2026:AHC:185465-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 339 of 2024

AFR

Reserved on 12.05.2026

Delivered on 07.09.2026

M/s Durga Rice and Dall Mills and 4 others

.....Appellant(s)

Versus

Shri Ram Avtar And another

.....Respondent(s)

Counsel for Appellant(s)	:	Kartikeya Saran, Ujjawal Satsangi, Veerendra Kumar Shukla
Counsel for Respondent(s)	:	Ashok Kumar Lal, Maneesh Mehrotra, Shreya Gupta

With

SPECIAL APPEAL No. - 376 of 2024

Banaras State Bank Limited Now Bank of Baroda

.....Appellant(s)

Versus

Shri Ram Avtar and 5 others

.....Respondent(s)

Counsel for Appellant(s)	:	Maneesh Mehrotra
Counsel for Respondent(s)	:	Shreya Gupta, Veerendra Kumar Shukla

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE GARIMA PRASHAD, J.

(Delivered by Hon'ble Saral Srivastava,J)

1. Heard Sri Naveen Sinha, learned Senior Counsel assisted by Sri Ujjawal Satsangi and Sri Kartikeya Saran, learned counsels for the appellants and Sri Manish Goyal, learned Senior Counsel assisted by Ms. Shreya Gupta, learned counsel for the respondents.

2. Since, both the appeals arise out of a common judgement passed by the learned Single Judge, therefore, both the appeals are being decided by a common judgement.

3. For convenience, the facts are being delineated from Special Appeal No.339 of 2024.

4. The appellants by means of the present appeal have assailed the judgement and order dated 11.03.2024 passed by the learned Single Judge in Writ-C No.68334 of 2005. By the impugned judgement, the learned Single Judge has set aside the judgement and order dated 19.10.2005 passed by the Debt Recovery Appellate Tribunal (hereinafter referred to as 'DRAT') in Appeal No.R-525 of 2005 as well as impugned order dated 29.04.2005 passed by the Presiding Officer of Debt Recovery Tribunal, Lucknow in Appeal No.01 of 2004.

5. The facts, in brief, are that appellant no.1-M/s Durga Rice and Dall Mills had taken loan from Banaras State Bank Limited (which was subsequently merged with Bank of Baroda) (hereinafter referred to as 'Bank'). The appellant no.1 was proprietorship firm of which appellant no.2-Ghanshyam Das Mittal was proprietor. The appellant no.2 (Ghanshyam Das Mittal) and appellant no.3 (Sribhagwan Mittal) had created equitable mortgage in respect of their immovable properties for securing Cash Credit Limit granted to the appellant no.1-M/s Durga Rice and Dall Mills and appellant no.2-Ghanshyam Das Mittal (hereinafter referred to as 'borrower').

6. The borrower approached the Bank for enhancement/grant of Cash Credit Limit of Rs.12 lacs. The Bank on the request of borrower sanctioned the Cash Credit Limit of Rs.12 lacs on 22.01.1992 subject to execution of requisite documents of loan, furnishing guarantee and other

securities. Subsequently, the borrower executed number of documents on 22.01.1992 to secure the Cash Credit Limit.

7. The borrower defaulted in payment of loan amount which led the Bank to institute Original Application No.111 of 1999 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'RDDBFI Act, 1993') for recovery of loan amount to the tune of Rs.38,36,871/- alongwith interest @ 18.5% per annum with quarterly rest. The details of property mortgaged with the Bank as stated in Original Application No.111 of 1999 are as follows:-

i)	*Name of the Mortgagee*	*The Benares State Bank Ltd.*
ii)	*Name of the Mortgagor*	*i) Shri G.D. Mittal* *ii) Shri Bhagwan* *iii) Late Satya Narayan* *iv) Late Ram Chandra*
iii)	*Date of Mortgage*	*10.01.1985*
iv)	*Description of property* *Bounded as*	*Building together with land measuring 694 sq. yards, situated at Mohalla Haziapur, Pilibhit Road, Bareilly U.P.* *East: Haji Munshi Godown.* *West: Road M.B.* *North: Land of Naketulla* *South: Road M.B.*
v)	*Amount due*	*Rs.38,36,871.00 together with interest, costs, charges and expenses.*

(The aforesaid mortgage was initially created on 10.1.1985 for securing the credit facilities of the defendant No.1 and its sister concern M/s Mittal Industries, Bareilly).

8. The Debts Recovery Tribunal, Jabalpur (hereinafter referred to as 'DRT') allowed the Original Application No.111 of 1999 by *ex parte* judgement and order dated 21.12.1999 for recovery of Rs.38,36,871/- together with cost along with interest @ 18.5 % per annum with quarterly rests from 22.03.1999 till the date of realisation of decretal amount. The DRT allowed the Bank to recover the said outstanding

amount by sale of movable hypothecated goods as well as mortgaged immovable properties.

9. Thereafter, the Presiding Officer, DRT, Jabalpur issued certificate under sub-Section (7) of Section 19 of RDDBFI Act, 1993. However, because of change of jurisdiction, the case was transferred to the DRT, Lucknow and was registered as DRC No.155/2002/Lucknow.

10. The borrower against the judgement of DRT in Original Application No.111 of 1999 preferred an application dated 08.02.2000 under Section 22(2)(g) of RDDBFI Act, 1993 for setting aside the *ex parte* judgement and order dated 21.12.1999, and restoration of the original case which was transferred to DRT, Lucknow and was numbered as MA(T)/121/2003.

11. The DRT in the meantime on 06.08.2001 passed an order under Section 25 of RDDBFI Act, 1993 for attachment of the property. The detail of the property attached is given below:-

> *"(i). <u>Building together with land measuring 4950 sq.yds. situated at 6(B) Haziapur, Pilibhit Road, Bareilly bounded by East</u>: Bhim Sen Ki Mandia; West: Ganesh Industries; North: Shankar Industries and South; Road; owned by Sri G.D. Mittal, Smt. Saraswati Devi, Sri Bhagwan and Sri Radhey Shyam, All R/C 145(B), Gangapur, Bareilly (U.P.) is hereby attached."*

12. After attachment of the property, the proclamation of sale was drawn under Rules 52 & 54 of Second Schedule of IT Act, 1961 on 10.07.2003. The auction of the property was held on 25.08.2003. The property was auctioned to the respondent no.1 for Rs.35,20,000/-.

13. It transpires from the record that one Nikesh @ Bunty (hereinafter referred to as 'third party) had also filed objection in execution proceeding. The DRT without deciding the objection of third party proceeded with the auction which led the third party to institute a Writ Petition No.4106 (M/S) of 2003 which was disposed off by the Lucknow Bench of this Court by order dated 10.11.2003 with a direction to the DRT, Lucknow to decide the application so preferred by the third party

to recall the *ex parte* order dated 03.07.2003. This Court further stayed the confirmation of sale pursuant to auction held on 25.08.2003.

14. The DRT, thereafter, rejected the objection of third party on 17.12.2003. The DRT also dismissed the application of the borrower to set aside the *ex-parte* judgement by order dated 20.10.2003.

15. The borrower, thereafter, preferred an appeal against the order dated 20.10.2003 under Section 20 of the RDDBFI Act, 1993 before the DRAT which was numbered as R-366/2003. The DRAT stayed the recovery proceeding on 23.12.2003 before Recovery Officer in the appeal preferred by the borrower.

16. As per the borrower's case, he, thereafter, approached the Recovery Officer, DRT to serve stay order dated 23.12.2003 passed by DRAT, but since the Recovery Officer, DRT was not available in his room, therefore, he approached Section Officer, DRT, Lucknow and handed over the certified copy of the stay order dated 23.12.2003 who endorsed the remark on the certified copy of the order 'keep with record'. He handed over one certified copy of the order dated 23.12.2003 to the concerned Clerk, DRT.

17. The further case of the borrower is that he had served a copy of the order dated 23.12.2003 along with statutory appeal on 26.12.2003 to the Bank at Bareilly, and obtained receiving on the same. However, Recovery Officer, DRT on 09.01.2004 confirmed the sale in favour of respondent no.1.

18. It is the further case of the borrower that he came to know about the confirmation of sale on 14.01.2004 when the respondent no.1 along with his son Bharat Agarwal as well as two Constables appeared at the premises of borrower and produced the confirmation of sale certificate dated 09.01.2004 issued by DRT.

19. The borrower, thereafter, preferred an appeal under Section 30 of RDDBFI Act, 1993 before the DRT, Allahabad challenging the confirmation of sale on various grounds. The borrower's appeal before the DRT was numbered as Appeal No.1 of 2004.

20. The appeal of the borrower was allowed by DRT by judgement and order dated 29.04.2005. The DRT set aside the confirmation of sale on various grounds which shall be referred to at the appropriate place.

21. After the DRT allowed the appeal of the borrower, he entered into a compromise with the Bank and filed compromise application in Appeal No. R-366/2003.

22. The Bank also issued 'No Objection Certificate' to the borrower on 13.06.2005. The Bank, thereafter, filed an application before the DRT for depositing Rs.35,20,000/- in favour of respondent no.1 (auction purchaser).

23. The borrower, thereafter, filed a application on 04.07.2005 in Appeal No. R-366/2003 praying that the appeal be decided in terms of letter dated 10.06.2005.

24. The DRAT dismissed the Appeal No.R-366/2003 as withdrawn by order dated 05.07.2005. The relevant extract of the order dated 05.07.2005 is reproduced below:-

> *"There is further development in the case to the effect that the borrower and the Creditor Bank alleged to have entered into a compromise and on the basis of such compromise, 'No Dues Certificate' have been issued by the Creditor Bank and in such position a petition has been filed by the appellant for not proceeding with the present appeal as compromise has been arrived at and 'No Dues Certificate' issued Practically there is no scope of this Appellate Court in Mise. Appeal arising out of an interlocutory order to record any compromise arrived at between the Creditor and the appellant, but the fact remains that the appellant does not want to proceed with this appeal as compromise have been arrived. It is up to the appellant, whether he is to proceed with the present appeal or not. When he does not want to proceed with this appeal, then this court cannot debar him for withdrawing from this appeal. Learned counsel for the respondent has also submitted that compromise have been arrived at Be------- it what it may, such matter of compromise may be recorded or may be disputed before the Tribunal concerned not before this Appellate*

Court. Only position remains that the appellant does not want to proceed with this appeal as compromise have been arrived at. In that way, there is no other alternative but to dismiss this appeal on withdrawal.

<u>There is a petition filed by Ram Avtar for his impleadment in the present appeal under Order 1 Rule 10 of the C.P.C. Practically auction purchaser is neither a necessary party nor a formal party in the present appeal.</u> In this context as already mentioned above, this appeal arises out of the dismissal of the petition filed under Section 22(2)(g) of the DRT Act, wherein the Creditor Bank and the Borrower are the only parties. Auction purchaser was never a party in such petition filed under Section 22(2)(g) of the Act or its disposal thereof. <u>In such position, there is no scope to entertain the petition filed under Order 1 Rule 10 of the C.P.C. by Ram Avtar and that petition is dismissed. Again a prayer has been made by the learned counsel for Ram Avtar that he should be given a chance to file objection regarding withdrawal of the present appeal and his impleadment is set aside. The question of giving further chance to him does not arise at all.</u>

When the appeal is not in existence as mentioned above, no further scope to Ram Avtar can be given either to file objection regarding withdrawal of the appeal or regarding the rejoinder to be filed on the reply given by the appellant on the petition filed under Order 1 Rule 10 of the C.P.C. The grievance of the auction purchaser can be looked into the Appeal No. 525/05 and the present appeal is not the forum to consider any grievance of Ram Avtar.

In the conclusion thereof, the appeal is dismissed on withdrawal."

25. The respondent no.1 being aggrieved by the judgement and order dated 29.04.2005 of DRT in Appeal No.1 of 2004 preferred an appeal before the DRAT Lucknow registered as Appeal No. R-525/2005 in which DRAT passed a stay order directing the borrower not to alienate the auctioned property. The DRAT dismissed the appeal No.R-525/2005 of respondent no.1 by judgement and order dated 19.10.2005.

26. The respondent no.1, thereafter, preferred Writ-C No.68334 of 2005 against the order of DRT dated 29.04.2005 in Appeal No.1 of 2004

and the order of DRAT dated 19.10.2005 in Appeal No.R-525 of 2005 which were set aside by the learned Single Judge on following grounds:-

(A) Once the relief for setting aside the auction proceeding was not prayed by the borrower, the Tribunal had neither any jurisdiction nor authorised under the Act to go beyond the same and could set aside the same.

(B) In the absence of any deposit as contemplated under the Rule 60 or 61 of Second Schedule of IT Act, 1961, the appeal of the borrower challenging the confirmation of sale was not maintainable, therefore, the DRT ought not to have entertained the appeal and set aside the confirmation of sale. The DRAT has not considered this aspect of the matter while dismissing the appeal of respondent no.1.

(C) With the dismissal of Appeal No.R-366/2003 of the borrower, the interim order granted in the said appeal had merged with the order of dismissal. Consequently, learned Single Judge held that once the effect and operation of the interim order wipes out on final order being passed thereon, all consequential proceeding goes. This vital aspect of the matter was not considered by the DRAT while dismissing the appeal of respondent no.1.

27. Challenging the order, Sri Naveen Sinha, learned Senior Counsel for the appellant has submitted that the appeal challenging the confirmation of sale and sale certificate was filed by the borrower under Section 30 of RDDBFI Act, 1993. It is submitted that Section 30 of the RDDBFI Act, 1993 does not contemplate any deposit before filing the appeal, therefore, the learned Single Judge has erred in law in holding that the appellant's appeal to the DRT was not maintainable for want of pre-deposit.

28. He urges that two remedies are available to the borrower under the RDDBFI Act, 1993 to get the sale set aside. One remedy available to the borrower is that he can file an application under Rule 60 or 61 of Second Schedule of the IT Act, 1961 before the Recovery Officer for setting

aside the sale. The other remedy to the borrower is to file an appeal before the DRT under Section 30(1) of RDDBFI Act, 1993 challenging the order of Recovery Officer confirming the sale.

29. He submits that if the borrower opts the remedy under Rule 60 of Second Schedule of IT Act, 1961 and files objection within thirty days from the date of sale for setting aside the sale, the borrower is required to make deposit under Rule 60(1) (a) & (b) of IT Act, 1961. However, if the borrower takes recourse to Rule 61 of Second Schedule, the sale under the said Rule shall not be set aside unless the borrower under the proviso (b) to Rule 61 deposits the amount recoverable from him in the execution certificate.

30. He submits that the requirement of deposit is only when the borrower opts to avail the remedy under Rule 60 or 61 of Second Schedule of IT Act, 1961, but in the instant case, the borrower has approached the DRT challenging the confirmation of sale by the Recovery Officer under Section 30 of RDDBFI Act, 1993 which does not require any pre-deposit to maintain the appeal.

31. He contends that there is no provision under the RDDBFI Act, 1993 mandating the borrower to first approach the Recovery Officer under Rules 60 or 61 of Second Schedule of IT Act, 1961, if aggrieved by the orders of Recovery Officer, then he can approach DRT by filing appeal under Section 30 of RDDBFI Act, 1993. He submits that it is the choice of the borrower either to avail the remedy under Rules 60 or 61 of Second Schedule of IT Act, 1961, or approach DRT directly challenging the order of Recovery Officer.

32. It is submitted that the language of Section 30 of RDDBFI Act, 1993 is plain and clear which states that any person aggrieved by the order of Recovery Officer may prefer an appeal. Thus, he submits that the appeal under Section 30 will lie against any order of Recovery Officer. In support of his submission, he has placed reliance upon the judgement of this Court in the case of ***Kamal Kishore Dheer Vs. Debts Recovery Appellate Tribunal, 2022 (8) ADJ 704 (DB).***

33. Accordingly, he submits that the learned Single Judge has failed to correctly appreciate Section 30 of RDDBFI Act, 1993 while holding that the Tribunal ought not to have entertained the appeal of the borrower for want of pre-deposit.

34. He further contends that the learned Single Judge has erroneously held that DRT has no residuary power to go beyond the relief prayed for by the borrower in the appeal. He submits that the learned Single Judge has misinterpreted the law while recording a finding that once the relief for setting aside the auction proceeding was not made, the DRT had neither the jurisdiction nor authorised under the Act to go beyond the same. He submits that Rule 18 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as 'Rules, 1993') gives residuary power to the Tribunal to pass orders to give effect to its order or prevent abuse of its process or to secure the ends of justice.

35. He submits that the grounds on which the borrower had sought relief for setting aside the confirmation of sale and sale certificate has been extensively spelt out in the memo of appeal, and reading of those grounds clearly discloses that the borrower had pointed out the illegalities in conducting the auction proceeding, therefore, the respondent no.1 was aware of the case set up by borrower in challenging the order of confirmation of sale. He contends that it was not a case where the respondent no.1 was caught by surprise during the hearing of appeal before the DRT. Accordingly, he submits that there was no necessity to pray for setting aside the auction proceeding as the relief of setting aside the confirmation of sale and sale certificate imbibes the relief of annulling the auction proceeding.

36. Finally, he contended that although the interim order dated 23.12.2003 was vacated upon the DRAT's dismissal of the borrower's Appeal No.R-366/2003, this would not affect the DRT's decision under Section 30, as the appeal was decided strictly within the parameters of the said section.

37. In rebuttal, Sri Manish Goyal, learned Senior Advocate submits that under the Scheme of RDDBFI Act, 1993, the borrower has first to avail the remedy under Rule 60 or 61 of Second Schedule of IT Act, 1961, and if he is still aggrieved by the action of Recovery Officer, he can prefer an appeal under Section 30 of the RDDBFI Act, 1993. In other words, he submits that there is no equivalance of remedy rather there is hierarchy of remedy.

38. He submits that appeal under Section 30 of RDDBFI Act, 1993 was not maintainable as the borrower had failed to avail remedy under Rule 60 or Rule 61 of Second Schedule of IT Act, 1961. He further contends that since the borrower had not made pre-deposit as provided under Rule 60 or 61, therefore, in the absence of any pre-deposit, the appeal of the borrower under Section 30 of the RDDBFI Act, 1993 was not maintainable and the DRT had erred in law in entertaining the appeal of the borrower and deciding the same.

39. He submits that once the auction has been conducted and the sale of the property had taken place, and if no objection had been filed under Rule 60 or 61 of Second Schedule of IT Act, 1961, the Recovery Officer was under obligation to confirm the sale under Rule 63 as the confirmation of sale is only a ministerial act. Accordingly, he submits that learned Single Judge has not committed any illegality in holding that in the absence of any pre-deposit, the appeal under Section 30 of RDDBFI Act, 1993 was not maintainable.

40. He submits that the provisions of Second and Third Schedule of IT Act, 1961 and Income Tax (Certificate Proceedings) Rules, 1962 (hereinafter, referred to as ‘Rules, 1962’) has been incorporated in the RDDBFI Act, 1993 by virtue of Section 29. He contends that as the provisions of Second and Third Schedule of IT Act, 1961 and Rules, 1962 have been made applicable for recovery of debt under the RDDBFI Act, 1993, the borrower was under obligation to make pre-deposit at the time of filing of appeal, and since borrower had failed to make deposit under Rule 60 or 61 of Second Schedule of IT Act, the appeal was

incompetent, therefore, the DRT has erred in law in entertaining the appeal of borrower.

41. He further submits that when there is specific provision conferring power upon the DRT to grant relief provided in the relevant Statute, the Tribunal does not have any residuary power to grant relief not prayed for. In other words, he submits that there is no provision in the RDDBFI Act, 1993 which enables the DRT and DRAT to grant relief not prayed for by the appellant.

42. It is contended that it is settled law that an adjudicatory body is not entitled to grant those reliefs which have not been prayed for by the appellant. Consequently, it is contended that in the absence of any prayer seeking declaration of the auction proceeding and sale to be illegal, the DRT had erred in law in setting aside the confirmation of sale, and thus, in turn, granted those reliefs to the borrower that were not prayed for by the borrower in the appeal.

43. He submits that once the stay order granted by the DRT in appeal filed by the borrower under Section 20 of the RDDBFI Act, 1993 had lost its efficacy with the dismissal of the appeal of the borrower, the DRT ought to have taken into consideration the effect of wiping out the stay order while deciding the appeal under Section 30 of the RDDBFI Act, 1993.

44. Ms. Shreya Gupta, Advocate in addition to the aforesaid submission of Sri Manish Goyal has contended that respondent no.1 is a bona fide purchaser in Court auction, therefore, the Court should strive to protect the interest of respondent No. 1. She submits that law is settled that a stranger who purchases at an auction sale has to be considered as a bona fide purchaser for value, therefore, he should not be allowed to suffer on account of mistake or irregularities committed in Court of law.

45. She further submits that conduct of borrower was unfair and unscrupulous as is evident from the chain of events in the present case, therefore, the borrower is disentitled to any relief from a Court of law.

46. In rejoinder, Sri Kartikeya Saran, learned counsel for the appellant submits that Rule 56 of Second Schedule of IT Act, 1961 deals with the sale by auction and provides that sale shall be by public auction to the highest bidder and shall be subject to the confirmation by the Recovery Officer. He submits that after the auction takes place, the sale is to be confirmed by the Recovery Officer, and while confirming the sale, the Recovery Officer has to apply his mind and consider whether the auction proceeding had been conducted as per procedure provided under the law, and if he is satisfied that there was no irregularity in auction proceeding, only then he can proceed to confirm the sale. He submits that Rule 63 of Second Schedule of IT Act, 1961 mandates the Recovery Officer to pass an order confirming the sale and only then the sale becomes absolute.

47. He further submits that reading of Section 29 of RDDBFI Act, 1993 suggests that Rules of Second and Third Schedule of the IT Act are to be applied with necessary modification and not as it is. He submits that Section 30 of RDDBFI Act, 1993 begins with a non-obstante clause which excludes the application of Section 29, and argues that Section 30 itself does not envisage any pre-deposit by the borrower at the time of filing an appeal under that section.

48. He lastly urges that respondent no.1 has not assailed either before the learned Single Judge or before this Court finding of DRT affirmed by the DRAT with regard to irregularity committed in the auction proceeding, thus, the said findings being finding of fact have attained finality. It is, thus, contended that the learned Single Judge without reversing the findings of the DRT regarding illegalities and irregularities committed in the auction sale has erred in law in setting aside the order of DRT and DRAT while allowing the writ petition.

49. We have heard learned counsel for the parties and perused the record.

50. In the light of the facts delineated above, we proceed to deal with the contentions urged by the learned counsel for the parties.

51. To test the validity of argument of learned counsel for the respondents that in the absence of pre-deposit under Rule 60 or 61 of Second Schedule of IT Act, 1961, appeal under Section 30 of the appellants was not maintainable before the DRT against the order of confirmation of sale, it would be apposite to have a glance at Sections 25, 29 & 30 of the RDDBFI Act, 1993 which are being reproduced below:-

*"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;

(aa) taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same;

(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.

(d) any other mode of recovery as may be prescribed by the Central Government.

*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).”

52. According to the learned counsel for the respondents, the sale is to be conducted as per the procedure contained in Second Schedule of the IT Act which has been made applicable by virtue of Section 29 of the RDDBFI Act, 1993, and once the property has been sold by auction, the only remedy for the borrower is to approach the Recovery Officer under Rule 60 or Rule 61 of Second Schedule of the IT Act, 1961 and if the borrower does not avail the remedy provided under Rule 60 or 61 by filing necessary application and making pre-deposit as required under the aforesaid Rules, the confirmation of sale by the Recovery Officer is only a ministerial act and since the appellant has not availed the remedy prescribed under Rule 60 or 61 of Second Schedule of the IT Act and did not make any deposit, the appeal under Section 30 of the RDDBFI Act was not maintainable nor could assail the order of confirmation of sale.

53. It is explicit from reading of Section 25(a) of the RDDBFI Act, 1993 that it is enabling section authorising the Recovery Officer for attachment and sale of the movable or immovable property of the borrower on receipt of copy of certificate under sub-section (7) of Section 19 of the RDDBFI Act, 1993. However, the provisions of Second and Third Schedule of the IT Act, 1961 and Rules, 1962 have been made applicable with necessary modifications by virtue of Section 29 of the RDDBFI Act, 1993.

54. So the Recovery Officer derives the power of attachment and sale of movable or immovable property under Section 25 of RDDBFI Act, 1993 whereas to execute the sale of immovable property, the procedure prescribed under the provisions of Second and Third Schedule of IT Act

is to be followed by the Recovery Officer which has been made applicable with necessary modifications by virtue of Section 29 of RDDBFI Act, 1993.

55. If we take a glance at the attachment order dated 06.08.2001 issued by the Recovery Officer, it is evident that the order of attachment of property has been made under Section 25 of the Act, 1993. The order dated 06.08.2001 is reproduced herein below:

> *"Both the parties present.*
>
> *Counsel for JD nos.1 and 2 request for some time. Shri Arvind Sharma, Law Officer for the applicant bank request that attachment of the mortgaged properties be made and no time may be granted to the JD's. The JD's have not liquidated the debts till date. <u>In view of the above following order is made under Section 25 of the RDDBFI Act, 1993</u>.*
>
> *(i) 'Building together with land measuring 4950 sq. yas. situated at 5 (B) Haziapur, Pilibhit Road, Bareilly bounder by East Bhim Sen Ki Mandia; West: Ganesh Industries; North Shankar Industries and South Road; owned by Sri G.D. Mittal, Smt. Saraswati Devi, Sri Bhagwan and Sri Radhey Shvam. All R/o 145 (B) Gangapur, Bareilly (U.P.)' is hereby attached.*
>
> *(ii) The 'execution of this attachment order shall be made by Shri Kamleshwar Singh, Advocate, High Court, Allahabad on 28.8.2001 in presence of senior officers of the concerned bank and the JD's and independent witnesses.*
>
> *(iii) The copy of the attachment order shall be affixed at conspicuous part of the above mentioned property as well as in the office of Sub-Registrar and Tahsildar of the concerned district.*
>
> *(iv). The execution of this attachment order shall be done by beat of drum or by any other customary mode.*
>
> *(v). The applicant bank is directed to help the attaching officer in identifying the above property and in providing any other necessary assistance during the course of execution.*

(vi) The JDs are directed to appear before the undersigned on 27.09.2001 to take notice of date to be fixed for setting terms of proclamation of sale of the above mentioned property.

Let Form No.16 duly filled and signed to be issued to all concerned.

Fix on 27.09.2001."

56. After the order dated 06.08.2001 was passed under Section 25 of the RDDBFI Act, 1993, the order of attachment of immovable property was passed under Rule 48 of Second Schedule of IT Act, 1961. So it is only procedural part for carrying out the sale of the property that has been adopted under Section 29 of RDDBFI Act, 1993 by incorporating the provisions of Second and Third Schedule of IT Act, 1961 and Rules 1962 with necessary modification.

57. It goes without saying that the sale process starts with the proclamation. Perusal of proclamation of sale order dated 10.07.2003 reveals that the auction sale proceeding of the attached property had been undertaken by the Recovery Officer under Sections 25 & 29 of the RDDBFI Act, 1993. The order dated 10.07.2003 passed by the Recovery Officer, DRT, Lucknow, is reproduced herein below:-

"10.07.2003

Counsel for applicant bank M/s Usha Chawla present.

None present for the JD's or any other parties.

Applicant bank has already filed valuation of the property.

The JD's have not offered any terms of settling the proclamation of sale of the attached properties to be put to sale.

Applicant Bank confirms that the JD's have till date not liquidated their debts as per the certificate amount.

<u>In view of the above, and since dependants have not liquidated dues of the bank, the auction sale proceeding of the attached immovable properties shall now be taken up.</u>

<u>In exercise of the power under provision of Section 25 and Section 29 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 as</u>

amended, the following order is made by the undersigned to meet the ends of justice.

O R D E R

i) The immovable property already attached by order dated 6.08.2001 by DRT Allahabad shall be sold by Advocate commissioner by public auction on 25.08.03 from 11.00 A.M. onwards at the premises of Bank of Baroda, Kutub Khana, Branch, Main Road, Bareilly.

ii) The immovable mortgaged property i.e. Building together with land measuring 4950 sq. yards situated at 6(B), Haziapur, Pilibhit Road, Bareilly and bounded as under :-

E : Bhim Sen Ki Mandi

W : Ganesh Industries

N : Shankar Industries

S : Road

and owned by Shri G.D. Mittal, Smt. Saraswati Devi, Shri Bhagwan and Shri Radhey Shyam, JD No.2, 3, 4 and 5

Reserved price : Rs. 35 Lakhs

ii) The proclamation of the sale shall be made in the following manner by the Recovery Inspector :

a) The proclamation of the sale shall be made at the same place on or near such property by beat of drum or other customary mode. The copy of the proclamation shall be affixed at a conspicuous part of the property and also affixed at a conspicuous part of the office at the Debts Recovery Tribunal, Lucknow.

b) The proclamation for the sale shall also be published in an abridged form in a local news paper and the cost of such publication shall be deemed to be the cost of the sale. A copy of the publication shall be filed by the applicant bank well before the date of the auction.

c) The proclamation shall be made in the presence of independent witnesses and also in the presence of senior officers of the applicant bank, and the defendants.

d) The applicant bank shall provide all necessary assistance for proclamation of sale and all necessary arrangements for holding the auction at the site as ordered and any other assistance in execution of this order.

e) Counsel for the applicant bank shall procure a copy of this order and inform the concerned branch/cell of the applicant bank to contact the recovery Officer and take necessary steps for the proclamation of the sale and auction of the property. Let the applicant bank confirm compliance of the arrangements.

f) Steps to be taken by the Counsel/applicant bank to send a copy of the proclamation of Sale (form 13) to the concerned defendants by registered post with acknowledgement due.

g) Let Form 13 be issued duly filled and signed by the undersigned, to all concerned.

Fix on 18.09.2003 for further orders."

58. Rule 53 of Second Schedule of IT Act, 1961 provides 'contents of proclamation'. Rule 54 of Second Schedule of IT Act, 1961 provides for 'mode of making proclamation'. Rule 55 of Second Schedule of IT Act, 1961 provides for 'time of sale'. Rule 57 of Second Schedule of IT Act, 1961 provides for 'deposit by purchaser and resale in default'.

59. Rule 63 provides for 'confirmation of sale' and is the specific mechanism by which the Recovery Officer makes an order confirming the sale, rendering it absolute. Thus, the confirmation of sale under Rule 63 of the Second Schedule of IT Act, 1961 by the Recovery Officer is the final step that concludes the sale, and only thereafter the sale certificate is issued to the auction purchaser.

60. So, the confirmation of sale by the Recovery Officer under Rule 63 of the Second Schedule of IT Act, 1961 followed by issuance of a sale certificate under Rule 65 vests the right, title and interest of the property in the auction purchaser.

61. The order of the Recovery Officer under Rule 63 is referrable to Section 25 (a) of the RDDBFI Act, 1993, which confers the authority

upon the Recovery Officer to sell the property. Consequently, it can be safely concluded that Rule 63 is merely the procedural machinery used to finalise the sale authorised by the Parent Statute namely RDDBFI Act, 1993, and any final order confirming that sale draws its ultimate legal authority from Section 25 (a) of RDDBFI Act, 1993. Therefore, the order of confirmation of sale is an order passed by the Recovery Officer in exercise of power under Section 25 (a) of RDDBFI Act, 1993.

62. The Apex Court in the case of ***Parayankandiyal Eravath Kanapravan Kalliani Amma (Smt) and Others Vs. K. Devi and Others (1996) 4 SCC 76*** has explained how to interpret the non-obstante clause. Paragraph no.77 of the said judgement is reproduced below:-

> *"77. "<u>Non obstante clause is sometimes appended to a section in the beginning, with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision or Act mentioned in that clause.</u> It is equivalent to saying that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provision indicated in the non obstante clause will not be an impediment for the operation of the enactment." (See: Union of India v. G.M. Kokil (1984) (Supp.) SCC 196; Chandavarkar Sita Ratna Rao v. Ashalata S. Guram (1986) 4 SCC 447; R.S Raghunath v. State of Karnataka (1992) 1 SCC 335; G.P. Singh's Principles of Statutory Interpretation)."*

63. The Apex Court in the case of ***A.G. Varadarajulu & Another Vs. State of T.N. & Others (1998) 4 SCC 231*** has held that while dealing with non-obstante clause, the Court must try to find out the intention of the legislature as to the extent to which it intends to give overriding effect over the other provisions of the Act. Paragraph 16 of the said judgment is reproduced herein below:-

> *"16. <u>It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the</u>*

<u>enacting part of the section.</u> In Aswini Kumar Ghose v. Arabinda Bose AIR 1952 SC 369,Patanjali Sastri, J. observed:

> *"The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously;"*

In Madhav Rao Scindia v. Union of India (1971)1SCC85, Hidayatullah, C.J. observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. "A search has, therefore, to be made with a view to determining which provision answers the description and which does not."

64. Section 30(1) of the RDDBFI Act, 1993 starts with non obstante clause which implies that Section 30(1) has overriding effect over Section 29. The words employed in Section 30 are explicit and clear and state that any person aggrieved by an order of the Recovery Officer made under this Act may prefer appeal before the DRT within 30 days. So, an appeal under Section 30 (1) of RDDBFI Act, 1993 will lie against an order of Recovery Officer passed under this Act.

65. We have detailed above reasons for concluding that order of confirmation of sale under Rule 63 falls under Section 25 (a) of RDDBFI Act, 1993. Therefore, the appeal under Section 30 (1) of RDDBFI Act, 1993 will directly lie before the DRT against the order of Recovery Officer confirming the sale.

66. The aforesaid reasoning is also fortified by reading of sub-section (2) of Section 30 which explicitly dictates that upon receiving the appeal and giving the appellant an opportunity to be heard, the Tribunal may confirm, modify or set aside the order made by the Recovery Officer in exercise of his power under Sections 25 to 28 (both inclusive).

67. So, it is explicit by reading of sub-Section (2) of Section 30 that legislature has provided appeal under Section 30(1) from an order passed by the Recovery Officer in exercise of power under Sections 25 to 28 (both inclusive).

68. The cardinal principle of interpretation of Statute is where language in the Statute is clear, the intention of the legislature is to be gathered from the language used in the Statute. Paragraph no.10 of the judgement of the Apex Court in the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay (2002) 4 SCC 297*** is reproduced herein below:-

> *"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. <u>Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (sick altering) the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted.</u> The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner (1846) 6 Moore PC 1) "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the*

particular case. This principle is too well settled and reference to a few decisions of this Court would suffice. (See: Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests (AIR 1990 SC 1747), Union of India v. Deoki Nandan Aggarwal (AIR 1992 SC 96), Institute of Chartered Accountants of India v. Price Waterhouse ((1997) 6 SCC 312) and Harbhajan Singh v. Press Council of India (JT (2002) 3 SC 21)."

69. At this juncture, it would be useful to refer to relevant extract of paragraph no.30 of the judgment of Apex Court in the case of ***Union of India and Another Vs. Delhi High Court Bar Association and Others, 2002 (4) SCC 275*** wherein Apex Court has held that Section 30, after the amendment by Amendment Act, 2000, gives a right to any person aggrieved by an order of Recovery Officer to prefer an appeal to the Tribunal. Paragraph no.30 of the aforesaid judgment is reproduced below:-

"30. By virtue of Section 29 of the Act, the provisions of the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, have become applicable for the realisation of the dues by the Recovery Officer. Detailed procedure for recovery is contained in these Schedules to the Income Tax Act, including provisions relating to arrest and detention of the defaulter. It cannot, therefore, be said that the Recovery Officer would act in an arbitrary manner. Furthermore, Section 30, after amendment by the Amendment Act, 2000, gives a right to any person aggrieved by an order of the Recovery Officer, to prefer an appeal to the Tribunal. Thus now an appellate forum has been provided against any orders of the Recovery Officer which may not be in accordance with law. There is, therefore, sufficient safeguard which has been provided in the event of the Recovery Officer acting in an arbitrary or an unreasonable manner. The provisions of Sections 25 and 28 are, therefore, not bad in law."

70. The Co-ordinate Bench of this Court in the case of ***Kamal Kishore Dheer (supra)*** has also held that borrower being aggrieved person can prefer appeal under Section 30 of RDDBFI Act, 1993 against the order of Recovery Officer without resorting to provisions of Rule 60

or 61 by making an application before the Recovery Officer. Paragraph nos.20 to 23 of the aforesaid judgement are being reproduced below:-

“20 The aforesaid decision of the Bombay High Court follows an earlier decision in Hill Properties Limited v. Union Bank of India and others, 2016 SCC OnLine Bom10362.

21. The same issue fell for consideration before the Madras High Court in Nazims Continental and others v. The Indian Overseas Bank, Triplicane Branch, Madras and others, 2009 SCC OnLine Mad 862, where it was held:

"20. In view of the provisions of law and finding of the Court and discussions made above, we hold that the recovery officer has also jurisdiction to entertain an application under rules 60, 61 and 62 of Part-III of 2nd Schedule to the Income Tax Act and in case any person is aggrieved against such order, may prefer appeal under Section 30 of the Act, 1993. As the defaulter or any person whose interests are affected by sale is supposed to pay the pre-deposit amount under Rule 60 and a defaulter required to pay pre-deposit amount under Rule 61 except the person whose interests are affected due to non-service of notice on defaulter to pay the arrears or material irregularity in publishing or conducting the sale should apply under Rule 61 or the purchaser, who may file application under Rule 62, who are not liable to pre-deposit any amount, in such case, for preferring an appeal under Section 30 of Act, 1993, against an order of recovery officer under Rules 60, 61 or 62, no pre-deposit amount required to be deposited.

21. Section 30 starts with non obstante clause, as evident from the said provision and quoted hereunder:-

"30. Appeal against the order of Recovery Officer.

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

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

In the case of Union of India v. I.C. Lala (AIR 1973 SC 2204), Supreme Court held that non obstante clause does not mean that the whole of the said provision of law has to be made applicable or the whole of the other law has to be made inapplicable. It is the duty of the Court to avoid the conflict and construe the provisions to that they are harmonious.

22. Mode of recovery of debt is prescribed under Section 25 of DRT Act, as quoted hereunder:-

"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."

From the aforesaid provision it will be evident that apart from attachment and sale of movable or immovable property of the defendant, the recovery officer, under the said provision, may proceed to recover the amount of debt by arresting the defendant and his detention in prison or by appointing a receiver for the management of the movable or immovable properties of the defendant. Those two provisions made under clauses (b) and (c) of Section 25 cannot be challenged before the Recovery Officer under II or III Schedule of Income Tax Act. Therefore, except by preferring an application (appeal) under Section 30 against the order of recovery officer, any aggrieved person has no other option. It cannot be said that for sale of movable or immovable *property as made under II Schedule to Income Tax Act, including Rules 60 or 61 or 62 of Part-III of II Schedule, then by way of appeal only under Section 30 could be preferred and no such appeal could be preferred directly against the order of attachment and sale of movable or immovable property of the defendant, if recovery officer pass such order under Section 25. Therefore, we hold that against the order of attachment and sale of movable or immovable property of defendant, who are the defendants before the Tribunal, an aggrieved person, instead o moving application under Rule 60 or 61 or 62, may also prefer an application (appeal) under Section 30 of the Act, 1993. Therefore, there being a concurrent jurisdiction, DRT under Section 30 and recovery officer under Rules 60, 61 and 62 of Part-III of II Schedule of Income Tax Act in regard movable property and jurisdiction of Tribunal under Part-II of 11 Schedule of Income Tax Act in regard to movable property, application of any defendant cannot be entertained by Tribunal under Section 30 without pre-deposit of the amount in terms with Rules 60 or 61 bypassing the jurisdiction of the recovery officer under the aforesaid provisions of II Schedule of Income Tax Act. Further, the auction purchaser being not a defendant in the original application under Section 19, cannot file an appeal under Section 30 against the order of recovery officer, if it intends to prefer an application, if under the provision of Rule 62 of Part-III of II Schedule to Income Tax Act."*

(emphasis by Court)

22. The aforesaid position of the law makes it pellucid that it is not imperative for a defaulter or any person whose interest is affected by the sale held by the Recovery Officer acting under the RDDBFI Act to take resort to the provisions of Section 60 or 61 of the Second Schedule to the 1961 Act. Doing a harmonious constructions of the provisions of Sections 29 and 30 of the RDDBFI Act, the right of a person aggrieved by an order of the Recovery Officer under the aforesaid Act cannot be confined in the manner that he must of necessity invoke Rule 60 or 61 by making an application before the

Recovery Officer in the first instance and against the order of the Recovery Officer, come up in appeal under Section 30. If that were done, it would whittle down the scope of the appellate powers of the Tribunal against all orders of the Recovery Officer, that include an order of attachment, auction and sale prior to its confirmation. If the challenge is laid on grounds completely different from those envisaged under Rule 60 of the Rules framed under the Second Schedule of the 1961 Act, there may not be any requirement of deposit at all. The challenge may be on grounds like those envisaged under Rule 61 of the Rules aforesaid or on any other ground.

23. Mindful of the fact that the petitioner-appellant was claiming to redeem the mortgagor's interest, akin to an objection under Rule 60, the Tribunal directed the petitioner-appellant to deposit the amount specified in the proclamation of sale as the one for which the recovery was ordered. The petitioner-appellant, accordingly, deposited a sum of 92,200/- on 13.11.2009. The Tribunal, therefore, permitted the petitioner-appellant, who had stepped into the shoes of the judgment debtor-mortgagor through a registered sale-deed of the mortgagor's estate, to exercise the equity of redemption and set aside the sale, subject to the condition that the petitioner-appellant would have to bear all expenses of the sale, pay poundage fees and further pay 10% simple interest to the auction purchaser till payment was made. In our opinion, therefore, the learned Single Judge was not right in holding that since the petitioner-appellant had not followed the procedure prescribed under Rule 60 of the Second Schedule to the 1961 Act, he could not ask the auction sale, not yet confirmed, to be set aside through an appeal under Section 30 of the RDDBFI Act."

71. Learned counsel for the respondents has placed reliance upon paragraph nos.13, 14 & 25 of the judgement of Madras High Court in the case of ***Nazims Continental (supra)***.

72. Though, in paragraph no.25 of the judgement in the case of ***Nazims Continental (supra)***, the Madras High Court has held that *"There is nothing on the record that for setting aside the sale the*

borrower deposited any amount as pre-deposit as required under Rules 60/61 r/w Section 30 as required under the law and held by us in the preceding paragraph. In absence of such deposition of amount as pre-deposit to set aside the sale or confirmation of sale, the impugned order dated 19th Aug. 2008, cannot be upheld. However, if pre-deposit amount is deposited within 30 days, it will be open to the Tribunal to pass final order in the appeal u/s 30 made to set aside the sale, if found illegal or against law or if perverse."

73. The view taken by the Madras High Court referred above in the case of ***Nazims Continental (supra)*** has also been followed by Kerala High Court in the case of ***Dr. Mathew Antony Vs. Oriental Bank of Commerce and Others 2024 SCC OnLine Ker 6067*** as well as by the Gujarat High Court in the case of ***Hasubhai Jewellers & Others Vs. Union Bank of India and Another 2010 SCC OnLine Guj. 4340.***

74. However, with respect we do not concur with the reasons recorded by the Madras High Court in the aforesaid paragraph which has been followed by Kerala High Court as well as Gujarat High Court for two reasons; we are bound by the precedent laid down by the Coordinate Bench of this Court; secondly, the reasons we have deliberated above in concluding that the order of confirmation of sale by the Recovery Officer falls under Section 25(a) of RDDBFI Act, 1993, therefore, appeal will lie under Section 30 have not been considered by the Madras High Court.

75. As held above, the order of the Recovery Officer falls under Section 25 (a) of RDDBFI Act, 1993, therefore, the borrower can directly file appeal under Section 30 (1) of RDDBFI Act, 1993 before the DRT against an order confirming the sale without first invoking Rule 60 or 61 of Second Schedule of IT Act, 1961. Consequently, we hold that the legislature has provided the borrower a concurrent remedy; either to invoke Rule 60 or 61, or to approach the DRT directly by filing an appeal under Section 30 (1) of the RDDBFI Act, 1993 within thirty days

from the date a copy of the order passed by the Recovery Officer confirming the sale is issued to him.

76. In view of the aforesaid discussion, we do not find substance in the submission of Sri Manish Goyal, learned Senior Counsel that there is no equivalence of remedy rather there is hierarchy of remedy which the borrower has to avail for challenging the order of confirmation of sale.

77. We find that the learned Single Judge did not consider the aforesaid aspect of the matter while holding that appeal of the borrower was not maintainable for want of pre-deposit.

78. In the case of ***Om Sakthi Sekar Vs. V. Sukumar and Others AIR 2026 SC 1460****,* the Apex Court has vividly explained the purpose of auction. Paragraph nos.15 & 16 of the said judgement are being reproduced below:-

> *"15. While there can be no quarrel with the settled proposition that the rights of a bona fide auction purchaser deserve due protection and* <u>*that confirmed court sales should not ordinarily be interfered with, it is equally well established that such protection is not absolute. Where credible issues are raised regarding the adequacy of valuation or the fairness of the process leading to the fixation of the reserve price, the supervisory jurisdiction of the Court may be invoked to ensure that the recovery proceedings have been conducted in a manner that secures the best possible value of the property. The objective of recovery proceedings is not merely to complete the sale but to realise the maximum value of the secured asset so as to balance the interests of the creditor and the borrower.*</u> *In this regard, reference may be made to the decision of this Court in Rajiv Kumar Jindal v. BCI Staff Welfare Association 2023 SCC Online SC 507, wherein, it was observed that the purpose of an auction is to obtain the most remunerative price for the property by affording an opportunity to intending purchasers to participate in a process of competitive bidding, thereby ensuring transparency and fairness in the sale. The Court further emphasized that if the process of competitive bidding is curtailed or compromised, the possibility of underbidding or securing an inadequate price cannot be ruled out. In such circumstances, the court is required to exercise its discretion with circumspection so as to*

safeguard the legitimate interests involved in the sale process. The following paragraphs are apposite:

"24. The object of the auction is to secure optimum realisable value of the property by giving opportunity to the potential buyers facing competitive bids either in open or closed format. The terms "auction" or "bid" are inter-related as both give the idea of selling the product to the public. Bidding involves the process where a person offers a price which is known as a bid. The process of bidding takes place in a situation where large number of people show their willingness to buy a particular product or a service and bidding in a sealed envelope is often used by various companies, industries and small businesses for assessing the needs of the public at large. On the other hand, auction is the process that involves buying and selling goods and services by offering them for bids, taking bids and selling the item to the highest bidder and that is possible if there is a competitive bidding between the bidders.

25. <u>The purpose of auction (open or close format) is to get the most remunerative price and giving opportunity to the intending bidders to participate and fetch higher realizable value of the property. If that path is cut down or closed, the possibility of fraud or to secure inadequate price or underbidding would loom large. In the given circumstances, it is the duty of the court to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case</u>.

26. The object of auction has been considered by this court in Lakshmanasami Gounder v. C.I.T. Selvamani, 1992 AIR SCW 551 as under :-

"…The object of the sale is to secure the maximum price and to avoid arbitrariness in the procedure adopted before sale and to prevent underhand dealings in effecting sale and purchase of the debtors property. Public auction is one of the modes of sale intending to get highest competitive price for the property. Public auction also ensures fairness in actions of the public authorities or the sale officers who should act fairly and objectively. Their action should be legitimate. Their

> *dealing should be free from suspicion. Nothing should be suggestive of bias, favouritism, nepotism or beset with suspicious features of underbidding detrimental to the legitimate interest of the debtor. . ."*

16. In the present case, the High Court, upon examining the record, was of the view that the question relating to valuation of the property and the fixation of the reserve price warranted closer scrutiny. Significantly, the High Court has neither set aside the auction sale nor questioned the participation of the auction purchaser; rather, it has confined its direction to a reconsideration of the issue of valuation by the DRT."

79. It is trite law that the Court should be reluctant to interfere with the sale of property by auction but that protection is not absolute, and in a given case, if the Court finds that there is element of fraud or material irregularities have been committed in conducting the sale, the supervisory jurisdiction of the Court can be invoked to ensure the fairness in the auction proceeding to secure the best possible value of the property. Therefore, we are of the view that the Recovery Officer while passing an order of confirmation of sale must apply his mind to ensure that the auction of sale had taken place strictly in accordance with the procedure prescribed in the relevant Statute.

80. Consequently, we reject the submission of Sri Manish Goyal that in the absence of any objection of borrower under Rule 60 or 61, the Recovery Officer must confirm the sale under Rule 63 as it is only a ministerial act.

81. Now coming to the second argument of learned counsel for the appellants that learned Single Judge has erred in law in allowing the writ petition on the ground that once the relief for setting aside the auction proceeding was not prayed for by the appellants, the DRT did not have jurisdiction to set aside the auction proceeding.

82. However, learned counsel for the respondents has urged that DRT does not have any residuary power to grant a relief where there is specific provision conferring power upon the DRT to grant a relief provided in the relevant Statute.

83. Sri Naveen Sinha, learned Senior Counsel for the appellants while elaborating his submission has placed the memorandum of appeal filed by the appellants before the DRT to demonstrate that the grounds set out in the memo of appeal on which the appellants had sought the relief of setting aside the confirmation of sale had been spelt out in the memo of appeal, and it is evident from the grounds stated in the memo of appeal that the appellants have pointed out various irregularities committed by the Recovery Officer in auction proceeding. Therefore, the respondent no.1 was aware of the fact that the appellants have also challenged the action of Recovery Officer in illegally carrying out the auction proceeding and sale of immovable property. Consequently, it is urged that it was not a case where the respondent no.1 was caught by surprise during the course of hearing that appellants also have challenged the action of the Recovery Officer in carrying out the sale illegally.

84. He has placed reliance upon ground nos.xv to xviii of paragraph no.5 of the appeal which are reproduced below:-

"xv. That the aforesaid statutory appeal, under section 20 of the Act, 1993 came up for hearing on the application for interim relief on dated 23rd December, 2003 and after hearing the appellants/applicants, the Debts Recovery Appellate Tribunal, Allahabad passed an interim direction and stayed the confirmation of sale vide order dated 23rd December, 2003.

xvi. That on 24th December, 2003, the appellants/applicants immediately approached with the Recovery Officer, Debts Recovery Tribunal, (Concerned Recovery Officer), Lucknow in connection with the submission of the interim direction dated 23rd December, 2003 passed by the Debts Recovery Appellate Tribunal, Allahabad. However, the concerned Recovery Officer, Debts Recovery Tribunal, Lucknow was not available in his sitting room, hence having no other alternative remedy, the appellants/applicants (Judgement Debtor No.5) i.e. Shri Radhey Shyam Mittal approached with the Section Officer, Debts Recovery Tribunal, Lucknow and also handed over the certified copy of Judgement and order dated 23-12-2003 to him considering the same the Section Officer, Debts Recovery

Tribunal, Lucknow endorsed the remarks on the certified copy of order dated 23rd December, 2003 "keep with record" and also handed over the same to the concerned clerk, Debts Recovery Tribunal, Lucknow.

xvii. That thereafter the appellants/applicants also handed over the same copy of interim direction dated 23rd December, 2003 alongwith a copy of statutory appeal on dated 26th December, 2003 to the respondent-Bank at Bareilly and also obtained duly receiving on the same dated 26th December, 2003.

xviii. That on 14th January, 2004, the respondent-auction purchaser Shri Ram Avtar alongwith his son Shri Bharat Agarwal as well as two other constables appeared at the premises of M/s Durga Rice & Dal Mills, Haziapur, Pilibhit Road, Bareilly and also produced the confirmation of sale of immovable property certificate dated 9th January, 2004, issued by the Recovery Officer, Debts Recovery Tribunal, Lucknow."

85. He has further placed paragraph nos.xx to xxiv of paragraph no.5 of the appeal wherein the appellants have pointed out the illegality in publication of proclamation. The appellants in the aforesaid paragraph have questioned the fixation of reserved price of Rs. 35 lacs by the Recovery Officer. He has also questioned the legality of auction proceeding on the ground that single bidder had participated in the auction proceeding. Paragraph nos.xx to xxiv of paragraph no.5 of the appeal are reproduced herein below:-

"xx. That it is desirable to state here, that the Recovery Officer. Debts Recovery Tribunal, Lucknow calculated the reserve price of immovable property in the tune of Rs.35 lacs only on the basis of incorrect measurement of land measuring 4950 sq. yards situated at 6-B, Haziapur, Pilibhit Road, Bareilly, bounded as under:-

East - Bhimsen Ki Mandi

West - Ganesh Industries

North - Shanker Industries

South - Road

However, in fact the immovable property dispute in question having its total land measuring 6100 sq. yards approximately. It may be further submitted that the Recovery Officer, Debts Recovery Tribunal, Lucknow also shown/ indicated the situation of boundaries in incorrect manner, since the western and northern portion having commercial properties, as like to the Dal Mills, Commercial Godowns etc. which resulted the immovable property land in question in the commercial place of the immovable property dispute in question.

xxi. That it is desirable to state here that the Recovery Officer, Debts Recovery Tribunal, Lucknow put all the immovable property dispute in question on the basis of valuation report dated 22nd March, 2003 in which total area of land measuring shown/ indicated in the shape of 3762 sq. meter, which would be to come into the tune of 4499.46 sq. yards. However in fact the Recovery Officer, Debts Recovery Tribunal, Allahabad vide attachment order dated 6th August, 2001 shown the land measuring the carpet area 4950 sq. yards which later on also shown/indicated by the learned Recovery Officer, Debts Recovery Tribunal, Lucknow in his another order of proclamation of sale dated 10th July, 2003. It may be further submitted, if the measurement of 4950 sq. yards is converted into shape of square meter, then it would be to come in the shape of 4138.69 sq. meter, as such the Recovery Officer, Debts Recovery Tribunal, Lucknow calculated the reserve price of immovable property in the tune of 35 lacs only on the basis of incorrect measurement of land treating the land measuring area 3762 sq. meter, hence the basis structure of valuation report dated 22nd March, 2003 is based on the basis of incorrect measurement of land area of the immovable property, which resulted the cost of immovable property disputed in question in lower market value of the land.

xxii That it is desirable to state here that the Recovery Officer, Debts Recovery Tribunal, Lucknow calculated the reserve price of the immovable property in the tune of Rs.35 lacs on the basis of incorrect measurement of construction area/structure in the shape of 1255 Sq. Meter constructed in 1968 as well 278.81 sq. meter constructed in 1982. However infact at the place of immovable property dispute in question, the construction area/structure is at present available in the *tune of 2508.3 sq. meter approximately, which resulted in the tune of extra constructed area of 975 sq. meter approximately, as such the constructed area shown in the valuation report dated 22.03.2003 is incorrect measurement, as such the calculation of reserve price of the immovable property in the tune of Rs.35 Lacs is incorrect figure/valuation adjudicated by the Recovery Officer, Debts Recovery Tribunal, Lucknow.*

xxiii That it is desirable to state here, that the property auction publication shown/published in the New paper, Danik Jagran, Bareilly on dated 21st August, 2003 which is before 4 days from the date of its auction dated 25th August, 2003.

xxiv That on 25th August, 2003 the public auction as the same was scheduled on 25th August, 2003, the public auction as the same was scheduled on 25th Augusut, 2003 has taken place and only one single bid participated in the auction proceedings namely Shri Ram Avtar through his authorized representative Shri Bharat Agarwal, Bareilly."

86. Besides the above grounds, the appellants have taken various other grounds challenging the auction proceeding in paragraph no.5 of the appeal stating 'brief facts of the case'. Based upon these facts and grounds stated in the appeal, the appellants have prayed for the following relief in the appeal:-

"a. That the confirmation of sale of immovable property order dated 9th January, 2004 as well as certificate of sale of immovable property, form No. 20 passed by the Recovery Officer, Debts Recovery Tribunal Lucknow in DRC NO.155/2002/LKO be set aside.

b. That any other order or direction which is just, fit and proper in the present facts and circumstances of the case may also kindly be passed in favour of the appellants/applicants.

c. That cost be also awarded, against the respondents."

87. According to Sri Naveen Sinha, learned Senior Counsel for the appellants, the DRT under Rule 18 of Rules, 1993 has ample power to make such orders or give such direction 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. Therefore, there was no need to make a specific prayer for setting aside the auction proceeding.

88. Alternatively, he submits that even if, without admitting, the argument of respondents is accepted that DRT does not have any residuary power to grant a relief not prayed for in the instant case, the DRT has not exercised any residuary power because the relief of setting aside the auction proceeding is implicit in the relief of confirmation of sale and as such, the DRT has not committed any illegality in allowing the appeal of appellants which order has been affirmed by the DRAT by dismissing the appeal of respondent against the order of DRT.

89. The Apex Court in the case of ***Bachhaj Nahar Vs. Nilima Mandal and Others AIR 2009 SC 1103*** has explained the purpose and object of pleading. Paragraph nos.9 & 10 of the said judgment are being reproduced herein below:-

> *"9. <u>The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration.</u> This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.*
>
> *10. <u>The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon</u>. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not*

made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief."

90. In the case of ***Hindalco Industries Ltd. Vs. Union of India and Others (1994) 2 SCC 594***, the Apex Court has explained the power of Court or Tribunal to grant relief. Paragraph nos.7 & 8 of the said judgment are being reproduced herein below:-

"7. It is settled law that it is no longer necessary to specifically ask for general or other relief apart from the specific relief asked for. Such a relief may always be given to the same extent as if it has been asked for provided that it is not inconsistent with that specific claim which the case raised by the pleadings. The court must have regard for all the relief and look at the substance of the matter and not its forms. <u>It is equally settled law that grant of declaring relief is always one of discretion and the court is not bound to grant the relief merely because it is lawful to do so. Based on the facts and circumstances the court may on sound and reasonable judicial principles grant such declaration as the facts and circumstances may so warrant. Exercise of discretion is not arbitrary. If the relief asked for is as of right something is included in his cause of action and if he establishes his cause of action, the court perhaps has been left with no discretion to refuse the same</u>. But when it is not as of right, then it is one of the exercise of discretion by the court. In that event the court may in given circumstances grant which includes 'may refuse' the relief. It is one of exercising judicious discretion by the court. Same consideration would apply to the causes under the Act and the Tribunal has such discretion. The Tribunal, while keeping justice,

equity and good conscience at the back of its mind, may when compelling equities of the case oblige them, shape the relief consistent with the facts and circumstances established in the given cause of action. Any uniform rigid rule, if be laid, it itself turns out to be arbitrary. <u>If the Tribunal thinks just, relevant and germane, after taking all the facts and circumstances into consideration, would mould the relief, in exercising its discretionary power and equally would avoid injustice</u>. Likewise when the right to remedy under the Act itself arises on the presence or absence of certain basic facts, at the time of granting relief, may either grant the relief or refuse to grant the same. It would be one of just and equitable exercise of the discretion in moulding the ancillary relief. It is not as of right. In Associated Provincial Picture Houses Ltd. case, under Sunday Entertainments Act, 1932, the licensing authority while granting permission to exhibit cinematographs, imposed certain conditions, prohibiting the children under age of 15 years to be admitted in the theatre. It was challenged as being arbitrary. Dealing with the discretionary power of the licensing authority, the Court of Appeal held that the law recognised certain principles on which discretion must be exercised but within the four comers of those principles. The discretion is not absolute one. The exercise of such a discretion must be a real exercise of the discretion. If in any statute conferring the jurisdiction, there are to be found, expressly or by implication, matters to which the authorities exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject- matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty-those, of course, stand by themselves, unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. The discretion must be exercised reasonably. A *person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said to be acting unreasonably.*

8. <u>There lies a distinction between the administrative authorities exercising discretionary jurisdiction and the court or the quasi-judicial Tribunal deciding the lis. In the latter case discretion has been given to the court or the Tribunal to mould the ancillary relief. The discretion is to be exercised with circumspection consistent with justice, equity and good conscience, keeping always the given facts and circumstances of the case</u>."

91. Now, in the light of the law postulated by the Apex Court in the aforesaid case with respect to power of Tribunal to grant relief, the Court proceeds to test the argument of learned counsel for the respondents whether in the absence of any prayer for setting aside the auction proceedings, the DRT had erroneously set aside the auction proceeding.

92. From the grounds of appeal, reproduced above, it is manifest that while challenging the confirmation of sale by the Recovery Officer, the appellants have challenged the fixation of reserved price Rs.35 lacs of the property. The appellants have also challenged the publication of notice, which according to appellants, was not as per Rule 52(2) of Second Schedule of IT Act, 1961. The appellants have also pointed out that the auction was not fair because only one bidder had participated in the auction proceeding.

93. In the light of grounds raised by the appellants, the DRT has framed issue no.2 which is being reproduced below:-

"2. Whether the impugned order dated 09.01.2004 passed by the Recovery Officer, DRT, Lucknow in DRC 155/2002 LKO as well as the related earlier order is respect of attachment, proclamation of sale and auction of the immovable property suffer from illegality, material irregularity and exercising power beyond jurisdiction."

94. It is obvious that the issue no.2 had been framed on the basis of the pleadings on record. The issue no.2 clearly encompasses the adjudication of legality of orders passed by the Recovery Officer in respect of attachment, proclamation of sale and auction of immovable property by the DRT.

95. So, from issue no.2, it is evident that DRT was asked to adjudicate the legality of orders passed by the Recovery Officer regarding attachment, proclamation of sale and auction of immovable property.

96. The respondent no.1 was well aware of the issue no. 2. However, the record does not reflect that respondent no.1 had ever objected to the framing of issue no.2 on the ground that since appellants had only prayed for setting aside the order dated 09.01.2004 passed by the Recovery Officer, DRT Lucknow in DRC 155/2002 LKO, and had not asked for setting aside the orders passed by the Recovery Officer relating to attachment, proclamation of sale and auction of immovable property, therefore, the DRT could not adjudicate the aforesaid issue in its entirety and should confine the issue no.2 only with regard to legality of the order dated 09.01.2004 passed by the Recovery Officer, DRT Lucknow in DRC 155/2002 LKO. In the absence of any objection by the respondent no.1 against framing of issue no.2, the respondent no.1 has acquiesced to adjudication of legality of other orders regarding auction proceeding besides the legality of order of confirmation of sale dated 09.01.2004.

97. Respondent no.1 was also aware of the consequence of adjudication of issue no.2: if the DRT found the orders relating to attachment, proclamation of sale, and auction of immovable property patently illegal, it might set them aside. Consequently, the respondent no.1 is estopped in law by his conduct from challenging the order of the DRT that it had acted beyond its jurisdiction in granting reliefs which had not been prayed for by the appellants before the DRT in appeal.

98. It is pertinent to state that under Rule 18 of the Rules, 1993, the DRT is empowered to make such orders and give necessary directions to

give effect to its decision, prevent the abuse of its process, and secure the ends of justice.

99. The Apex Court in the case of ***Hindalco Industries Ltd. (supra)*** has enunciated that the Tribunal could shape the relief consistent with the facts and circumstances established in the given cause of action. Even Rule 18 of Rules, 1993 authorises the Recovery Officer to pass any order to secure the ends of justice.

100. In the instant case, the DRT while deciding issue no.2 was supposed to determine the legality of the orders passed by the DRT relating to attachment, proclamation of sale and auction of immovable property. Adjudication of those issues have not been objected by the respondent no.1. Therefore, once the DRT came to the conclusion that orders of attachment, proclamation of sale and auction of immovable property were illegal, the DRT was well within its right and had the jurisdiction under Rule 18 of Rules 1993 to set aside the order of attachment, proclamation of sale and auction of immovable property to secure the ends of justice.

101. The argument of respondents can be tested from another angle. It is urged by the respondent no.1 that his rights accrued in the auction property on acceptance and payment of bid amount, therefore, it was incumbent upon the appellants to have prayed for setting aside of auction proceeding. Now, the question arises whether the rights of respondent no.1 in auctioned property accrued on acceptance and payment of bid amount. We have held that process of sale of property starts from the proclamation of sale and culminates with the confirmation of sale and issuance of sale certificate.

102. To appreciate this issue, it would be useful to have a glance at judgement of Apex Court in the case of ***Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others (2008) 9 SCC 299*** wherein the Apex Court has held that in cases where auction is subject to confirmation by some authority, the right of auction purchaser would accrue only after the sale is confirmed by the

said authority. Paragraph nos.29 & 30 of the said judgement are being reproduced below:-

"29. In the present case we are satisfied that there is no fraud in the auction-sale. It may be mentioned that auctions are of two types - (1) where the auction is not subject to subsequent confirmation, and (2) where the auction is subject to subsequent confirmation by some authority after the auction is held.

30. In the first case mentioned above, i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud."

103. It means that no right accrues to the respondent no.1 till the sale is confirmed by the Recovery Officer by passing appropriate order under Rule 63 of Second Schedule of IT Act, 1961.

104. So, non-challenge the order of proclamation of sale and order of auction sale of immovable property does not prejudice any right of the respondent no.1, since the right, title and interest of the property vests in the auction purchaser i.e. respondent no.1 only after the Recovery Officer passes an order confirming the sale. Thus, non-challenge to the earlier orders passed by the Recovery Officer before confirmation of sale did not prejudice any rights of the respondent no.1.

105. In view of the aforesaid fact, the order of confirmation of sale is the main relief. Accordingly, even if the appellants have not prayed specifically for setting aside the orders passed by the Recovery Officer relating to proclamation of sale and auction of immovable property, that would not come in aid of the respondent no.1 as the natural consequence of setting aside the order of confirmation of sale was that all earlier

orders, namely the proclamation of sale, auction of immovable property passed by the Recovery Officer during the process would have to go.

106. So far as the judgement in the case of ***Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi and Others AIR 2010 SC 475*** is concerned, the Apex Court has held that the Court cannot grant a relief which has not been prayed for and would result in serious prejudice to the interested party and deprive him of valuable right under the statute, but the said judgement is not applicable in the facts of the present case inasmuch as we have already held that interest of respondent no.1 in the auction property accrued only after the Recovery Officer has passed order of confirmation of sale and not by earlier orders, namely attachment, proclamation of sale and auction of immovable property. We have already held that Rule 18 of the Rules, 1993 confers ample power upon the Tribunal to pass any order to secure the ends of justice. The DRT in the instant case has acted within its jurisdiction to set aside the orders of proclamation of sale and auction of immovable property under Rule 18 of the Rules, 1993 to secure the ends of justice.

107. The respondent no.1 has also relied upon the judgement of the Apex Court in the case of ***Trojan & Company Ltd. Vs. RM. N.N. Nagappa Chettiar AIR 1953 SC 235.*** The principle of law laid down by the Apex Court in the case of ***Trojan & Company Ltd. (supra)*** that the decision of a case cannot be based on grounds outside the pleadings of the parties is well settled. However, we are of the view that the said judgement does not come to the aid of the respondent no.1 for the reasons delineated below.

108. We have detailed above that the appellant in appeal under Section 30 of the RDDBFI Act 1993 raised specific grounds pointing out the illegalities committed by the Recovery Officer in proclamation of sale and sale of immovable property, and based upon the pleadings, the DRT framed the issue no.2. The DRT decided issue no.2 in favour of the appellants. Consequently, it set aside the order of confirmation of sale.

109. The respondents could not demonstrate that relief granted by the DRT is not based on the grounds set out by the appellants in appeal, therefore, the judgement of the Apex Court in the case of ***Trojan & Company Ltd. (supra)*** is not applicable in the facts of the present case.

110. Now coming to the finding of the learned Single Judge that DRT as well as DRAT ought to have considered the fact that by dismissal of Appeal No.R-366/2003 of borrower by the DRT, the effect and operation of the interim order wiped out. The said finding has been recorded by the learned Single Judge in paragraph no.25 of the judgment, which reads as under:-

> *"25. Once the effect and operation of the interim order wipes out on final order being passed thereon, all consequential proceeding goes. This vital aspect of the matter was brought to the notice of the Tribunal, but in stead of taking note of the said fact, the appeal of the petitioner was dismissed on that ground, which cannot be permissible in law."*

111. From the reading of the aforesaid paragraph, we do not find that the aforesaid finding is supported by any reason. The appellants have preferred appeal under Section 30 of the RDDBFI Act, 1993 challenging the confirmation of sale and issuance of certificate of sale. The DRT was supposed to decide the appeal strictly within the parameters of Section 30 on the basis of pleadings, arguments and issues framed in the appeal.

112. Though the DRT has observed that propriety demanded that when the DRT had passed an order staying the confirmation of sale, the Recovery Officer ought not to have passed the order of confirmation of sale to show proper respect to the stay order dated 23.12.2003 passed by the Appellate Authority. However, the order passed by DRT does not reflect that the grant of interim order by DRAT staying the confirmation of sale was the consideration which weighed with the DRT in allowing the appeal of the borrower and setting aside the confirmation of sale and sale certificate.

113. Neither the decision of DRT in Appeal No.R-366/2003 was relevant nor the interim order passed in the said appeal was relevant in deciding the appeal under Section 30 as the appeal was to be decided within the parameters and scope of Section 30. Since the scope of appeal under Section 30 of the of RDDBFI Act, 1993 of the appellant was only confined to the issues framed in the said appeal, therefore, the aforesaid finding is erroneous and perverse.

114. We have reproduced the order dated 05.07.2005 of DRAT dismissing the appeal of appellant after compromise. If we take a glance at the said order, we find that respondent no.1 had filed an application under Order 1 Rule 10 of CPC before the DRAT for being impleaded as a party in the appeal so that he could file objection against the application of appellant for withdrawal of appeal which was rejected by the DRT. The record does not reflect that the appellant has ever challenged the said order or has challenged the compromise between the bank and the borrower in any appropriate proceeding.

115. Since there was no challenge to the compromise between the borrower and the bank in an appropriate proceeding by the respondent no.1, therefore, we are of the view that learned Single Judge has acted beyond jurisdiction in declaring the compromise invalid.

116. Now coming to the last submission of learned counsel for the respondents whether the respondent no.1 by virtue of being a stranger is entitled to be considered a bona fide purchaser for value is concerned, it is trite law that a stranger who purchases a property at an auction sale has to be considered as a bona fide purchaser for value and he should not be allowed to suffer on account of mistakes or irregularities committed in Court of law. However, while enunciating the said proposition, the Courts have consistently held that if there was element of fraud in conducting auction sale or material irregularities had been committed in conducting the sale, the Courts are not devoid of power to set aside the confirmation of sale.

117. In the case of ***Om Sakthi Sekar (supra)***, the Apex Court while repelling the contention of appellant that the confirmation of sale renders the matter entirely immune from further scrutiny has observed *"The requirement that the recovery process be fair, transparent and based on a proper assessment of value must co-exist with the principle of finality governing confirmed sales".*

118. The DRT while deciding the issue no.2 has recorded as follows:-

(i) The auctioned property was different than the mortgaged property.

(ii). The publication of auction notice in one daily Dainik Jagran is in English language, whereas the district Bareilly is a Hindi speaking area, and therefore, for giving wide publicity of auction sale and in order to fetch best possible highest price, the publication of notice should have been in Hindi language.

119. The record reflects that finding on merits recorded by DRT affirmed by DRAT setting aside the confirmation of sale have not been assailed before the learned Single Judge inasmuch as the order of learned Single Judge does not reflect that it has set aside the findings of DRT affirmed by DRAT with regard to irregularity conducted in auction proceeding.

120. The learned counsel for respondents has not assailed the finding of irregularity committed in the sale returned by DRT and affirmed by DRAT even before us. Therefore, in the absence of any challenge by the respondent no.1 before the learned Single Judge and even before this Court, the findings of DRT in respect of irregularities committed in sale of property have attained finality.

121. The record also reflects that glaring irregularities have been committed in sale of property inasmuch as it is evident from the original application that description of mortgaged property was '*Building together with land measuring 694 square yards situated in Mohalla Hazipur, Pilibhit Road, Bareilly U.P.'* whereas the description of property put for auction was *'Building together with land measuring*

4950 square yards'. The area of land put for auction was about more than seven times the area of land that was mortgaged.

122. The record reveals that the proclamation of sale was published in English in daily newspaper i.e. Dainik Jagran. The proclamation of sale is to be made as per the procedure provided under Rule 52(2) of Second Schedule of IT Act, 1961 which categorically mandates that the Recovery Officer shall cause a proclamation of the intended sale to be made in language of district. Therefore, as per the mandate of Rule 52(2) of Second Schedule of IT Act, 1961, the publication of intended sale must be made in the language of district.

123. Undisputedly, the mortgaged property is situated in District Bareilly which is a Hindi speaking area, and therefore, the proclamation of intended sale should also have been published in Hindi language.

124. The Apex Court in the case of ***State of Orissa Vs. Sridhar Kumar Malik AIR 1985 SC 1411*** while upholding the judgement of Orissa High Court whereby the Orissa High Court has quashed a notification issued by the State Government for the purpose of constituting a notified area under the Municipal Act, 1950 on the ground that the proclamation convey the intention of the State Government to constitute a notified area was made in English language and not in a language with which the local people are familiar with. Paragraph no.8 of the said judgement is being reproduced below:-

> *"8. The next point concerns the validity of the proclamation made under sub-Section (1-a) of Section 417-A of the Orissa Municipal Act. The sub-section requires that the proclamation should be published in the official Gazette and also at least in one newspaper circulating in the area. Admittedly, the proclamation was framed in the English language, in the Gazette as well as in the local newspaper, the "Daily Samaj". The Oriya Gazette is published in English, and that being so the intention of the legislature in sub-Section (1-a) must be construed to be that the proclamation in the Gazette should be in the English language. But the proclamation in the newspaper was also in the English language. The contention of the residents, which has found*

favour with the High Court, is that the notification should have been in Oriya, the local language of the people residing in the area and invited to submit their objections. Our attention has been drawn to Rule 602 of the Orissa Municipal Rules, 1953 which provides:

> *"(1) Every notification required to be published by a municipal council under the Act shall be published in Oriya by affixture in the notice board of the municipal office concerned and also proclaimed by beat of drum.*
>
> *(2) Every notification required to be published by the State Government in the prescribed manner shall be published in English in the Gazette".*

There is nothing, however, in Rule 602 which prescribes the language in which the proclamation under sub-Section (1-a) of Section 417-A of the Orissa Municipal Act has to be made. Sub-rule (1) of Rule 602 deals with the notification published by a municipal council while sub-rule (2) deals with a notification published in the Gazette by the State Government. <u>We have no doubt in our mind that having regard to the object with which a proclamation is required to be published under sub-Section (1-a) of Section 417-A of the Orissa Municipal Act, it must be published in the local language of the area in which the newspaper circulates. It is apparent that the legislature attaches serious importance to eliciting the opinion of the residents of the area who will be affected by its constitution as a notified area, and that is why express provision in that behalf was made in sub-Section (1) of Section 417-A. The legislature did not consider it sufficient that the proclamation was published in the official Gazette. It is a notorious fact that few people beyond those who belong to the official community actually read the official Gazette. Therefore, the legislature imposed the fürther requirement that the proclamation should be published in a newspaper circulating in the area. A newspaper today has become a basic medium for communication with the people. Its effectiveness in that regard cannot be disputed, even as its influence in the dissemination of information cannot be underestimated. To reach out to the people, it must be published in a language with which they are familiar. In so fundamental a matter as local self-government the</u>

legislature intended that an opportunity should be available to all persons residing within the area to submit their objections. The local language of the area is Oriya, and therefore the State Government should have published the proclamation in that language in the newspaper. On this point also we find ourselves in agreement with the High Court."

125. The Orissa High Court in the case of ***Govinda Chandra Pattnaik Vs. Presiding Officer, Debt Recovery Tribunal, Cuttack and Others 2009 SCC OnLine Ori 37*** had set aside a confirmation of sale on the ground of non-compliance of statutory requirement of Rule 52 as in the said case, the proclamation notice was published in English language and not in Oriya language which was the local language. Paragraph no.22 of the said judgement is being reproduced below:-

"22. The statutory notice under Rules-52 and 53 was published in English language, and not in "the language of the district", which clearly indicate non-compliance of the statutory requirements. The object behind such requirement is that if the notice is published in English though in a newspaper printed in vernacular language, it would definitely not sub-serve the purpose for which the Rule has been grafted. Therefore, notice has to be published in vernacular language in the newspaper published in vernacular language. The property mortgaged and the secured creditor may be situated in "rural area" and the persons residing in rural areas may be interested in purchasing it. Therefore, the need was considered to have the publication of the notice in vernacular language and non-compliance of such a mandatory requirement vitiated the proceedings."

126. In the instant case also the mandate of Rule 52(2) had not been followed by the Recovery Officer as the notice of proclamation of sale was published in English language and not in Hindi which is the local language of District Bareilly.

127. One more fact needs to be noticed is that as per valuer report, the Market Value of the property was Rs.80,55,468/- and after depreciation, the Residual Value of the property was Rs.70,15,380/-, and the Forced

Sale Value of the property was Rs.56,12,000/-. Part-II of valuation report is reproduced herein below:-

"<u>Part-II Valuation</u>

As per the request of Manager, Bank Of Baroda, I visited and inspected the property which is under question with bank Employ to evaluate the relisiable force sale value of said property. But on site there was not any responsible person who could give us required informations and we had not permitted to visit and measure the entire property, we could measure only a part portion (measuring 278.81 sqm) of said property. We are giving valuation as per revised rates considering all the measurements of previous valuation.

As per previous valuation of said property given us by bank, the said property is a single storey industrial type property and stands in the name of Sri Ram Chandra and Sri Satya Narain both sons of Sri Fateh Chand. The said property is situated in Haziapur and measures 3762 sqm land as per given documents.

The said construction is ordinary type, brick work is done in cement mortar and covered by R.B. slab and G.I. sheet roofing plain flooring is done. The said building was done in two phase 1968 and 1982.

The circle rates are Rs 1200/Sqm and the prevailing market rates are Rs.1500 to 1800/Sqm. As the said property consists of a very big piece of land so (land rates diminishes. After considering all factors I adopt the land rates Rs.1400/Sqm.

COST ANALYSIS:

Market Value:

*Value of Land: 3762*1400/Sqm= Rs.52,66,800.00*

Value of structure (constructed in 1968)=1255.00 Sqm x 1600=20,08,000.00

Value of structure (constructed in 1982)=278.81 Sqm x 2800=7,80,668.00

Total value of said property=Rs.80,55,468.00

***DEPRECIATION**:*

*DEPRECIATION=(20,08,000.00" 0.9*35/75) + (7,80,668.00* 9*21775)=10,40,088.00*

RESIDUAL VALUE Rs.80,55,468.00-Rs.10,40,088.00=Rs.70,15,380.00

<u>FORCED SALE VALUE</u>

*After work out fair market value we can find out the Forced Sale Value multiplying by a suitable factor. This multiplying factor may be 0.95 to 0.75 depending upon on the legal, economic, utility, marketability, transferability etc. In my opinion the forced sale value of the property is Rs.70,15,780.00 *0.80 i.e. Rs.56,12,304.00. (Rs.56,12,000.00)."*

128. From the aforesaid valuation report, it is evident that the market value of the property on 22.03.2003 was more than Rs.80 lacs, and after depreciation, the value of the property was Rs.70,15,380/- and the forced sale value of the property was Rs. 56,12,000/-.

129. As per '*Advanced Law Lexicon'* dictionary, the meaning of Forced Sale Value is *'Amount that may be realized at a forced sale. The price that could be obtained at immediate disposal, generally, substantially below fair market value'*.

130. So, the minimum price which the property would have fetched if sold on Forced Sale Value was Rs.56,12,000/- whereas in the instant case, only one bidder i.e respondent no.1 participated and the property was sold out at Rs.35,20,000/-much below not only the market value, but also the forced sale value.

131. For the aforesaid reason also, we find that there had been material irregularities committed in conducting the auction sale.

132. In a recent judgment, the Apex Court in paragraph nos.36 to 39 of the judgement in the case of ***M.R. Vasumathi Vs. The Authorized Officer & Others in Civil Appeal No.1606 of 2026*** has held as follows:-

"36. While it is trite that the rights of an auction purchaser and the sanctity of a confirmed sale ordinarily merit due protection, such protection is by no means absolute. It must yield where the very process

engendering the sale is demonstrated to be legally infirm or to be incongruous with the statutory framework. The object of proceedings under the SARFAESI Act is not the mere culmination of a sale in a mechanical manner, but the lawful realisation of the secured asset through a process that is fair, transparent and strictly compliant with the prescribed rules. In the present case, the non-adherence to the timeline that the SARFAESI Rules contemplate constitutes a material irregularity going to the root of the matter. The mere factum that the sale stood confirmed cannot, therefore, foreclose judicial scrutiny.

37. It is true that there is no express or formal articulation, in so many words, by the appellant evincing her readiness and willingness to tender the stipulated amount for redemption of the secured asset. However, the matter cannot be posited in such a narrow compass. The record unmistakably discloses that the appellant, along with the other legal heirs, had instituted multiple miscellaneous applications before the DRT, inter alia, seeking permission to redeem the property upon the deposit of the required amount and to set aside the consequences of the sale. Such steps, taken in the teeth of adverse proceedings, cannot be disregarded as inconsequential or merely procedural. On the contrary, they evince a clear manifestation of intent, although implicit, that the appellant was desirous of redeeming the property upon being accorded with an opportunity to do so. Viewed in this prism, the filing of the said application must be construed as sufficient indication of the appellant's willingness to redeem.

38. Even otherwise, as a logical sequitur, the contention that the guarantor or his legal heirs did not evince adequate interest in repayment does not advance the case of the secured creditor, for a process vitiated by statutory non-compliance cannot otherwise be sanctified on such considerations.

39. The property in question belonged to G. Ramanujam, the deceased guarantor, and upon his demise, vested in his legal heirs. Such heirs cannot be divested of their lawful interest except in accordance with a procedure that is fair, just and in strict conformity with the governing statute, i.e., the SARFAESI Act and the SARFAESI Rules."

133. The Apex Court in the case of ***Surinder Pal Singh Vs. Vijaya Bank & Others*** in Civil Appeal No. 6843 of 2023 has refused to set aside the judgement of Punjab and Haryana High Court whereby the High Court has dismissed the writ petition filed by the appellant for quashing of an order passed by the Debt Recovery Appellate Tribunal by which the Tribunal has allowed the appeal of the borrower and permitted the redumption of mortgaged property.

134. The Apex Court refused to interfere with the judgment of High Court merely on the ground that sale certificate issued was not registered and possession of auction property was not handed over to the appellant and same remained with the borrower. Further, the bank had issued 'No Objection Certificate' to the borrower against the loan account.

135. In the instant case also, only sale certificate had been issued. The record of the case does not show that the sale certificate has been registered. The possession of mortgaged property is also with the borrower. The borrower has paid dues of the bank and the bank has issued 'No Objection Certificate'.

136. For the reasons given above, we are of the view that judgement of learned Single Judge does not stand to merit. Consequently, the judgement of learned Single Judge is set aside. The Writ-C No.68334 of 2005 is dismissed. Both the appeals are ***allowed*** with no orders to cost.

(Garima Prashad,J.) (Saral Srivastava,J.)

September 7, 2026
Sattyarth/NS