APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

FPA-PBPT-840/BPL/2019
State Bank of India ... Appellant

Versus

The Initiating Officer, Bhopal ... Respondent

Advocates/Authorized Representatives who Argued
For the Appellant: Mr. Chandrachur Bhattacharyya, Advocate,
For the Respondents: Mr. Kanhaiya Singhal, S.P.P. alongwith Prasanna, Ajay Kumar & Amrita Kumari, Advocate.

CORAM
SHRI BALESH KUMAR : MEMBER
SHRI RAJESH MALHOTRA : MEMBER

FINAL ORDER
10.09.2026

Dictated By: Rajesh Malhotra

The present appeal has been preferred under section 46 of the Prohibition of Benami Transaction Act, 1988 (PBPT), against the Confirmation Order under section 26(3) dated 27.05.2019 passed by the Hon'ble Adjudicating Authority, New Delhi in Reference No. R-815/2018, whereby the Adjudicating Authority had confirmed the Provisional Attachment Order dated 27.04.2018 passed by the initiating officer/ respondent u/s 24(4)(a)(i) of the PBPT Act 1988, w.r.t. an immovable property i.e. a flat bearing no. B-304, 3rd Floor, Blue Berry Apartment, DB City, Village Mehra, Ward number 60, Gwalior

2. As per facts of the case, an immovable property i.e. a flat number B-304, 3rd floor, Blue Berry Apartment, DB City, Village Mehra, Ward number 60, Gwalior admeasuring 1262 sq. ft. that is 117.28 sq meter super built up area was purchased in the name of Shri Surendra Kumar Agrawal S/o Shri Ramesh Chand Agrawal.

Consequent upon search action by the Income Tax Department, certain documents containing registry and chain documents of one flat including purchased conversion related documents, receipt of cash payment of Rs. 6,79,320/- issued in the name of Shri Sonu Mangal (alias Shri Sandeep Mangal), agreement for flat, etc. were seized. From the seized documents, it was found that initially the impugned flat i.e B- 304, 3rd floor, Blue Berry Apartment, DB City, Village Mehra, Ward number 60, Gwalior (hereinafter referred as impugned flat) was booked in the name of Shri Sonu Mangal alias Sandeep Mangal and entire negotiations for the purchase of flat was done by Shri Sandeep Mangal. Further it was also found that the receipts of booking the flat were also issued in the name of Shri Sonu Mangal. However, an agreement was found which showed that the impugned flat was purchased in the name of Shri Surendra Agrawal a relative of Shri Sandeep Mangal (brother in law).

In the agreement and sale deed, the address of Surendra Kumar Agrawal was mentioned as M/s Rajesh Enterprises, Bhaskar Lane, Jayendra Ganj, Lashkar Gwalior. Shri Surendra Agrawal in his statement before the DDIT (Investigation) stated that he is an employee in a shop named M/s Narendra Enterprises, Datia for last 5-6 years and earns Rs. 5-7 thousand per month. As such he (Surendra Kumar Agrawal) has no capacity to purchase the impugned property.

The flat (B-304, 3rd floor, Blue Berry Apartment, DB City, Village Mehra, Ward number 60, Gwalior) was kept as collateral security with SBI Rambagh Colony, Gwalior by the hotel 'The Prabha International' a unit of M/s Maa Kaila Devi Developers and Hotels Pvt. Ltd. in which Shri Sandeep Mangal is a Director and key person. Further, this flat was rented out by Shri Sandeep Mangal to his known person without any rent which shows the beneficial ownership of Shri Sandeep Mangal on the said flat.

A housing loan was also taken from bank on this property (B-304, 3rd floor, Blue Berry Apartment, DB City, Village Mehra, Ward number 60, Gwalior) in which the repayments have been made by Shri Sandeep Mangal, the beneficial owner. Shri Surendra Agrawal earns Rs. 5-7 thousand per month and as such he has no capacity to pay the installment of loan on the impugned property.

Shri Sandeep Mangal has paid cash towards the cost of the impugned property (B-304, 3rd floor, Blue Berry Apartment, DB City, Village Mehra, Ward number 60, Gwalior) and has also transferred Rs. 7.5 lakhs from his bank account to the housing loan account of the said property. A payment of Rs. 6,79,320/- was made in cash to M/s Divine Housing Development Co. Pvt. Ltd. and the receipt was issued in the name of Sonu Mangal alias Sandeep Mangal. An another payment of Rs. 10,78,000/- was made in cash. Shri Surendra Kumar Agrawal in his statement before the DDIT (Investigation) denied to have made such payments.

Further enquiries were conducted and the details of which are as under:-

a) Summons were issued to Shri Surendra Agrawal and Shri Sandeep Mangal alias Shri Sonu Mangal and their statements on oath were recorded u/s 19(1) of the PBPT Act, 1988.

b) In his statement Shri Surendra Kumar Agarwal stated that he has purchased the Flat-304, DB City, Gwalior, for Rs 29,00,000/- by taking a loan of Rs. 22,00,000/- from Canara Bank, Branch-Gwalior and by paying cash of Rs. 7,00,000/-. He stated that he has no idea about how the loan was passed by the Canara Bank, and this loan was sanctioned through the broker Shri Kailash Soni whom he does not know personally. He further stated that he has not kept any security or mortgage for availing the above said loan of Rs. 22 lakhs from Canara Bank. Even there was no explicit intent of purchasing the flat at Gwalior by Shri Surendra Agarwal as he belongs, resides and works at Seoda, Dist.-Datia, MP.

Further he stated that he has repaid the total loan amount of Rs. 22,00,000,/- in cash only in installments during the period of 21 months i.e. from Feb, 2015 to Nov, 2016. But it was found that Shri Sandeep Mangal has transferred amounts from his Canara Bank A/c No. 3910261000011 (Prabha Jewellers, Proprietor Shri Sandeep Mangal) to the housing loan A/c no. 3910619000010 of Shri Surendra Kumar Agrawal as under:-

Date	Amount
16.07.2016	20,000/-
14.12.2016	1,50,000/-
26.12.2016	1,00,000/-
29.12.2016	13,31,361/-
Total	16,01,361

A total of Rs. 25,61,749/- was paid in the said loan account of Canara Bank out of which Rs. 16,01,361 was transferred from Canara Bank A/c No. 3910261000011 (Prabha Jewellers, Proprietor Shri Sandeep Mangal) and the remaining balance amount deposited in cash for which Shri Surendra Agrawal could not substantiate the sources of fund. As in his statement Shri Surendra Agrawal stated that he has repaid the total loan amount of Rs. 2200000/-in Cash, but as the above amounts of Rs. 16,01,361/- have been transferred from the A/c no. of Shri Sandeep Mangal, it proves that Shri Surendra Agrawal has no idea about the repayment of loan and the same has been executed by Shri Sandeep Mangal.

The loan account was closed on 29.12.2016 and the closing balance of Rs. 13,31,361/- was cleared from the funds transferred from the bank account of proprietorship concern of Shri Sandeep Mandal, which is evidence of his being beneficial owner of the Flat B-304, DB City Gwalior.

c) Further the property (B-304 DB Gwalior) was kept as equitable mortgage as one of the collateral security by Shri Sandeep Mangal (Director M/s Maa Kaila Devi Developers and Hotels Pvt. Ltd.) to obtain a term loan of Rs. 228 Lakh from State Bank of India, Rambagh Colony, Gwalior. This is also evidence that Shri Sandeep Mangal has purchased the property (Flat B-304) from his own funds and has been using it for his own benefit and means.

d) Regarding the payment of Rs. 6,79,320/- made in cash to Divine Housing Development Co. Pvt. Ltd. and the receipt (seized from the residence of Shri Sandeep Mangal during the search and seizure operation of Income Tax Department on 17.02.2017) issued in the name of Sonu Mangal alias Sandeep Mangal, Shri Surendra Agrawal in his statement stated that the payment of this entire amount of Rs. 6,79,320/- was made in cash by his Jija Ji, Shri Sonu Mangal (alias Shri Sandeep Mangal). Whereas Shri Sandeep Mangal alias Sonu Mangal in his statement denied this and stated that the amount of Rs. 6,79,320 was paid in cash by Shri Surendra Agrawal who was accompanied with his Munim (Accountant) Shri Manoj Yadav. This shows that Shri Surendra Agarwal is unaware that who has paid this consideration of Rs. 6,79,320/- for purchasing the said flat B-304.

e) Further, during the course of enquiry, it is found that the flat B-304 is occupied by Shri Devesh Sharma who has a political acquaintance with Shri Sandeep Mangal. With reference to the discussion made in the above para 2(b) and in this para, it also proves that the property (Fiat B-304) has been purchased in Benami Name Surendra Agrawal) for the ultimate and future benefit of Shri Sandeep Mangal.

f) Further in his statement, Shri Sandeep Mangal stated that he transferred about Rs. 10,00,000/- to the loan account of Shri Surendra Agrawal as loan and on being questioned about the repayment of this loan, he stated that Shri Surendra Agarwal has not repaid this loan of Rs. 10,00,000/- so far. Further Shri Surendra Kumar Agarwal had completely denied in this statement that he has not taken any such loan from any person and except him no one has deposited any amount in his loan account either in cash or cheque or transfer. And he further stated that he has just taken 05-06 lakhs cash from Maa Kaila Devi Developers & Hotels Pvt. Ltd (Director- Shri Sandeep Mangal) only to repay the said Canara Bank Loan. Further Shri Sandeep Mangal in his statement denied that no amount/loan has been given to Shri Surendra Agarwal from Maa Kaila Devi Developers & Hotels Pvt. Ltd. It is also evident from such contradictory statements that Shri Surendra Kumar has no idea about the repayment of said loan and the same has been paid by Shri Sandeep Mangal.

g) Earlier during the statement Shri Surendra Agrawal stated that no agreement was executed for the flat B-304 DB City, Gwalior, but when he was shown the copy of agreement executed for the flat B-304 DB City, Gwalior then he admitted that the signature made on the said agreement was his only. It shows that Shri Surendra Agarwal is signing documents on the instructions of Shri Sandeep Mangal, who is handling all the procedural and financial affairs and gets benefitted with the said flat B-304, DB City Gwalior.

h) It was found that in the land documents submitted before the Canara Bank for obtaining the housing loan to purchase the flat B-304, DB City Gwalior, the Audit Report, Profit and Loss Account and Balance sheet of M/s Agarwal Traders was submitted, which was projected as proprietorship concern of Shri Surendra Agrawal. In his statement Shi Surendra Agarwal stated that he is completely unaware about the firm M/s Agarwal Traders and its functions, activity and existence. He further denied about the signature of his name made on the above said documents. The housing loan from Canara Bank was obtained by submitting the audit reports of M/s Agarwal Traders. As Shri Surendra Agrawal has denied about the existence of M/s Agarwal Traders which exhibits that the above said loan has been taken in the name of Shri Surendra Agarwal whereas Shri Surendra Agrawal was not involved in the procedure of taking above said loan. Further as per the Audit Report it is Shri Surendra Agrawal who is the proprietor of M/s Agarwal Traders and the signature of his name are present on the Audit Report, but as he is completely unaware about the firm M/s Agarwal Traders and also denied about the signature of his name present on the Audit Report, it is therefore clearly evident that this transaction (obtaining housing loan form Canara Bank) is itself carried out in the name of a fictitious entity i.e. "M/s Agarwal Traders" and therefore M/s Agarwal Traders is a Benami Entity and thus the above mentioned loan of Rs. 22,00,000/- taken from Canara Bank is also à Benami Transaction and therefore the said Flat B-304 DB City is also a Benami Property in which Shri Surendra Agarwal is the Benamidar and Shri Sandeep Mangal alias Sonu Mangal is the Beneficial Owner.

In view of above it is clear that the benamidar Shri Surendra Agrawal do not have capacity to buy the said property (B- 304, 3rd floor, Blue Berry

Apartment, DB City, Village Mehra, Ward number 60, Gwalior) as he has meagre income to explain the investment in the above said immovable property purchased/ held in his name. Therefore, it is clear that Shri Surendra Agrawal has entered into transactions where property is transferred in his name for a consideration paid or provided by another person. Therefore, such transactions are covered under the definition of PBPT Act, 1988 prior to amendment. Also, such transactions are covered under the amended definitions 2(9)(A) of the PBPT act. Therefore, the property is a Benami Property and Show Cause Notice u/s 24(1) of the PBPT Act, 1988 dated 31.01.2018 was sent to the parties.

In view of the above it is held that the property (B-304, 3rd floor, Blue Berry Apartment, DB City, Village, Mehra, Ward number 60, Gwalior) under consideration is a Benami property and Shri Surendra Agrawal is benamidar and Shri Sandeep owner of this property and thus, on the same day, a Provisional Attachment Order U/s 24(3) of the Act was passed by the Initiating Officer, whereby the property of the alleged benamidar was attached for a period of 90 days.

Thereafter, summons dated 15.02.2018 was issued to the alleged benamidar U/s 19(1) of the PBPT act whereby the benamidar appeared and the statement of benamidar U/s 19(1) was recorded.

Further, the initiating officer passed a Provisional Attachment Order dated 27.04.2018 U/s 24(4) of the PBPT Act, whereby the aforesaid property of the alleged benamidar was attached provisionally and the reference R-815/2018 was forwarded to Hon'ble Adjudicating Authority for confirmation. The Hon'ble Adjudicating Authority after giving opportunity of hearing to the benamidar and beneficial owner confirmed the provisional attachment of the immovable property vide impugned order.

Aggrieved by the same, the present SBI being the mortgagee of the property has preferred the present appeal.

3. The Ld. Counsel for the appellant SBI contended that the impugned order dated 27.05.2019 passed by Ld. Adjudicating Authority has been passed without hearing the appellant Bank and without giving the appellant Bank, the opportunity to present its case, thereby violating the principal of natural justice. He stated that this is evidenced by para 2 of the impugned judgment dated 27.05.2019 wherein the Adjudicating Authority, has recorded inter-alia, as:-

> *"...........on receipt of the reference, notice under section 26 (1) of the PBPT Act was issued to both the Benamidar and Beneficial owners, asking them to appear before the adjudicating authority and submit documents, particulars, evidences and explain why the said transactions/ property be not declared Benami Transaction and the property be declared as Benami property.........".*

He argued that the phrase, *".......notice under section 26 (1) of the PBPT Act was issued to both the Benamidar and Beneficial owners....."* clearly indicates that the notice was only issued to the Benamidar i.e. Shri Surendra Agrawal and the Beneficial Owner, i.e. Shri Sandeep Mangal. No notice was issued to the appellant bank as clearly apparent in the said para 2 and the Ld. Adjudicating Authority has passed the impugned order without issuing any notice to the appellant Bank.

He pointed out that in view of the above, it has been wrongly held at Page-15 of the impugned order that in spite of opportunity given on 25.07.2018, 17.09.2018, 16.10.2018, 20.11.2018, 04.01.2019 and 24.01.2019, the appellant Bank/ Defendant no. 3 did not file any reply in response of notice U/s. 26(1). The said observation is wrongly recorded since the appellant Bank never received any notice U/s 26(1) and therefore, the Bank never had the opportunity to participate in the proceedings before the Ld. Adjudicating Authority to defend its case.

He stated that therefore by not issuing a notice to the appellant bank the Learned Adjudicating Authority has violated 26(1)(c) of the Prohibition of Benami Property Transaction Act, 1988, which states inter-alia, as:-

> *"....26 (1). On receipt of a reference under sub-section (5) of section 24, the Adjudicating Authority shall issue notice to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons, namely:-*
> *(a)---*
> *(b)----*
> *(c) Any interested party, including a banking company........".*
> *(d)---*

He argued that since, no notice under section 26 (1)(c) was issued to the appellant bank to furnish any document or evidence, therefore, the proceedings conducted by the Adjudicating Authority was in violation of section 26 (1) and therefore suffers from procedural irregularity.

He pointed out that the appellant bank had sent a representation dated 2.4.2019 to Initiating Officer, Approving Authority and the Adjudicating Authority after the passing of Provisional Attachment Order. The appellant bank had sent a representation to the 3 authorities (i.e. the Initiation officer, the Approving Authority and The Adjudication Authority) to safeguard its action taken under the SARFAESI Act 2002 (the Bank had issue notice u/s 13(2) and 13 (4) under SARFAESI Act 2002 on 03.12.2018 & 02.03.2019, respectively), however the representation was not considered by the Adjudicating Authority. A copy of the said written representation along with the proof of delivery to the 3 authorities is enclosed as ANNEXURE C.

He stressed that further there is no allegation anywhere that the appellant bank is guilty of an offence under the Prohibition of Benami Property Transaction Act, 1988. The bank has merely advanced a loan and to safeguard its own interest it has created a charge over the impugned property by way of a mortgage. The same is also registered with CERSAI and with office of Sub-Registrar. The appellant bank therefore cannot be faulted for granting and disbursing loan prior to the passing of the PAO and its confirmation.

He contended that further the Provisional Attachment Order and the action of the Adjudicating Authority of confirmation of the Provisional Attachment Order is also hit by and contrary to the legislative mandate under section 26-E of the Securitization & Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. He pointed out section 26-E of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, which is reproduced as under:-

> *"....26 E. Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor, shall be paid in priority over all other debts and all revenues, taxes, cess and other rates payable to Central Government or State Government or local authority........*

He stated that a secured creditor gets priority over all other "charges", if the security interest is registered. In the present case the security interest is registered, as per law. Therefore, a security interest stands created in favour of the appellant bank, protects its right. The Provisional Attachment Order and the subsequent confirmation is liable to be set aside, since it disregards and completely ignores the legislative mandate under section 26 E of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. The said amendment of section 26 E has been bought into effect in 2016 and the said section 26 E has a non- obstante clause, which means, the said new amended law has an overriding effect over any other law for the time being in force including the provision of the Prohibition of Benami Property

Transactions Act, 1988. Hence, the Provisional Attachment Order is in direct conflict with the provisions of section 26 E of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, and therefore the said Provisional Attachment Order is liable to be set aside.

He stated that in the case of **State Bank of India Vs. Joint Director, Directorate of Enforcement,** MP-PMLA-2020.KOL/2015 (U.A) MP-PMLA- 2021.KOL/2015 (Misc.) FPA-PMLA-1072.KOL/2015, the Hon'ble Appellate Tribunal of Money Laundering at para 35, 50, 51, 52, 55, 56, 57, 58, 61, 65, 67 and 68 of the judgment has held, inter- alia, as:-

> *"........35. Thus, it is very clear from above that the secured creditor, gets a priority over the rights of Central or State Government or any other Local Authority. The amendment has been introduced to facilitate the rights of the secured creditors which are being hampered by way of attachments of properties, belonging to the financial institutions/secured creditors, done by/in favour of the government institutions........*
>
> *"50. The ED in its provisional order as well as in the complaint before the Ld. Adjudicating Authority admitted that the properties which are subject matter are mortgaged with the appellants banks. The borrowers acquired and possessed by the respective owners since 2000, much before the borrowers availed the loan from the appellants banks and therefore no proceeds of crime were invested in these properties and even prior to the coming in force of the act of 2002. The copies of the sale deed/title deed of the properties show the date of acquisition to be prior to dates of alleged fraud committed in 2008-2009 as per the case of the respondent no. 1. Hence, it cannot be said the claim in any manner that these properties have been acquired out of the funds/loans availed from Union Bank of India.*
>
> *51. The mortgaged properties are security to the loans and cannot be subject matter of attachment particularly when the same were purchased and mortgaged prior to the events of funds diversion and frauds committed by the respondents. The appellants Banks have to recover huge amounts in the above. loan accounts and the appellant bank being the mortgagee/transferee of the interest in the properties is entitled to recover its dues with the sale of the properties. The properties stood transferred by way of mortgage to the appellant bank much before the alleged criminal action.*
>
> *52. The appellant banks is the rightful claimants of the said properties which are already in the possession of the appellant bank under the SARFAESI Act. The Hon'ble Supreme Court of India in the case of*

Attorney General of India ((1994) 5 SCC 54: AIR 1994 SC 2179) while dealing with the matter under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act has defined the illegally acquired properties and held that such properties are earned and acquired in ways illegal and corrupt, at the cost of the people and the state, hence these properties must justly go back where they belong, the state. In the present case as the money belongs to the Appellant bank it is public money. The appellant bank has the right to property under the Constitution of India. The property of the appellant bank cannot be attached or confiscated if there is no illegality in the title of the appellant and there is no charge of money laundering against the appellant. The mortgage of property is the transfer under the transfer of property act.

55. The ED has also filed the copies of the sale deeds/title deeds of the properties which shows the date of acquisition of all the properties. The original title deeds of all the properties are lying with the Appellant Bank. The Appellant Banks are having the mortgage charge over the properties.

56. That the definition of "proceeds of crime" as per Section 2(u) of the PML Act comprises of the property which is derived or obtained as a result of criminal activity. In the present case, all the properties have been purchased by the Respondents and have been mortgaged with the Appellant Bank much prior to the date of alleged offence which shows that no proceeds of crime are involved in the obtention of these properties and hence the same cannot be attached by the ED because the same would result in hampering the interest of the Appellant Bank.

57. The Ld. Adjudicating Authority has failed to understand that Appellant Banks have heavy stakes in the properties as they have lent its valuable money to the borrowers. The property is mortgaged to the Appellant Bank. If tomorrow any borrower orrower fails to repay the loan, the Bank has a legal right to bring the properties to sale and recover its dues. Valuable right will be lost for the Appellant, by order of attachment and eventual confiscation! As a matter of fact, the borrowers may not be interested in repaying the loan, since they are not going to enjoy the property. Therefore, ultimately, the action of the ED/Respondent No. 1 would make the Appellant, a victim than even greater accused/Respondents............The banks in the present case are just victim and not accused. If the attachment would continue against the mortgage property of the banks in this matter, the economy of the country would suffer. The banks in the present case has proceeded with the matter in good faith and are not involved in the offence of money laundering much the

58. Thus, in the present case, even though the Ld. Adjudicating Authority had all the reasons to believe that the abovementioned were mortgaged to the Appellant Bank and that the Appellant/SBI had prior charge over the subject matter/five properties; still the Ld.

Adjudicating Authority provisional attachment order of the Respondent No. 1 and thus causing huge loss to the Appellant/SBI.

61. The Ld. Adjudicating Authority has failed to considered that the ED has attached all the properties without examining the case of the banks. The evidence on record suggested that all the properties were acquired by the accused much-much before the alleged date of crime. No money disbursed by the Union Bank of India from its Loan Account, has been invested in acquiring his property. Furthermore, the Appellants Banks had mortgaged charge over the property prior to the date of the crime.

65. From the entire gamut of the matter we are of the view that there is no nexus whatsoever between the alleged crime and the two bank who are mortgagee of all the properties which were purchased before sanctioning the loan. Thus no case of money-laundering is made out against banks who have sanctioned the amount which is untainted and pure money. They have priority to the secured creditors to recover the loan amount/debts by sale of assets over which security interest is created, which remains unpaid. The Ld. Adjudicating Authority has not appreciated the facts and law involved in these matters and the primary objective of section 8 of PMLA is that the Adjudicating Authority to take a prima facie view on available material and facts produced. All the contentions raised by Mr. Matta has no substance. The provisional attachment in the present matter is bad and against the law.

In the circumstances available in the present case, the allegation of money laundering prima facie found to be unsustainable for the purpose of attachment under the PMLA, 2002.

66. In view of aforesaid facts and circumstances in the present case and for reasons referred above, we set aside the Impugned Order dated and 02.07.2015 provisional attachment order dated 04.02.2015 All the eight properties are released from attachment forthwith.

67. No costs."

He argued that from the above case it is therefore clear that once a security interest is created in favour of a bank, and the said security interest is registered, the said secured creditor gets a priority over any attachment order. The consequence of creation of a security interest is that the properties stood transferred by way of mortgage to the appellant bank. Therefore, the said properties where a security interest has been created cannot be the subject matter of the attachment and thus, the same was wrongly attached. The properties which stood transferred by way of mortgage to the appellant bank much before the alleged criminal action.

He stated that, even the CBDT Letter No. FI(380-DIT(R-SARFAESI-17-18) dated 06.09.2017 also clearly states that where CERSAI has been registered over any property in accordance with SARFAESI act, such registered secured interest shall have, priority over any subsequent secured interest upon such property like sale, lease or attachment by any other authority/person. A copy of the said CBDT letter No. FI(380-DIT(R-SARFAESI-17-18) is enclosed as ANNEXURE - D.

He argued that in addition to the above, in a decision of the Hon'ble Supreme Court of India in the case of **Solidaire India Ltd. v. Fairgrowth Financial Services Pvt. Ltd.** (2001) 3 SCC 71, the Hon'ble Supreme Court has held that where there are two special statues which contain non-obstante clauses, the later statue must prevail. In light of the said Judgment, it is clear that the non-obstante clause of the SARFAESI Act 2002 (i.e. Section 26E & 35) will override the non-obstante clause of Prohibition of Benami Property Transaction Act 1988 (i.e. Section 64) as SARFAESI is a later statue.

He contested that the appellant Bank has noted CERSAI of the said property on 19.06.2017 and the same is prior to the passing of Attachment Order. Copy of the said CERSAI noting is enclosed as ANNEXURE-E. The appellant Bank, in consonance to the above-mentioned order/judgment/letter, has issued the Demand notice U/s. 13(2) of SARFAESI ACT on 03.12.2018. A copy of the demand notice dated 03.12.2018 is enclosed as ANNEXURE-F. The appellant Bank further has taken action U/s. 13(4) of SARFAESI ACT on 02.03.2019 and thereby has taken the Symbolic Possession of the said Property on 02.03.2019 the Bank in compliance of the SARFAESI Act has made Paper Publication about the Symbolic Possession on 07.03.2019. That a copy of the loan arrangement letter evidencing the factum of loan which was advanced by the appellant bank is enclosed as ANNEXURE - G. Copy of document showing the registration of the mortgage is enclosed as ANNEXURE - H.

Prayer is accordingly made to allow the present appeal and set aside the impugned adjudication order passed by the Adjudicating Authority (AA), qua the interest of the present appellant bank.

4. The Ld. Counsel for the respondent countered all the arguments of the appellant and the same will be analysed and reflected in our discussions and findings in paras below.

5. After hearing both the sides, the following issues emerge for analysis:

i) Whether notice was not duly served on the appellant bank and thereby the impugned order was passed without hearing the appellant bank?

ii) Whether the alleged benami property mortgaged with the bank as collateral security needs to be released?

6. Coming to issue no. i), the appellant has claimed that the AA has not issued any notice of hearing u/s 26 (1) of the Act and appellant bank could not file its response to the reference launched at the behest of initiating Officer. However, as stated by the respondent, the bank admittedly invoked the recovery proceedings by way of issuance of notices under SARFAESI Act only on 03.12.2018 & 02.03.2019. It is the case of appellant itself that a notice was sent on 02.04.2019 by the bank to the Approving Authority and the Adjudicating Authority. Meaning thereby, the appellant bank was much aware about the on-going adjudication proceedings before the Ld. Adjudicating Authority. Thus, the bank cannot take the plea that the bank was unaware about the adjudication

proceedings. At this stage, it would be relevant to refer Section 26 (1)(d) of the PBPT Act which provides that the notice shall be issued by the Adjudicating Authority to any person who makes any claim with respect to property in question. Even section 26 (6) of the PBPT Act enjoins the power of addition/deletion of party/parties in the adjudication proceedings.

Furthermore, proviso to Sub Section (2) of Section 26 of PBPT Act deals with the situation where there are more than one person holding the property. Here holding does not mean the actual possession, rather, it takes care of symbolic and constructive possession. It provides that where the notice is served on anyone of the persons, the service of notice shall not be invalid on the ground that the said notice was not served to all the persons holding the property. Therefore, there is no illegality in the impugned order qua the service of notice on the appellant bank. It is submitted that the bank was admittedly aware about the adjudication proceedings and if the bank had any interest in the property in question, it could have invoked the jurisdiction of the Adjudicating Authority by filing an appropriate application to file its response/reply to the adjudication proceedings.

The respondent has in fact contested that the appellant bank is guilty of suppressing material fact as it did not disclose that the letter dated 02.04.2019 of the bank was duly considered and request of the bank to lift the Provisional Attachment Order was rejected in terms of letter dated 12.04.2019, wherein the entire proceedings pending before the Adjudicating Authority was detailed and even it was detailed as under:

> *"It is important to note that the provisional attachment under the Benami Act is subject to confirmation by the adjudicating authority. Mere order of provisional attachment does not prevent a person "entitled to claim" any interest in the property ("person interested") or*

to enjoyment of an immovable property (for example a lessee) from such enjoyment, the possibility of taking over the possession of such property or for it to be treated as "Frozen being Benami" arising only upon confirmation by the adjudicating authority under section 27 (1) of the Benami Act. In terms of such scheme, the attachment is an interim measure, eventual intendment being that in the event of it being "found" that the property is benami, the same shall be ordered to be "confiscated to the Central Government" [Section 27(3)]."

Thus, no prejudice has been caused to the appellant bank as the bank was having sufficient time to explain its stand before the Adjudicating Authority by way of submitting its objection/application/ response which the bank has not availed and it would be unjust to say that the bank has not been given opportunity before the Adjudicating Authority.

Moreover, the respondent stated that the notice under Section 26(1) and the reference under Section 24(5), along with the Annexure/Relied upon Documents, were served to the State Bank of India via Speed Post No. EI943942385IN on 18.06.2018. A copy of the tracking print for Speed Post No. E1943 is marked as Annexure A-3. It is, thus, hereby, assured that the service of the notices and references has been carried out meticulously and in adherence to the prescribed legal procedures as mandated by the PBPT Act, 1988. The appellant has chosen for not participating in the proceedings before the Adjudicating Authority and thus, the appellant's contention that no notice was served upon the appellant is wholly baseless, wrong and devoid of any merit and thus liable to be rejected only.

In light of the above discussion, this issue is decided in favour of the respondent and against the appellant bank.

7. Coming to issue no. ii) the appellant has contended that SARFAESI Act shall prevail over the PBPT Act and thus the attachment of the impugned property which are mortgaged to the SBI should be set aside.

The Provisional Attachment Order is not to recover any dues, rather, the same is to confiscate the property itself. Further, relevant to note Section 27 (4) which provides as under:

> *"(4) Any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void."*

The counsel for respondent has submitted that the objective of Benami Property Act has been "*to prohibit benami transactions and the right to recover property held benami*". In terms of Section 27, a property found to be held "*benami*" may be confiscated by the Adjudicating Authority, subject to remedy of appeal before the Appellate Tribunal. The detailed procedure for such action requires due notice to the interested parties that include "*any person who has made a claim in respect of the property*" (Section 26). The action is initiated on the basis of "*reason to believe*" that the holder of the property is a "*benamidar*" which expression is defined by Section 2 (10) to mean "*a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name*". The "*benami property*" means, as per Section 2(8), a property which is "*the subject matter of a benami transaction*" and also includes the proceeds from such property. The expression "*benami transaction*" is defined by Section 2(9) to connote a transaction or an arrangement where the property is transferred to or held by one person while the consideration for the same is provided or paid by another, it being held for the "*immediate or future benefit*" of the latter, this being subject to some exceptions with which one is not immediately concerned here. In the context of attachment and confiscation, the disputes might also involve a transferee, for consideration, of property suspected to be held benami in the name of transferor. Such transferee is given the right to object to confiscation, it being incumbent on him to prove that the property had been held or acquired by him from the transferor (benamidar) "*without his having knowledge of the benami transaction*". The test, thus, is of the transaction being bonafide and for "*adequate consideration*". The taint of benami in such disputes would precede the acquisition by the bonafide holder.

If the proposition of the SBI is accepted then the very purpose/intent as well as the object of the Benami Act would be defeated as unscrupulous person after acquiring a Benami Property and on detection of the same will become cautious. Thereafter, in order to escape from the rigours of the PBPT, Act, they will receive financial assistance from the banks/financial institutions by mortgaging the benami properties and then intentionally default to pay back the loan amount. The said banks/secured creditor would be appealing by suggesting that they have priority over the assets/ properties and thereby, the said unscrupulous person/s would be successful in achieving their ulterior motive by not getting their illegally gotten benami properties attached under the Benami Act. Therefore, once the property is declared as Benami, the benamidar loses its rights over the property and the property cannot be claimed by him as his assets and the said property cannot be mortgaged against any loan facility.

Perusal of the record also reveals that in the present case the appellant SBI sanctioned and disbursed the loan/credit facilities to M/s MAA KAILA DEVI DEVELOPERS AND HOTEL PVT. LTD. (THE HOTEL PRABHA INTERNATIONAL). The appellant bank issued the notice (at page 109 to 112) to the said borrower for recovery of outstanding loan liability of Rs. 2,48,28,690/- as on 30.11.2018, plus interest and other expenses. The said notice also reflects that Smt. Prabha Mangal, Smt. Seema Mangal, Smt. Anita Mangal, Shri Sandeep Mangal & Shri Bhagwandas Mangal, the

Directors of the above borrower also gave their personal guarantee for the loan and mortgaged their two properties by deposit of title deeds which is reflected at page 130 of the Appeal Paper Book and is detailed as under:-

i) EM Commercial property shop no. G-3 & G-4, Ashiya Plaza, 93 & 93-A, Mayur market, Thatipur, Gandhi Road, Gwalior, (MP) in the name of **Smt. Seema Mangal** w/o Shri Sandeep Mangal measuring 400 sq. ft. and bounded as: East- shop no. G-2, west- common area, North- stairs and common area, south – Road colony

ii) EM of Flat no. S-1, Second floor, building constructed on plot no. B-7, Purushottam Vihar Colony, Gram Jaderuakalan, Gole ka Mandir, Gwalior in name of **Smt. Seema Mangal** w/o Shri Sandeep Mangal measuring 54.46 Sq Mtr. And bounded as: east- Prakosth no S-2, west- road at ground floor, north- house no 6, Block B, South- road at Ground floor.

The present impugned property in the name of Shri Surendra Agrawal (the alleged benamidar) was also mortgaged with the appellant SBI as personal guarantor. Therefore, as the appellant SBI sanctioned and disbursed the loan/credit facilities to M/s MAA KAILA DEVI DEVELOPERS AND HOTEL PVT. LTD. (THE HOTEL PRABHA INTERNATIONAL) and took the title deed to the two properties of Smt. Seema Mangal, the one of the Director in the borrower company, the appellant bank should exercise its right to recover the dues firstly from the said two properties, as the present impugned property is tainted as benami property. Even otherwise, the said two properties of the borrowers are quite sufficient to recover the outstanding loans of the appellant bank from the borrower M/s MAA KAILA DEVI DEVELOPERS AND HOTEL PVT. LTD. (THE HOTEL PRABHA INTERNATIONAL) and its Directors, who gave the personal guarantee, without touching the property of the guarantor Sh. Surendra Kumar Agrawal, (the alleged benamidar). In case the appellant bank is unable to recover its complete outstanding dues from the said two properties, then appellant bank is at liberty to file its claim before the Adjudicating Authority u/s 27(2) of the PBPT Act.

Thus, this issue is also decided against the appellant and in favour of the respondent.

8. In view of the discussions above, the present appeal is hereby dismissed with liberty, to the appellant bank-SBI as mentioned in the preceding para.

Appeal Dismissed with Liberty.

Pronounced on this 10th Day of September, 2026.

(Rajesh Malhotra)
Member

(Balesh Kumar)
Member