore, and by judgment dated 18/12/1998 decreed the suit directing the petitioners or anybody acting under the petitioner herein from interfering with the schedule property, and to hand over the two sheds as undertaken by him Clause (3) and (4) of the lease deed dated 01/08/1994. The Petitioners herein filed R.F.A.No.164/1999 before this Court, and by judgment dated 05/01/2000, was pleased to allow the appeal filed by the Petitioners herein. The 3rd respondent

herein being aggrieved by the same filed SLP No.6503/2000, before the Honourable Supreme Court and by Order dated 17/09/2000 was pleased to set aside the order passed by this Court and confirm the order passed by the Trial Court. It appears that the 3rd respondent herein has created equitable mortgage with regard to the schedule property.

19. According to the 3rd respondent, the Petitioners have not approached this Court with clean hands and are not entitled to any equitable relief at the hands of this Court. It is averred that the 3rd respondent being in possession and having interest over the said property is entitled for redemption of the same. Hence it has sought for dismissal of the writ petition.

20. Respondent No.6 has filed statement of objections by contending that the order of DRAT granting a direction to the DRT to issue a sale certificate in favour of 3rd respondent is beyond the scope and jurisdiction of the DRT itself. As such, what could not have been granted by the DRT could not have been granted by the DRAT, as DRAT does not have the jurisdiction to grant any relief to the 3rd respondent which could be granted only by a competent civil court of law under the provisions of Specific Relief Act as the MOU, on the basis of which, 3rd respondent in claiming the right has to be adjudicated before a Civil Court. That the sale certificate can be issued by the DRT only when the sale proceedings take place through Recovery proceedings as per the provisions of the Act. The un-registered MOU does not create any charge or interest for the agreement holder in respect of the property as per Section 54 of T.P.Act. When there is no charge or interest created in favour of the MOU holder, Section 91 and 92 of T.P.Act cannot be of any assistance to 3rd respondent. Hence the order of the DRAT assigning reasons on the basis of the applicability of Section 91 and 92 of T.P.Act is erroneous, if at all the 3rd respondent has paid any money on behalf of Petitioner No.2 to the creditor Bank, then the 3rd respondent is entitled to get its money by way of recovery under Section 69 of Contract Act.

21. That, one M/s. Tirupathi Borewells, by its Proprietor Ramodhar Kedia, i.e., Petitioner No.2 had availed financial assistance from Respondent No.6-KSFC and had committed default in repayment of the said loan and Respondent No.6 had

filed OA.No.553/2001 before the DRT Bangalore for recovery of Rs.50,06,789.55, against the Defendants therein including the Petitioner No.2 herein, which was allowed vide order dt.31.12.2002. The said order includes in its Schedule-D, the schedule property involved in this writ petition. That in pursuance of the said Order passed in OA.No.553/2001, DCP.No.2602 was commenced and a Recovery certificate was issued in favour of this Respondent No.6 for recovery of Rs.63,32,663.55 as on 31.12.2002. But petitioner No.2 in a clandestine manner entered in to an Agreement of Sale of the schedule property in favour of one Sri.Yellappa and two others vide Regd.Doc.No.2060/04-05, dated 02.01.2004, for a sale consideration of Rs.1.50 Crores, and an amount of Rs.1.20 Crores was received by the Petitioner No.2 as per the said document. In Clause No.21 of the said agreement, Petitioner No.2 has admitted his liability with Respondent No.6 - KSFC and undertook to clear the dues of KSFC before the Registration of sale deed.

22. That, in pursuance of the Recovery Certificate passed in DCP.No.2602 in OA.No.553/2001, the Recovery officer of the DRT attached the schedule property for the satisfaction of the dues as per Recovery Certificate and while the attachment and sale process by the DRT pertaining to the schedule property was in progress, the 3rd respondent filed its objection to the sale proceedings by quoting the development of the proceedings in DRAT and filing of this writ petition, and the Respondent No.6 -KSFC has filed detailed counter to the said objector's application. That, without lifting the attachment order passed by the Learned DRT Bangalore in DCP.No.2602 in OA.No.553/2001, 3rd respondent herein cannot be granted any relief. Also, the schedule property is subject to a charge created in the order passed in OA.No.553/2001 and attachment order passed in DCP.No.2602. Therefore, according to Respondent No.6, the order passed by the DRAT which is impugned herein is liable to be set-aside.

23. We have heard learned Senior Counsel along with learned counsel for the respective parties.

24. Learned Senior Counsel appearing for the petitioners at the outset submitted that the DRT as well as the DRAT lacked jurisdiction to cancel a Recovery

Certificate on the basis of an application filed by 3rd respondent. That the object of the application filed by 3rd respondent was to give effect to the terms and conditions of the MOU or in other words to seek specific performance of the MOU which could be only before a competent Civil Court and not before the DRT. Secondly, the MOU was executed only for raising monies for discharging the debt with the Bank and that the 3rd respondent was in no way concerned with the lisbetween the Bank and the petitioners. Therefore, the DRT as well as the DRAT had no jurisdiction to entertain an application filed by the 3rd respondent seeking cancellation of the Recovery Certificate and in addition, return of the original documents to it. Drawing our attention to Section 17 and Section 20 of the Act, read with Sections 2(b) and 2(g), it was contended that it is only a bank and a financial institution which can make an application to the DRT under Section 19 of the Act for recovery of any debt from any person and that the DRT has no jurisdiction to cancel a Certificate of Recovery at the instance of a third party. It was also contended that when the DRT had no jurisdiction to entertain an application filed by a third party who is a stranger to the proceedings, the DRAT also does not have jurisdiction to entertain an appeal against an order of the DRT. In support of the said submission reliance was placed on certain decisions. It was therefore, contended that the DRT rightly dismissed the application filed by 3rd respondent herein, but the DRAT was not right in granting relief to the 3rd respondent by entertaining an appeal filed by the 3rd respondent.

25. While elaborating the said contention, it was stated that the 3rd respondent was not a party to the original proceeding before the DRT and there was no privity of contract between the Bank and the 3rd respondent. The DRT could exercise its jurisdiction vis-a-vis the loan transaction under Section 19 of the Act but it has no jurisdiction under Section 27 to withdraw the Certificate of Recovery at the instance of a third party. It was also contended that Section 91 of the Transfer of Property Act is not applicable to the facts of the present case and the same had been erroneously relied upon by the DRAT.

26. It was alternatively contended that the MOU with the 3rd respondent could at best be construed as an agreement to sell but it would not confer any right, title or interest in the 3rd respondent vis-a-vis the scheduled property. It was also stated

that since the petitioners and the other agreement holder Sri. Yellappa could not settle the liability of Rs.49.00 lakh with the Bank, the MOU was entered into with the 3rd respondent and that Sri Yellappa had agreed to purchase the property for Rs.150.00 crore.

27. Per contra, learned Senior Counsel appearing for the 3rd respondent stated that the MOU entered into between the petitioners and 3rd respondent was in the nature of an agreement to sell which was acted upon and a sum of Rs.1.30 crore was paid by 3rd respondent which completely discharged the petitioners from all liability. Therefore, the 3rd respondent filed an application for withdrawal of Certificate of Recovery and return of the original documents of the schedule property to it. That the DRT without appreciating its powers dismissed the application, but the DRAT has rightly allowed the appeal which order would not call for any interference in this writ petition. Drawing our attention to Sections 17 to 20, 22 and Sections 25 to 28, it was contended that the Recovery Officer had every right to demand the payment of money stated in the Recovery Certificate from 3rd respondent in terms of Section 28, but in the instant case 3rd respondent itself offered to pay the money so as to discharge the liability of the petitioners resulting in the withdrawal of the Recovery Certificate. That at the instance of the petitioners, the auction of the scheduled property was prevented but the provisions of the Act permit the satisfaction of the outstanding amount stated in the Certificate of Recovery by a third party. That the petitioner's counsel wrote to the Bank on 27.03.2001 admitting that the agreement to sell the scheduled property has been entered into on 10.02.2001 and that a sum of Rs.30.00 lakh had been received from 3rd respondent and the same was paid before this Court pursuant to an order of stay of auction of the schedule property subject to deposit of Rs.30.00 lakh. Thereafter on 14.7.2001 the petitioners' counsel wrote to the Chairman of the 3rd respondent Educational Trust requesting for payment of Rs.20.00 lakh to the Bank pursuant to the sale agreement dated 10.2.2001. Accordingly, on 31.7.2001, a further sum of Rs.20.00 lakh was paid to the Bank and a memo was filed before this court in W.P.26266/2001. That in view of these facts, the petitioner cannot now change its stance and prevent the Bank from returning the original documents of the schedule property to the 3rd respondent. It was also stated that DRT which has issued the Certificate of Recovery can also withdraw the same. In support of

this contention reliance has been placed on certain precedents.

28. Repelling the case of KSFC-respondent No.6, it was contended that KSFC has no right over the scheduled property, particularly in view of the interim order passed by this Court in W.P.No.39646/2001. Thus there is no charge created by the KSFC over the suit property.

29. It was contended on behalf of the sixth respondent-KSFC that in OA.No.553/2001 an order against M/s Thirupathi Tube Wells was passed pursuant to which there was an attachment of the scheduled property as per Annexure-R4. That the 3rd respondent is a stranger to the proceedings initiated by the KSFC and placing reliance on Rule 11 of the Second-Schedule of the Income-Tax Act, 1961, it was contended that any private sale for the recovery of the outstanding sum is void.

30. In reply the counsel for the petitioners reiterated that the provisions of the Act are self-contained and that the recovery of the outstanding debt can only be from the defaulter and not from any other party and that there cannot be any private alienation of the scheduled property in the guise of recovery of a debt by the Bank. It was hence, contended that when the DRT has no jurisdiction to entertain an application filed by the 3rd respondent, the DRAT could not have exercised any jurisdiction which the DRT did not possess.

31. Having regard to the aforesaid submissions the following points would arise for our consideration:

i) Whether the MOU dated 10.02.2001 (Annexure-J) between the 2nd petitioner, the 3rd respondent and Sri Yellappa is in the nature of an agreement to sell the schedule property by the 2nd petitioner to the 3rd respondent?

ii) Whether the DRT had the jurisdiction to entertain an application filed by the 3rd respondent under Section 27 of the Act seeking withdrawal or cancellation of the certificate of recovery and return of original documents pertaining to the schedule property?

iii) What order?

32. From the material on record, we find that the petitioner had borrowed a sum of Rs.25.00 lakh from the 3rd respondent-Bank and had committed default in the repayment of the said loan resulting in the institution of OA NO.1260/96 by the Bank before the DRT which was decreed on 31.08.1998. The operative portion of the order reads as under:

"15. In the result, the application is allowed declaring that the applicant Bank is entitled to recover from the Defendants 1 to 5 jointly and severally a sum of Rs.44,50,316.16 with costs, current and future interest at 22.75% P.A. for letter of Credit account, at 21.75% P.A. for cash credit account, at 22.75% for Bills passed due account and at 22.75% P.A. for inland bill discount account with quarterly rests from the date of application till the date of realization.

16. The Banks claim against Defendant Nos.6 and 7 are hereby dismissed.

17. The Banks claim against the 8th Defendant to the extent of Rs.2,82,050.70 is allowed to be paid with interest at 22.75% P.A. with quarterly rests from the date of suit till the date of realization.

18. The Defendants are given three months time to settle the claim of the Bank; failing which, the Bank may proceed to sell the mortgaged immovable property and to adjust the sale proceeds towards the amount due. This period of three months will not be a bar to the Recovery Officer to issue demand notices.

19. The Bank may deal with the hypothecated movables independently.

20. Costs include the Advocates fee also as per the Rules prevailing in the State.

21. Issue Recovery Officer accordingly and inform the parties concerned."

33. Thereafter a Certificate of Recovery No. 1055 dated 4.3.1999 was issued by the DRT and in order to recover the outstanding dues of Rs.66,49,009/- the Bank had issued a sale proclamation on 26.12.2000 which was stayed in W.P.4212/2001 in which an interim order staying the sale subject to deposit of Rs.30.00 lakh on or before 15,2.2001 was issued. That in the interregnum on 10.2.2001 the MOU was entered into between the 2nd petitioner and 3rd

respondent and Sri.Yellappa pursuant to which a sum of Rs.30.00 lakh was paid to the Bank by 3rd respondent. That subsequently, a sum of Rs.20.00 lakh was also paid by 3rd respondent to the Bank on 31.7.2001 pursuant to Interim Order passed in W.P.No.26266/2001. That the 1st petitioner had agreed to sell the schedule property for a sum of Rs.1,30,00,000/- to the 3rd respondent under the MOU. Therefore, the first point to be considered is as to whether the MOU was in fact an agreement to sell entered into between the 2nd petitioner and 3rd respondent and Sri.Yellappa or it was only a transaction to raise funds by the petitioners herein. The terms and conditions of the MOU read as under:

**TERMS AND CONDITIONS:**

01. The First party and Third Party have agreed and undertaken that they would negotiate with Bank of Baroda to settle the claim for a lesser amount than the amount that is been decreed for, they have also assured that in view of the latest guidelines of the RBI that they would persuade the Bank to accept a sum of Rs.49,70,000/- as full and final settlement of the Bank's claim.

02. The first party and Third party have agreed to obtain such assurance by the Bank in writing and produce the same to the second party and on production of the said documents, the second party shall make arrangements to pay the said amount on behalf of the first party.

03. It is agreed that on payment of the amount as aforesaid, by the second party, to the Bank, the first party hereby authorizes the second party to collect and take possession of all the original documents of title to its custody.

04. It is agreed between the parties that once the Bank gives a letter to the effect that it would accept a lumpsum amount towards the full and final settlement, the original of this agreement shall be placed before the Income Tax authorities to obtain clearance/permission as contemplated under section 239-UD of the Income Tax Act and obtain necessary permission as contemplated under Form No.37-1,

05. It is agreed between the parties that after clearing the Bank loan as aforesaid, and after obtaining the permission as stated supra, a registered deed of sale shall

be entered between the first party and second party in which the third party shall sign the document as a confirming party. It is also agreed that the Third Party shall be paid a sum of Rs.80,00,000/- on the date of registering the sale deed and the third party ensure that his children will give up all their claims under the agreement of sale deed 3rd November 1995.

06. The first party hereby covenants that he has not entered into any agreement to sell the schedule property with any other person except the children the Third party.

07. The first party has also agreed that he shall execute a general power of attorney in favour of the nominees of the second party as and when he is called upon to do so.

08. It is agreed between the parties that the second party is authorized to release an advertisement in the daily newspaper to verify whether there are any other claims in respect of the schedule property immediately after executing this Memorandum of Understanding.

09. It is agreed that the first party shall on execution of this Memorandum of Understanding shall pass on Xerox copies of all the documents of title so as to enable the second party to have the same scrutinized by the Advocate/s.

10. The Second party hereby agrees that he shall pay the payment as stated in supra provided that the first party and third party shall discharge the obligations on their part such as:

(a) Obtaining a letter from the Bank for discharge of the loan in a lumpsum payment,

(b) Make necessary applications before the competent authority, namely, income tax to obtain permission under section 37-1,

(c) The first party shall withdraw all the cases including criminal cases filed against the second party in connection with and arising out of the schedule property.

11. It is made clear that all the expenses regarding conveyance, registration stamp duty shall be exclusively borne by the second party.

12. Since major portion of the schedule property is in possession of the second party, the first party shall attorn tenants in favour of the second party who are in occupation of two shops on the registration of the document.

13. In the event of the first party and third party failing to discharge any of their obligations so cast on them in supra, the agreement shall not have any effect at all and the first party hereby undertakes to reimburse the expenses that has been actually incurred by the second party in connection with the preparation of documents scrutiny of documents, advertisements, etc.,

14. The Second party agrees that on receipt of the letter from the Bank of Baroda for one time settlement and after receipt of the original documents of title from the Bank of Baroda, the Second party is at liberty to raise loan on the strength of the documents and it shall complete its obligation of paying the balance of sale consideration and registering the sale deed within three months from this day.

**SCHEDULE**

All that piece and parcel of the property bearing No.43/1, Sarjapura Road, 5$^{th}$ Main, Jakksandra Village, Bangalore South Taluk, Bangalore-34, measuring approximately 1 acre 3 guntas consisting of partly ACC sheet roofs and partly RCC Structure buildings and the total constructed area is 30,500 sq.feet. And bounded on the

EAST BY : Road,

WEST BY : Village limits of Rupena Agrahara

NORTH BY : Sarjapura Road,

SOUTH BY : Sy.No.43/2

In witnesseth whereof, the parties have set their hands to the document on the day month and year first above written, in presence of the witnesses.

WITNESSES:

1. FIRST PARTY,

SECOND PARTY

2. THIRD PARTY

34. In the MOU it is stated that the first party i.e., the 2nd petitioner herein is the exclusive owner of the scheduled property and 1st petitioner had borrowed a loan from Bank of Baroda, the second respondent herein, and having defaulted in the repayment of the loan, the Bank had instituted recovery proceedings before the DRT which had issued a Recovery Certificate for payment of the outstanding sum. That an agreement to sell was entered into with the children of Sri.Yellappa, (third party under the MOU) dated 3.11.1995 and a sum of Rs.80.00 lakh was received by the petitioner. But the petitioner had agreed to sell the schedule property to the second party i.e., 3rd respondent who was in possession of the same except two shops and that the 3rd respondent had agreed to purchase the entire property for a consideration of Rs.1.30 crore. That the 2nd petitioner and Sri.Yellappa had agreed to negotiate with the Bank to accept a sum of Rs.49,70,000/-and that 3rd respondent would pay the said amount on behalf of the petitioners to the Bank. That on payment of the amount to the Bank the petitioners would authorise the 3rd respondent to take possession of all the original documents of title to its custody. That when once the Bank agreed to accept a lump sum amount towards a full and final settlement the original MOU was to be placed before the Income-tax Authorities to obtain clearance/permission as contemplated under Section 239-UD of the Income-tax Act. That after obtaining the aforesaid clearance/permission, a registered sale deed was to be executed by the petitioner in favour of the 3rd respondent with Sri.Yellappa being the confirming party and that a sum of Rs.80.00 lakh was to be paid to Sri.Yellappa on the date of registration of the sale deed, thereby ensuring that his children gave up all their claims under the agreement to sell dated 03.11.1995 entered into with Sri.Yellappa. That the petitioner was to handover photocopies of all the documents of title to the 3rd respondent to have the same scrutinised. The 3rd respondent was to pay the amount to the petitioner and Sri.Yellappa on (a) obtaining a letter from the Bank

for discharge of loan in a lump sum payment (b) make necessary applications before the Income-tax Authorities to obtain permission and (c) the petitioners withdrawing all the cases filed against the 3rd respondent. That all expenses regarding conveyance, registration stamp duties was exclusively to be borne by the 3rd respondent. That the tenants in the schedule property were to attorn their tenancy in favour of the 3rd respondent on the registration of the sale deed. In case the petitioners and Sri.Yellappa failed to discharge their duties under the agreement the MOU was not to have any effect and all expenses incurred by the 3rd respondent was to be reimbursed by the petitioners. That on the receipt of the letter from the Bank for one-time settlement and after receipt of the original documents of title, the 3rd respondent was at liberty to raise a loan and complete the obligations by paying the balance sale consideration and getting the sale deed registered.

35. In terms of the said agreement and pursuant to the interim order in W.P.No.4212/2001 filed by the petitioners, a sum of Rs.30.00 lakh was paid by the 3rd respondent to the Bank. Subsequently, a sum of Rs.20.00 lakh was paid to the Bank on 31.7.2001 by the 3rd respondent on the request made by the petitioners pursuant to I.O. passed in W.P.No.26266/2001. The fact that the MOU is an agreement to sell is admitted by the petitioners in the letter dated 14.7.2001 (Annexure-R4) written on behalf of the petitioners to the Chairman of the 3rd respondent Trust and the receipt of Rs.50.00 lakh by the Bank is also acknowledged as per Annexure-F. In fact, in W.P.39646/2001 filed by the 3rd respondent, a direction was issued to the Bank not to handover the original documents pertaining to the scheduled property to the petitioners herein. Having regard to the terms and conditions of the MOU and the fact that the parties have acted upon it, it is held that the MOU is an agreement to sell the schedule property by the petitioner to the 3rd respondent. It is not a document for the purpose of raising funds to discharge the debt of the Bank. If it had been a transaction to raise a loan then the various terms and conditions which are present in an agreement to sell would not have found a place in the said agreement. Moreover the clauses which are relevant in a loan agreement are conspicuous by their absence, one of them being payment of interest by the petitioners on monies advanced by the 3rd respondent. On the other hand the amounts paid by the 3rd respondent are part

payment of the total consideration for the sale of the scheduled property. Further clearances and permissions are also to be obtained from the Income Tax Department for the sale of the scheduled property. Since 3rd respondent was in possession of the scheduled property as a lessee and evinced interest to purchase the same, it continued to be in possession as an agreement holder. Further the clause pertaining to attornment of tenancy by some of the 2nd petitioner's tenants in favour of 3rd respondent makes clear the intention of the 2nd petitioner to sell the property to 3rd respondent. As also the clause permitting 3rd respondent to raise funds on the basis of documents of title of the scheduled property for the purpose of payment of balance sale consideration also points to the fact that the MOU is infact an agreement to sell the schedule property to the 3rd respondent. It is also to be noticed that an amount of Rs.50.00 lakh was paid by the 3rd respondent to the Bank out of a total sale consideration of Rs.1.30 crores. In fact in order to pay the balance sale consideration the MOU permitted the release of documents by the Bank to the 3rd respondent so as to raise loans to complete the transaction. Therefore, point No.1 is answered in favour of the 3rd respondent.

36. In **Industrial Promotion and Investment Corporation of Orissa Limited versus Tuobro Furguson Steels Private Limited and Others //2012) 2 SCC 261],** the Apex Court noted that when both sides to a contract have acted on the terms of the contract, and have changed their respective positions and assumed rights and obligations against each other, the contract having been acted upon, it could not be unilaterally abrogated on the sweet will of any of the two sides.

37. In **Videocon Properties Ltd,versus Dr. Bhalchandra Laboratories and others [AIR 2004 SC 1787],** while adverting to the right of a buyers under Section 55 of the Transfer of Property Act, the Supreme Court has held as follows :-

"The buyer's charge engrafted in Cl.(b) of Para 6 of S.55 of the Transfer of Property Act would extend and ensure to the purchase money or earnest money paid before the title passes and property has been delivered by the purchaser to the seller; on the seller's interest in the property unless the purchaser has improperly declined to accept delivery of property or when he properly declines to

accept delivery - including for the interest on purchase money and costs awarded to the purchaser of a suit to compel specific performance of the contract or to obtain a decree for its rescission. The principle underlying the above provision is a trite principle of justice, equity and good conscience. The charge would last until the conveyance is executed by the seller and possession is also given to the purchaser and ceases only thereafter. The charge will not be lost by merely accepting delivery of possession alone. This charge is a statutory charge in favour of a buyer and is different from contractual charge to which the buyer may become entitled to under the terms of the contract, and in substance a converse to the charge created in favour of the seller under S.55(4)(b). Consequently, the buyer is entitled to enforce the said charge against the property and for that purpose trace the property even in the hands of third parties and even when the property is converted into another form by proceeding against the substituted security, since none claiming under the seller including a third party purchaser can take advantage of any plea based even on want of notice of the charge. The said statutory charge gets attracted and attaches to the property for the benefit of the buyer the moment he pays any part of the purchase money and is only lost in case of purchaser's own default or his improper refusal to accept delivery. So far as payment of interest is concerned, the section specifically envisages payment of interest upon the purchase-money/price prepaid, though not so specifically on the earnest money deposit, apparently for the reason that an amount paid as earnest money simpliciter, as mere security for due performance does not become repayable till the contract or agreement got terminated and it is shown that the purchaser has not failed to carry out his part of the contract, and the termination was brought about not due to his fault, the claim of the purchaser for refund of earnest money deposit will not arise for being asserted."

38. In **United Bank of India versusRamdas Mahadeo Prashad and others [2004 (13) AIC 250 (S.C.)],** the question was whether a MOU which was not acted upon between the bank and the debtor would have been the basis for the DRAT to pass an order. On the facts of the said case it was held that the three main conditions stipulated in the MOU were not complied with by the debtor and hence, there was not concluded contract nor any novation and therefore, the DRAT could not have passed an order on the basis of an MOU.

39. Reliance is placed on the aforesaid decision to contend that the DRAT in the instant case could not have enforced the terms of the MOU between the petitioners and the 3rd respondent to grant relief to the latter. Having regard to the distinct facts in the present case, the aforesaid decision is of no assistance to the petitioners. In the instant case, MOU has been acted upon by the parties particularly, 3rd respondent and the same has also been acknowledged by the respondent - Bank.

40. As far as the DRT having jurisdiction to entertain an application filed by the third party is concerned, at the outset, the relevant provisions of the Act and Rules made there under could be considered, the same read as under:

**"17. Jurisdiction, Powers and authority of Tribunals -** (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the Banks and financial institutions for recovery of debts due to such Banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

**18. Bar of Jurisdiction** - On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17.

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

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

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

works for gain; or

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

[Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.]

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of debt to be recovered:

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under subsection (1) of section 31.

(4) On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

(8) A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application, make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,-

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest, the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of the debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the

recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under subsection (14).

(16) If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void.

(17) In the case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached an may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order —

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to he possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956 (1 of 1956) the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realization or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every, order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

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

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

(24)The application made to the Tribunal under sub-section (1)or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may made such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.]

**20. Appeal to the Appellate Tribunal** - (1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed.

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it with in that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

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**25. Modes of recovery of debts.**—The Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely: -

(a) attachment and sale of the movable or immovable property of the defendant;

(b) arrest of the defendant and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the defendant.

**26. Validity of certificate and amendment thereof -** (1) It shall not be open to the defendant to dispute before the Recovery Officer the correctness of the amount specified in the certificate, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the Presiding Officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending intimation to the Recovery Officer.

(3) The Presiding Officer shall intimate to the Recovery Officer any order withdrawing or canceling a certificate or any correction made by him under sub-section (2).

**27. Stay of proceedings under certificate and amendment or withdrawal thereof** - **(1)** Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Presiding Officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the Presiding Officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate to the Recovery Officer.

(3) Where the order giving rise to a demand of amount for recovery of debt has been modified in appeal, and, as a consequence thereof the demand is reduced, the Presiding Officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal remains pending.

(4) Where a certificate for the recovery of debt has been received by the Recovery Officer and subsequently the amount of the outstanding demands is reduced 1 [or enhanced] as a result of an appeal, the Presiding Officer shall, when the order which was the subject-matter of such appeal has become final and conclusive, amend the certificate or withdraw it, as the case may be.

**28. Other modes of recovery** - (1) Where a certificate has been issued to the Recovery Officer under sub-section (7) of section 19, the Recovery Officer may, without prejudice to the modes of recovery specified in section 25, recover the amount of debt by any one or more of the modes provided under this section.

(2) If any amount is due from any person to the defendant, the Recovery Officer may require such person to deduct from the said amount, the amount of debt due from the defendant under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Recovery Officer:

Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908).

(3) (i) The Recovery Officer may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the defendant or to any person who holds or may subsequently hold money for or on account of the defendant, to pay to the Recovery Officer either forthwith upon the money becoming due or being held or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount of debt due from the defendant or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the defendant jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such amount shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the defendant at his last address known to the Recovery Officer and in the case of a joint account to all the joint holders at their last addresses known to the Recovery Officer.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, Bank, financial institution, or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like to be made before the payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or the part thereof is not due to the defendant or that he does not hold any money for or on account of the defendant, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant on the date of the notice, or to the extent of the defendant's liability for any sum due under this Act, whichever is less.

(vii) The Recovery Officer may, at any time or from time to time, amend or revoke any notice under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the defendant to the extent of the amount so paid.

(ix) Any person discharging any liability to the defendant after the receipt of a notice under this sub-section shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant so discharged or to the extent of the defendant's liability for any debt due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Recovery Officer, he shall be deemed to be a defendant in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were a debt due from him, in the manner provided in sections 25, 26 and 27 and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 25.

(4) The Recovery Officer may apply to the court in whose custody there is money belonging to the defendant for payment to him of the entire amount of such money, or if it is more than the amount of debt due an amount sufficient to discharge the amount of debt so due.

1 [(4A) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company, any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets.]

(5) The Recovery Officer may recover any amount of debt due from the defendant by distraint and sale of his movable property in the manner laid down in the Third Schedule to the Income-Tax Act, 1961 (43 of 1961).

**29. Application of certain provisions of Income-tax Act** - The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the defendant under this Act.

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

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

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**34. Act to have over-riding effect** - (1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984) [the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)].

Rule 18 of the Debts Recovery Tribunal (Procedure) Rules, 1993

**18. Orders and directions in certain cases** - The Tribunal may make such orders to give such decision as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

Rule 22 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994.

**22. Orders and directions in certain cases -** The Appellate Tribunal may make such orders or give such directions as may be necessary or expedient to give

effect to its orders or to prevent abuse of its process or to secure the ends of justice.

41. The Debt Recovery Act has been enacted for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therein or incidental thereto. ‘bank’ is defined in Clause (d) of Section 2 and ‘financial institution’ is defined in Clause (h) thereof, while ‘debt’ is defined in Clause (g) of Section 2. Chapter II of the Act deals with ‘Establishment of Tribunal’ and ‘Appellate Tribunal’. Chapter III deals with ‘Jurisdiction, Powers and Authority of Tribunals’, sub-section (1) of Section 17 states that on and from the appointed day i.e., the day when the DRT is established, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions is vested in the DRT. Sub-section (2) states that the Appellate Tribunal (DRAT) has the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by the DRT under the Act. Section 18 bars the jurisdiction of a court or other authority in relation to the matters specified in Section 17. As stated above, Section 17 deals with the jurisdiction of the DRT to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. Therefore, any matter concerning the recovery of debts due to a banks or financial institutions comes within the purview of Section 17 and no Court or authority would have jurisdiction to deal with the matter in relation to the matters specified in Section 17. The use of the expression ‘in relation to matters specified in Section 17’ is significant and would have to be construed in a broad and liberal sense and not in a narrow or pedantic sense. When the object of the Act is to completely exclude the jurisdiction of all courts and authorities in relation to applications by banks and financial institutions for recovery of debts due to them, all issues and matters pertaining to the recovery of debt even if ancillary or incidental has to be dealt with by the DRT and not by the Civil Court or any other authority.

42. This becomes further clear when the Procedure of the Tribunals is taken into consideration as delineated in Chapter IV of the Act. sub-section (1) of Section 19

enables a Bank or financial institution to make an application to the DRT for recovery of debt from any person. The procedure that has to be followed by the Tribunal is elaborately stated in various sub-sections of Section 19. While Section 17 read with Section 18 enables a bank or a financial institution to file an application for recovery of debts due to it, the debtor is empowered to claim set off against the bank's demand while filing a written statement to the application filed by the bank. Such a written statement has the same effect as a plaint in a cross-suit so as to enable the DRT to pass a final order in respect of both original claim as well as set-off. Similarly, the debtor can also file a counter-claim against the bank or the financial institution which would also be in the nature of a cross-suit and the DRT has the jurisdiction to determine the counter claim along with the original claim. Further, the DRT by an order can debar the debtor from transferring, alienating or otherwise dealing with or disposing of any property and assets belonging to him without the prior permission of the Tribunal. The same is in the nature of an order of attachment. Also the DRT can direct the debtor to furnish security to satisfy the Certificate for the recovery of the debt in the event of the debtor attempting to dispose the whole or any part of the property or to remove the same from the local limits of the jurisdiction of the DRT or cause damage or mischief to the property or affect its value by misuse or create any third party interest. Further the DRT can appoint a receiver of any property whether before or after a grant of a Certificate for Recovery of debt; can remove any person from the possession or custody of the property, handover possession, custody or management of the property to the receiver; confer upon the receiver all powers for the protection, preservation and improvement of the property, collection of rents and profits arising therefrom etc.,; appoint a Commissioner for the inventory of the properties for the sale thereof. The DRT is also empowered to exercise powers under Section 529-A of the companies Act, 1957 where a Certificate of Recovery is issued against the company registered under the said Act.

43. After an order for the recovery of the debt and/or the payment of interest is made by the DRT under sub-section (22) the Presiding Officer would have to issue a Certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount specified in the certificate. Under sub-section (25) the DRT is competent to make such orders and to give directions as

may be necessary to give effect to the orders or to prevent abuse of orders or to secure the ends of justice. Therefore, the DRT is endowed with ample powers to secure the ends of justice and to give effect to its orders or to prevent abuse of its process.

44. In this context., reliance could be placed on two decisions of the Apex Court in the case of **Renusagar Power Co. Ltd., Versus General Electric Company and another (AIR 1985 SC 1156)** and **M/s. Doypack Systems Pvt. Ltd. Versus Union of India (AIR 1988 SC 782)** by way of analogy. In the first of the above cases arising under the provisions of the Arbitration Act 1940, it has been held that expressions such as “arising out of” or “in respect of” or “in connection with” or “in relation to” or “in consequence of” or “concerning” or “relating to” the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement. Similarly, in M/s. Doypack Systems Pvt. Ltd., it has been held that the expressions “pertaining to”, “in relation to” and “arising out of”, used in the deeming provisions, are used in the expansive sense. The words “pertaining to” and “in relation to” have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word “pertain” is synonymous with the word “relate”. The expression “in relation to” (so also “pertaining to”) is a very-broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance.

45. When once a Certificate is issued to the Recovery Officer by the presiding Officer of DRT, the Recovery Officer can proceed to recover the amount of debt in terms of Chapter V of the Act which deals with Recovery of Debt Determined by Tribunal Section 25 prescribes three modes of recovery which are as follows:

(a) attachment and sale of the movable or immovable property of the defendant;

(b) arrest of the defendant and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the defendant.

46. Even though a certificate is issued to a Recovery Officer, the Presiding Officer is empowered to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer under Section 26. Even if a certificate has been issued to the Recovery officer for the recovery of any amount, the Presiding Officer of the DRT may grant time for payment of the amount, whereupon the Recovery Officer shall stay the proceedings till the expiry of time so granted. Where any amount is paid or time is granted for payment subsequent to the issuance of the Certificate, the same has to be informed by the Presiding Officer to the Recovery Officer. Where a Certificate for Recovery has been received by the Recovery Officer and subsequently the amount outstanding is reduced or enhanced as a result of an appeal as the case may be the Presiding Officer has to amend the Certificate or withdraw it as per Section 27 of the Act.

47. Apart from the three modes of recovery of debts mentioned in Section 25, Section 28 speaks of three other modes of recovery, sub-section (2) of Section 28 states that if any amount is due from any person to the defendant, the Recovery Officer may require such person to deduct from the said amount, the amount of debt due from the defendant under the Act and such person has to comply with any such requisition and pay the sum so deducted to the credit of the Recovery Officer. In fact sub-section (3) states that the Recovery Officer can issue a notice in writing to require any person from whom the money is due or may become due to the defendant before the DRT or to any person who holds or may subsequently hold money for or on account of a defendant, to pay to the Recovery Officer either forthwith upon the money becoming due or being held or within the time specified in the notice so much of the money as is sufficient to pay the amount of debt due from the defendant or the whole of the money when it is equal to or less than that amount by issuance of a notice or notices. In fact, such a notice can also be issued to any person who holds or subsequently holds any money for or on behalf of the defendant before the DRT jointly with any person. Every person to whom such a notice is issued is bound to comply with such notice and any claim

respecting any property in relation to which such a notice is issued arising after the date of notice shall be void as against any demand contained in the notice. Where any amount is paid in compliance with the notice issued under sub-section (3) Section 28, then the Recovery Officer shall issue a receipt and fully discharge the person so paying from his liability to the defendant to the extent of the amount so paid. In fact, Clause (ix) of sub-section (3) of Section 28 states that if any person discharging any liability to the defendant after receipt of a notice under sub-section (3) shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant so discharged or to the extent of the defendant's liability for any debt due under the Act, whichever is less. If a person to whom a notice under sub-section (3) is issued fails to make payment in pursuance thereof to the Recovery Officer, he shall be deemed to be a defendant in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it was a debt due from him and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under Section 25. Secondly, the Recovery Officer can apply to the court in whose custody there is money belonging to the defendant deposited for payment to him in discharge of the amount of debt so due. Thirdly, the Recovery Officer can also recover the amount of debt due from the defendant by distraint and sale of his moveable property in the manner laid down in Third Schedule of the Income-tax Act, 1961. In fact Section 29 states that the provisions of Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 as far as possible would apply with necessary modifications as if the said provisions and the Rules which would apply to an assessee be construed as a reference to defendant under the Act. Therefore, there are three modes of recovery stated in Section 28 of the Act.

48. Sub-section (2) read with sub-section (3) of Section 28 are in the nature of what may be termed as recovery through "garnishee orders". While sub-section (5) of section 28 read with section 29 enable recovery as contemplated under the Income Tax Act 1961.

49. The Act provides for appeals against the order of the DRT to an Appellate Tribunal (DRAT) as contemplated in Section 28 of the Act read with Section 22

which contemplates procedures and powers of the Appellate Tribunal while Section 30 states that any person aggrieved by the order of the Recovery Officer can file an appeal to the DRT. Rule 16 of the Debts Recovery Tribunal (Procedure) 1993 and Rule 22 of the Debts Recovery Appellate Tribunal (Procedure) 1994 have to be read along with sub-section (25) of Section 19 of the Act and Section 22 of the Act respectively.

50. Section 34 speaks of the overriding effect of the Act by stating that the provisions of the Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act in question. Sub-section(2) of Section 34 states that the provisions of the Act or the Rules are in addition to and not in derogation of certain other Acts including the State Financial Corporation Act, 1951.

51. On a conspectus reading of the aforesaid sections and having regard to the object of the Act, it becomes clear that a separate and independent mechanism has been established under the Act for the recovery of dues to the banks and financial institutions. Though section 17 states that the jurisdiction powers and authority of the Tribunal is to entertain and decide applications from the banks and financial institutions for recovery of debts due to them, Section 18 categorically states that no other court or other authority would have jurisdiction in relation to any matter pertaining to decide applications for recovery of debts due to banks and financial institutions. Section 19 prescribes a comprehensive procedure for the recovery of debts by the banks and financial institutions and also enables the debtor to plead a set off or seek a counter-claim against the creditor. Therefore, the contention that it is only the banks or the financial institutions which can approach the DRT for recovery of debts and no other person is entitled to any relief is belied.

52. That apart with regard to the recovery of debt determined by the DRT, after the issuance of the Certificate of Recovery, there are two different modes of recovery stipulated in Sections 25 and 28 of the Act. The recovery of debt is not limited to recovery from the actual debtor to the bank or financial institution but is extended

to recovery from other persons who are indebted to the debtor called "third party debt orders" or "garnishee orders". Sub-sections (2) to (4) of Section 28 are in the nature of garnishment proceedings. A garnishment is a proceeding by which a diligent creditor may legally obtain preference on other creditors by sequestration of the effects of a debtor in the hands of his debtor-Black's Law Dictionary 9th edition. By a garnishee proceeding, the executing court and in this case the Recovery Officer under Section 28 of the Act can order a third party to pay to the creditor the debt or monies from him to the judgment-debtor. A garnishee order is an order passed by a court and in the instant case the Recovery Officer by way of a notice ordering a person in the position of a garnishee-3rd respondent herein who is the person due of the debtor of the bank or financial institution (petitioners herein) not to pay the money to the debtor of the bank but directly to the garnishor who is the creditor. The payment made by the garnishee pursuant to the notice issued by the Recovery Officer is a valid discharge to him against the debtor to the bank to the extent of the amount paid, even though the proceedings may be set aside, or the judgment or order from which they arose is reversed.

53. Under sub-section (3) of Section 28 of the Act when the Recovery Officer issues a notice to any person who is in the position of a garnishee to pay to the Recovery Officer the money becoming due to or being held on behalf of the debtor to the bank, the garnishee is bound to comply with such a notice. On receipt of the amounts paid by such a person, the Recovery Officer has to issue a receipt for the same and the garnishee so paying is discharged from his debt to the bank or financial institution to the extent of the amount so paid. Any person discharging any liability to the debtor of the bank/financial institution after the receipt of the notice would be personally liable to the Recovery Officer to the extent of his own liability to the debt so discharged or to the extent of the debtor's liability for any debt due under the Act whichever is less. If any person in the position of a debtor fails to make payment to the Recovery Officer, is deemed to be a defendant in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were a debt due from him in terms of Sections 26, 27 and 28 of the Act. Therefore, the Act enlarges the mode of recovery of a debt on issuance of Certificate of Recovery so as to bring within its scope, the garnishee or a person due to a debtor of the bank who is

bound by a notice issued by the Recovery Officer and that on receipt of notice if any payment is made to his creditor who is the debtor to the bank or financial institution, then in that event action can be initiated against the said person. Moreover, if any misstatement is made to the Recover Officer by such a person who is in the position of a garnishee with regard to his dues to the bank's debtor, then in that event the garnishee is personally due to the Recovery Officer to the extent of his own liability to the debtor of the bank, in the event the garnishee's debt is lesser than the debt owed by the debtor to the bank. Therefore, when once the Certificate of Recovery is issued by the DRT, the Recovery Officer is empowered to seek recoveries from all persons who are due to the debtor to the bank and financial institution and they are bound to comply with the notice issued by the Recovery Officer failing which, adverse consequences could visit them. Under the circumstances, it cannot be held that apart from the bank and the financial institution on one hand and its debtor on the other hand, the Tribunal has no jurisdiction to deal with any other third party in the matter of recovery of debt on the issuance of the Certificate of Recovery.

54. Therefore the contention that there is no relationship between a Bank and a third party in the position of a garnishee cannot be accepted. Having regard to the object of the Act and its sweeping provisions, the DRT would have the jurisdiction to deal with all matters pertaining to "third party debt orders" or garnishee proceedings as contemplated in Section 28 of the Act. For instance, if a notice is issued against any third party under sub-section (3) of Section 28 of the Act and any dispute arises there from or if the third party satisfies the demand made in such a notice and seeks certain reliefs then in such cases the provisions of the Act such as Section 27 could be pressed in to service. Even otherwise sub-section (25) of Section 19 is in the nature of an omnibus provision placing a repository of power in the DRT to give effect to its orders or prevent abuse of its process or to secure the ends of justice. Sub-section (1) of Section 34 also makes this position clear by stating that the provisions of the Act would have an over riding effect on anything inconsistent contained in any other law for the time being in force. Thus a third party would have the right to seek a remedy in the matter of recovery of a debt under Section 28 of the Act by invoking an appropriate provisions of the Act. Any denial of a remedy to a third party before the DRT would lead an incongruous

situation where before a civil court or any other forum, the Recovery Officer of the DRT apart from the bank or financial institution would have to be arrainged as respondents by the third party and matters relating to recovery of debts by banks and financial institutions would be adjudicated upon thereby demanding the authority of the DRT to exclusively deal with such matters such an intendment of the Parliament is not envisaged under the Act. The Act being a self contained code for the recovery of debts to banks and financial institutions all matters relating to the recovery of debts have to be dealt with by the DRT or DRAT in appeal otherwise there would be vesting of jurisdiction in an authority not contemplated under the Act. The same would also be contrary to the intention of Section 18 of the Act which divests or bars jurisdiction of all courts or authorities in the matter of recovery of debt to banks or financial institution. Hence the contention that because there is no privity of contact between a bank or financial institution on the one hand and the third party on the other hand, the DRT would have no jurisdiction to entertain an application filed by a third party seeking relief in the matter of recovery of debt after the issuance of a Recovery Certificate is incorrect. We hasten to add that a third party has a right to seek a remedy before the DRT only after the issuance of a Recovery Certificate against a debtor to a bank or financial institution when the third party is directed to deposit monies it owes to the debtor of the bank or financial institution or when on an understanding/ agreement with such a debtor, the third party deposits the monies or discharges the debt of the debtor to the bank or financial institutions. Any other third party having any claim over the bank or financial institution or any dispute with the debtor to the bank or financial institution cannot seek any remedy before the DRT.

55. In the instant case, the 3rd respondent was liable to pay the consideration amount for the purchase of the schedule property and in order to secure the original documents, which were in the custody of the Bank, had to pay off the debts of the Bank. In fact, the terms and conditions of the MOU were also to the said effect particularly clause 14. After receipt of the original documents, the 3rd respondent could raise loan on the documents pertaining to the schedule property and pay the balance sale consideration and get the sale deed registered in its name. In the instant case, on account of the interim orders passed by this court in the writ petitions filed by the petitioners a request was made to the 3rd respondent

by the petitioners to deposit the amounts to the Bank so as to prevent the sale of the schedule property, which the 3rd respondent has complied with. Even though no notice was issued by the Recovery Officer to the 3rd respondent to pay the amounts to the Bank on account of judicial intervention and at the instance of the petitioners herein the 3rd respondent made payments to the Bank, which has acknowledged and appropriated the same towards the outstanding loan of the petitioners. The order of the DRAT has taken into consideration these aspects and also the fact that the 3rd respondent was in possession of the schedule property and keeping in mind the fact that a sum of Rs.51,11,333/- was already paid to the Bank and the 3rd respondent was ready and willing to pay the balance amount of Rs.63.00 lakh to the Bank and the bank being also prepared to receive the said amount, a direction was issued to the Bank to receive the balance amount of Rs.63.00 lakh and release the title deeds in favour of the 3rd respondent, thereby discharging the petitioners of the debt and consequently, issue a sale certificate in favour of the 3rd respondent after ensuring that he makes a deposit of Rs.20.00 lakh due to the petitioners before the DRT.

56. On a first impression the directions of the DRAT may be in the nature of granting the relief of specific performance of the MOU dated 10.2.2001 in favour of the 3rd respondent. But in fact, the exercise of jurisdiction by the DRAT is one under Section 26 read with Section 27 of the Act. The said jurisdiction has been exercised keeping in mind sub-section (1) of Section 22 of the Act read with sub-section (25) of Section 19 of the Act in order to secure the ends of justice in the matter. Therefore, we do not think that the exercise of the jurisdiction of the DRAT was outside the scope of its authority or de hors the provisions of the Act On the other hand, the DRT which is empowered to withdraw the Certificate of Recovery failed to exercise its jurisdiction under Section 26 read with Section 27 of the Act.

57. In **State of Karnataka versus Vishwabharathi House Building Coop. Society and others [2003 (2) SCC 412],** in the context of Consumer Protection Act 1986, constituting the District Forum, State Commission as well as National Commission, it is held that the cardinal principle of interpretation of a statute is that Courts or Tribunals must be held to possess powers to execute their own order. The following extracts are apposite to the present case:-

60. It is also well settled that a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is a self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective.

61. In Savitri versus Govind Singh Rawat, it has been held as follows: (SCC pp.341-42, para 6)

"Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim 'ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest' (where anything is conceded, there is conceded also anything without which the thing itself cannot exist. (Vide Earl Jowitt's Dictionary of English Law, 1959 Edn., p. 1797.) Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties."

62. In Arabinda Das versus State of Assam, it has been held as follows: (AIR p.31, para 22)

"We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule-making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of

the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule-making authority.

In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power."

58. In **Sardar Associates and others versusPunjab and Sind Bank and others (2009) 8 SCC 2S7,** it has been stated that the jurisdiction of the appellate Tribunal is co-extensive with the powers of the Tribunal (DRT) under the provisions of the Debt Recovery Act, 1993.

59. In **Central Bank of India versusState of Kerala and others [2009 4 SCC 94],** while considering as to whether there was any overlapping between the two sets of Central Legislations namely Debt Recovery Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on the one hand and the Bombay Sales Tax Act, 1959, or the Kerala Sales Tax Act, 1963 on the other hand, at para 92, the Apex Court opined as follows:-

"An analysis of the above noted provisions makes it clear that the primary object of the DRT Act was to facilitate creation of special machinery for speedy recovery of the dues of banks and financial institutions. This is the reason why the DRT Act not only provides for establishment of the Tribunals and the Appellate Tribunals with the jurisdiction, powers and authority to make summary adjudication of applications made by banks or financial institutions and specifies the modes of recovery of the amount determined by the Tribunal or the Appellate Tribunal but also bars the jurisdiction of all courts except the Supreme Court and the High Courts in relation to the matters specified in Section 17. The Tribunals and the Appellate Tribunals have also been freed from the shackles of procedure contained in the Code of Civil Procedure. To put it differently, the DRT Act has not only brought into existence special procedural mechanism for speedy recovery of

the dues of banks and financial institutions, but also made provision for ensuring that defaulting borrowers are not able to invoke the jurisdiction of civil courts for frustrating the proceedings initiated by the banks and financial institutions."

60. In **Allahabad Bank versusCanara Bank and another [AIR 2000 SC 1535],** it has been held that Section 17 and 18 of the Debt Recovery Act are exclusive so far as the question of adjudication of the liability of the defendant to the bank is concerned. Insofar as the jurisdiction with regard to execution of the order of the DRT is concerned, the Apex Court has observed as follows:-

"Even in regard to 'execution', the jurisdiction of the Recovery Officer is exclusive. Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained in Chapter V of the Act and is covered by Sections 25 to 30. It is not the intendment of the Act that while the basic inability of the defendant is to be decided by the Tribunal under Section 17, the Banks / Financial Institutions should go to the Civil Court or the Company Court or some other authority outside the Act for the actual realisation of the amount. The certificates granted under Section 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual jurisdictions at different stages are contemplated. Further, Section 34 of the Act gives overriding effect to the provisions of the RDB Act.

The provisions of Section 34(1) clearly state that the RDB Act overrides other laws to the extent of Inconsistency'. In our opinion, the prescription of an exclusive Tribunal both for adjudication and execution is a procedure clearly inconsistent with realisation of these debts in any other manner.

There is one more reason as to why it must be held that the jurisdiction of the Recovery Officer is exclusive. The Tiwari Committee which recommended the constitution of a Special Tribunal in 1981 for recovery of debts due to Banks and financial institutions stated in its Report. That the exclusive jurisdiction of the Tribunal must relate not only in regard to the adjudication of the liability but also in regard to the execution proceedings. It stated in Annexure XI of its Report that all "execution proceedings" must be taken up only by the Special Tribunal under the Act. In our opinion, in view of the special procedure for recovery prescribed in

Chapter V of the Act and section 34, execution of the certificate is also within the exclusive jurisdiction of the Recovery Officer."

61. Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the Company Court can go into the questions relating to the liability and the recovery except as provided in the Act. Accordingly point No.2 is answered.

62. In **Nahar Industrial Enterprises Limited versusHong Kong And Shanghai Banking Corporation [2009 8 SCC 646],** it has been stated that the jurisdiction of the Civil Court under the Debt Recovery Act is barred only in respect of recovery of debts due to banks and financial institutions but not beyond the same. In the said case, it was held that a debtor is not entitled to maintain an action before the DRT and if a suit is filed by the debtor is transferred from the Civil Court to the DRT, he would lose his unconditional right of appeal before a higher Court in terms of Section 96 and 100 of the Code of Civil Procedure (CPC) and various other rights under the CPC and evidence Act. In those circumstances, it was held that the High Court was not right in transferring the suit from the Civil Court to the DRT.

63. The said decision is not applicable to the case at hand where the issue is with regard to the jurisdiction of the DRT to withdraw a certificate of recovery issued by it on the satisfaction of the outstanding debt. Having regard to the fact that the Recovery Officer of the DRT is empowered to issue a notice to any person from whom money is due or may become due to the debtor, for the purpose of recovering the said amount and the person to whom the notice is issued has to satisfy the debt amount or any person who voluntarily offers to satisfy the outstanding debt of the debtor would also be entitled to seek relief in relation to the recovery of debts to banks and financial institutions as stipulated in Section 18 of the Act. It is reiterated that the expression recovery of debts due to banks and financial institutions must be interpreted in a broad sense to include all steps taken from the time of making an application by the bank or financial institution for the recovery of the debt till the actual recovery thereof through various modes

stipulated in Chapter V of the Act and to entertain and decide all matters in relation to recovery of debts due to banks and financial institutions.

64. In **Cofex Exports Ltd., versusCanara Bank [AIR 1997 Delhi 355],** it has been held that the Debt Recovery Tribunal is a Tribunal and not a Court. The proceedings before it are initiated on an application and hence are not suits. Only a bank or a financial institution has the locus to invoke the jurisdiction of the Tribunal. The Tribunal does not pass a decree. It issues a certificate to the recovery officer for recovery of the amount of debt specified therein. Its procedure is not prescribed nor detailed; the principles of natural justice alone have to be followed. The procedure is summary. Ordinarily the Tribunal shall spend a term of six months between the date of the application and decision thereon. The definition of debt shows that the jurisdiction of the Tribunal is attracted on the allegation of debt being due made in the application and is not dependent on its being so found.

65. In **Ms. Nivedita rep. by mother Ms. Asha Raja Kumar versusSouth Indian Bank Ltd. Industrial Finance Branch, Trichy Road, Coimbatore Town [1998 - 2 - L.W. 367],** the Madras High Court was concerned with an application filed by the younger children of the debtor stating that the mortgage was not necessary and a prayer for impleading themselves. The impleading application was dismissed by stating that when an original application by a debtor is not maintainable, an interlocutory application also cannot be maintained as the applicant before the DRT is always the bank or the financial Institution. The said decision is also not applicable to the present case since we are concerned with the exercise of powers by the Tribunal in the matter of withdrawal of a Recovery Certificate and not the adjudication of claims of the debtor and a third party.

66. A contention was also raised by the learned counsel for 6$^{th}$ respondent-KSFC that a Certificate of Recovery was issued in favour of KSFC by the DRT and that the DRAT could not have ordered for return of the documents of the schedule lands to the 3rd respondent. In this context, reference was made to Rule 16 of the Second Schedule of the Income-Tax Act, 1961 dealing with Procedure for Recovery of Tax wherein under Rule 2, it has been stated that where a notice has

been served on a defaulter, he is barred from dealing with the property except with the permission of the Tax Recovery Officer and no civil court can issue any process against such property in execution of decree for payment of money. Reference was also made to the same as Section 29 of the Act makes applicable the Second Schedule of the Income-Tax Act, 1961 to a proceeding for the recovery of debt under the Act. However, there is no force in the contention of respondent No.6 that there has been violation of Rule 16 of the Second Schedule in the instant case for the following reasons. Firstly, because under Section 29 of the Act the provisions of the Second Schedule of the Income-tax Act, 1961 would "as far as possible, apply with necessary modifications" to any proceeding under the Act and not verbatim. Secondly, it has not been stated that any notice was issued to the petitioners herein pursuant to the issuance of the Certificate of Recovery in the proceeding initiated by KSFC. Thirdly, Rule 66 of the Second Schedule of the Income-Tax Act, 1961 itself provides for postponement of sale to enable a defaulter to raise amounts due under the certificate, where the Recovery Officer has reason to believe that the amount of the Certificate may be raised by the mortgage or lease or private sale of the property of the defaulter in which event the sale of the property comprised in the property for sale can be postponed. More, significantly, the lis in the present case is between the petitioners and the 3rd respondent based on the MOU. Merely because the 6$^{th}$ respondent had sought to recover its dues from the petitioners it cannot seek any reliefs in these proceedings. Also the 6$^{th}$ respondent has not independently assailed the order of the DRAT. Therefore, the contentions of the 6$^{th}$ respondent have to be repelled.

67. In the result, the Writ petition is dismissed. The parties are directed to comply with the directions of the DRAT within a period of one month from the date of receipt of certified copy of this Order, if not already complied.

68. Parties to bear their respective costs.