A.F.R.

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HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 1002528 of 2012

K.G. Constructions a Partnership Firm Having and Anr.
…..Petitioner(s)

Versus

State Bank of India Having its Central Office at State and Ors
…..Respondent(s)

Counsel for Petitioner(s)	:	Gaurav Mehrotra, Sandeep Dixit, Santosh Kumar Tripathi, Utsav Mishra
Counsel for Respondent(s)	:	Anurag Srivastava, Alok Kumar Gupta, Amar Mani Tiwari, Bhanu Prakash Dubey, P. Agarwal, Pradeep Agrawal, Sudeep Kumar

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri Utsav Mishra, learned counsel for the petitioners, Sri Pradeep Agarwal, learned Senior Advocate assisted by Sri Anurag Srivastava, learned counsel for respondent Nos.1 and 2 and Sri Sudeep Kumar, learned Senior Advocate assisted by Ms. Radhika Verma, learned counsel for the respondent.

2. The petitioner no. 1 is a partnership firm registered with the Department of Commercial Taxes, Government of Uttar Pradesh, bearing TIN No. 09750018832. It is also registered with the Central Sales Tax Department. Petitioner no. 2 is one of the partners of the petitioner no. 1 firm and is engaged in business. The petitioners claim that they are neither borrowers nor guarantors in respect of any credit facility granted by respondent no. 1 Bank to the judgment debtor, including respondent no. 8. They further assert that they have no concern or connection with the loan transaction in question and have never

mortgaged, hypothecated or created any security interest in favour of the Bank over the properties owned and possessed by them.

3. The petitioners have stated that petitioner no. 1 purchased land measuring 0.238 hectares, forming part of Khasra Plot No. 248, situated at Village Anaura, Pargana, Tehsil and District Lucknow, through a registered sale deed dated 16.07.2010. The sale deed was duly registered in Book No. 1, Volume No. 9589, at pages 305-333. On the basis of the aforesaid registered sale deed, petitioner no. 1 claims to have acquired lawful ownership and possession over the said land.

4. It has further been stated that the property in question had previously been purchased by respondent no. 7, Kamalakshi Sewa Sansthan, from its erstwhile owner, Smt. Sangeeta Shukla, wife of Sri Rajiv Shukla, through a registered sale deed dated 30.03.2001. Smt. Sangeeta Shukla had, in turn, purchased the property from its original owner, Late Sri Dulare, son of Bhagwandeen, through his power-of-attorney holder, Sri Virendra Kumar Dubey, by means of a registered sale deed dated 07.12.1993.

5. The petitioners have also referred to a transaction dated 11.02.2010, whereby respondent no. 10 purchased the aforesaid property from its erstwhile owner, respondent no. 7, Kamalakshi Sewa Sansthan, through a registered sale deed executed in the office of the Sub-Registrar-II, Lucknow. The said sale deed was registered in Book No. 1, Volume No. 9395, pages 103-140, at Serial No. 1865/10. The pleadings further refer to a subsequent transaction executed by respondent no. 10 in favour of petitioner no. 1.

6. Petitioner no. 2 purchased another parcel of land measuring 0.1404 hectares, forming part of Khasra Plot Nos. 230 and 231, situated at Village Anaura, Pargana, Tehsil and District Lucknow, from its erstwhile owners, respondent nos. 11, 12 and 13, through a registered sale deed dated 24.02.2011. The said sale deed was registered in the office of the Sub-Registrar-II, Lucknow, in Book No. 1, Volume No. 10670, pages 217-250, at Serial No. 2492.

7. According to the petitioners, after purchasing the aforesaid properties and getting the land demarcated, they entered into peaceful possession thereof and have continuously been enjoying the same as owners without any interference. They further state that residential apartments have been constructed over the land and that a substantial part of the project has already been sold, while the remaining construction is nearing completion.

8. The petitioners have further pleaded that petitioner no. 1 obtained a Non-Encumbrance Certificate for the period 2007-2011 from the office of the Sub-Registrar-II, Lucknow. According to the said certificate, no encumbrance was recorded against the property. They also claim that, upon making enquiries from the concerned revenue authorities and the office of the Sub-Registrar, they discovered that neither the revenue records nor the registration records contained the names of respondent nos. 8 and 9 in respect of the properties purchased by them.

9. The dispute relating to the property, however, originated from certain loan transactions between respondent no. 1 Bank and respondent no. 8, namely M/s Trikone Rubber Industries Pvt. Ltd. It is stated that on 25.03.1998, respondent no. 1 Bank, through its Gorakhpur Branch, granted a credit facility to respondent no. 8. M/s Trikone Leisure Resorts Ltd., respondent no. 9, allegedly stood as a guarantor for the said loan and created an equitable mortgage over the property in question, along with certain adjoining properties, for securing repayment of the loan.

10. The Bank relied upon an alleged sale deed dated 26.03.1996, purportedly executed by Sri Vinay Singh, acting through a power of attorney, in favour of M/s Trikone Leisure Resorts Ltd. The said document was presented for registration before the Sub-Registrar, Mumbai. The petitioners, however, contend that the alleged sale deed was not legally valid, as the property covered by it was situated in Uttar Pradesh and the Sub-Registrar at Mumbai was not competent to register a document relating to such property, particularly in view of the provisions of the Registration (U.P. Amendment) Act, 1994.

11. The petitioners further contend that the Bank failed to produce any reliable document, apart from a photocopy of the alleged sale deed, to establish that M/s Trikone Leisure Resorts Ltd. had actually acquired ownership or possession over the property. It is also their case that the said company never appeared before the Recovery Officer to claim ownership or possession over the property, despite the recovery proceedings having been initiated against it. According to the petitioners, these circumstances demonstrate that the claim of the Bank regarding ownership of the property by the aforesaid company was unfounded.

12. When the previous owners, namely respondent no. 7 and Sri Babu Lal, father/husband of respondent nos. 11, 12 and 13, came to know that the property was being put to public auction pursuant to proceedings before the Debts Recovery Tribunal, they filed objections/applications dated 16.10.2003 before the Recovery Officer, Debts Recovery Tribunal, Allahabad. By way of the said objections, they sought a stay of the auction proceedings and setting aside of the proposed auction. They asserted that they were the lawful owners of the property on the basis of validly executed and registered sale deeds and that the revenue records also reflected mutation in their favour.

13. In their objections, the previous owners specifically challenged the alleged sale deed dated 26.03.1996, on the basis of which the Bank claimed that M/s Trikone Leisure Resorts Ltd. had acquired ownership of the property and subsequently mortgaged it. They contended that the alleged sale deed was not a valid document and that the mortgage purportedly created on its basis could not confer any enforceable security interest upon the Bank.

14. Apart from the aforesaid objections, other adjoining landowners, including Sri Dharmendra Kumar and Smt. Nita Kumar, also filed objections before the Recovery Officer in respect of their respective properties situated in the vicinity of the land in question, comprising Khasra Plot Nos. 245, 246, 247 and 248 of Village Anaura. They too disputed the Bank's claim over their properties and asserted their independent ownership and possession.

15. On 20.11.2003, this Court, while deciding Writ Petition No. 5613 (M/B) of 2003, filed by Sri Dharmendra Kumar and Smt. Nita Kumar against the State Bank of India and others, directed the petitioners therein to raise their objections before the Recovery Officer, Debts Recovery Tribunal, Allahabad. The Recovery Officer was, in turn, directed to consider and decide the objections in accordance with law.

16. In response to the objections filed by the previous owners, the Bank submitted its reply dated 09.02.2004. According to the petitioners, instead of properly addressing the objections on merits, the Bank raised objections regarding maintainability and limitation. The petitioners allege that the Bank failed to establish its claim of ownership and mortgage through legally admissible and reliable documents.

17. It has also been stated that the persons who had jointly purchased the properties put to auction withdrew from the auction proceedings and sought refund of the deposited amount by filing an application dated 10.05.2004. In the said application, they allegedly stated that, upon examination of the records, it had become clear that the borrowers/judgment debtors had no saleable right, title or interest in the properties put to auction and, consequently, no valid title could be transferred to the auction purchasers.

18. The Recovery Officer, Debts Recovery Tribunal, Allahabad, after considering the objections and the material placed before him, passed a detailed order dated 31.05.2004, allowing the objections filed by the objectors. By the said order, the auction sale was set aside and the property in question was released from attachment. The petitioners rely upon the aforesaid order to contend that the Bank had no lawful right to proceed against properties which did not belong to the borrower or guarantor.

19. According to the petitioners, the Recovery Officer, while passing the order dated 31.05.2004, had acted within his jurisdiction and authority under the applicable provisions of law. They submit that the Recovery Officer was competent to examine whether the property

sought to be auctioned actually belonged to the judgment debtor or the person against whom the recovery proceedings were initiated.

20. The Bank, instead of taking appropriate steps for identifying and proceeding against the personal assets of the actual judgment debtors, challenged the order dated 31.05.2004 before the Debts Recovery Appellate Tribunal. The petitioners contend that the Bank ought to have pursued its remedies in accordance with law rather than attempting to enforce its alleged security interest against properties belonging to third parties.

21. On 06.08.2007, the Presiding Officer, Debts Recovery Appellate Tribunal, passed the impugned order allowing the appeal preferred by respondent no. 1 Bank. The appellate authority principally held that the Recovery Officer had wrongly interpreted Rule 11 and had arrived at findings on an incorrect understanding of the matter, thereby exceeding his jurisdiction and travelling beyond the decree while passing the order dated 31.05.2004. Consequently, the order passed by the Recovery Officer was set aside.

22. It has further been stated that, prior to the passing of the aforesaid appellate order, the previous owner, respondent no. 7, had executed a sale deed in favour of the petitioners. The petitioners, however, claim that they had no knowledge of the appellate order dated 06.08.2007 and, therefore, did not challenge the same at that stage.

23. Meanwhile, the adjoining landowners, namely Sri Dharmendra Kumar and Smt. Nita Kumar, who had also raised objections before the Recovery Officer, preferred an appeal under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, registered as Appeal No. R-866 of 2007, before the Debts Recovery Appellate Tribunal, Allahabad.

24. The said appeal was admitted by the Appellate Tribunal on 05.11.2007, and the recovery proceedings were stayed. The Bank subsequently filed its objections to the appeal on 02.12.2008. The appellants also filed a rejoinder affidavit dated 03.02.2007, substantially

reiterating their objections and disputing the Bank's claim over the properties.

25. The petitioners have alleged that, despite being afforded sufficient opportunity, the Bank failed to file an effective rejoinder to the objections raised by the concerned landowners. They further contend that the Bank continued to rely upon the alleged sale deed dated 26.03.1996, without establishing the lawful acquisition of ownership by M/s Trikone Leisure Resorts Ltd. or the creation of a valid mortgage over the properties.

26. It is further stated that, on 21.10.2005, the previous owner of the land, who was arrayed as respondent no. 11, also filed objections against the appeal preferred by the Bank. The other owners of adjoining properties also raised objections on similar grounds.

27. Ultimately, on 26.04.2011, the Debts Recovery Appellate Tribunal dismissed the appeal preferred by Sri Dharmendra Kumar and Smt. Nita Kumar, holding that the same was without substance. The petitioners allege that the appellate authority failed to properly appreciate the objections raised by the concerned landowners and the material available on record.

28. It has also been stated that certain persons claiming to be representatives of respondent nos. 4 and 5 visited the property in question. Upon an enquiry being made by the petitioners, it transpired that the Recovery Officer had invited the auction purchasers of the year 2003, who had earlier withdrawn from the auction proceedings, to participate in the subsequent proceedings.

29. The petitioners further state that, on 10.04.2012, the Recovery Officer, Debts Recovery Tribunal, Allahabad, passed another order whereby the auction sale in favour of respondent nos. 3, 4 and 5 was confirmed. The petitioners contend that the said order was passed without properly considering the ownership rights of the petitioners and other persons who had acquired the properties through registered sale deeds.

30. The petitioners have challenged the appellate order dated 26.04.2011, the earlier appellate order dated 06.08.2007 and the subsequent order dated 10.04.2012, contending that the same were passed without proper consideration of the relevant facts and documents. According to them, the authorities failed to appreciate that the properties in question belonged to independent third parties and could not have been subjected to recovery proceedings for the debts of the borrower or guarantor.

31. The petitioners have also relied upon the interim order dated 23.04.2012 passed by this Court in an identical matter, namely Writ Petition No. 2220 (M/S) of 2012, titled Dharmendra Kumar and another Vs. State Bank of India and others. In the said writ petition, which related to adjoining property and involved similar issues, this Court stayed the operation and implementation of the appellate order dated 26.04.2011, the earlier appellate order dated 06.08.2007 and the order dated 10.04.2012, insofar as they related to the property forming the subject matter of that petition.

32. On the basis of the aforesaid interim order, the petitioners contend that their case stands on identical footing, as their properties are situated in the same area and their claim of ownership is founded upon registered sale deeds. They, therefore, assert that they are also entitled to similar protection against the auction and recovery proceedings initiated by the Bank.

33. A First Information Report was also lodged against Vinay Kumar Singh, special power of attorney holder and against the auction purchaser under Sections 420, 467, 468 and 471 of the Indian Penal Code in connection with the alleged fraudulent transaction relating to the sale deed in question. The said FIR was challenged before this Court by filing an application under Section 482 Cr.P.C.; however, the said application was dismissed by this Court.

34. The present writ petition has been filed on the following prayer :-

> *“(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated*

10.4.2012 passed by respondent No. 6 in DRC case No. 224 of 2002, so far as it relate to the petitioners, copy whereof is annexed as Annexure No. 1 to this writ petition.

(ii) To issue a writ, order or direction in the nature of certiorari quashing the impugned appellate order dated 26.4.2011 passed by Debts Recovery Appellate Tribunal in Appeal No. R-866 of 2007, so far as it relate to the petitioners, copy whereby is annexed as Annexure No.2, to this writ petition.

(iii) To issue a writ, order or direction in the nature of certiorari quashing the impugned first appellate order dated 6.8.2007 passed in Appeal No. 9 of 2004 by Debts Recovery Tribunal, so far as it relate to the petitioners, copy whereby is annexed as Annexure No.3, to this writ petition.

(iv) To issue a writ, order or direction in the nature of mandamus commanding the respondents from creating any hindrance in the peaceful possession of the petitioners in Khasra Plot No. 248, admeasuring area 0.238 hect. And Khasra Plot No. 230, 231, measuring 0.1401 hect. situated at Village Anaura, Pargana, Tehsil and District Lucknow.

(v) …

(vi) ...”

35. Submission of learned counsel for the petitioners is that the entire case of respondent-Bank for auctioning, inter-alia the property in question, is based on some alleged sale deed executed by Special Power of Attorney Holder of the General Power of Attorney Holder, on 26.3.1996, in favour of respondent No. 9. The aforesaid alleged sale deed has been shown to have been executed before Sub-Registrar, Mumbai, although the property in question is situated in District Lucknow and as such after the amendment in the Registration Act, vide U.P. Act No. 27 of 1994, the Sub-Registrar, Mumbai was not competent and authorize to receive and register the document in respect of the property in question which is situated in State of U.P., at Lucknow. The aforesaid Act No. 27 of 1994 had received the presidential assent on 16.9.1994 and was published in U.P. Gazette on 23.9.1994. Hence the entire impugned proceeding, based on a transaction, which is non-est and void ab-initio, is itself per se illegal and liable to be set-aside.

36. Therefore, the said sale deed, not being registered in accordance with the provisions of the Registration Act, cannot convey any right, title or interest to the respondent Bank.

37. Further submission is that the said Sale Deed dated 26th March, 1996, in respect of the aforesaid property executed at Mumbai, which was mortgaged by M/s Trikone Leisure Resorts Ltd., and the loan was secured, was not a legally executed sale deed and was void-ab-initio, and all the subsequent transactions in respect of the aforesaid sale deed does not stand in the eyes of law. The respondent-Bank, failed to produce a single document, (except the photocopy of the said alleged Sale Deeds), showing the name of M/s. Trikone Leisure Resorts Ltd., as the owner in possession of the aforesaid property, and neither the alleged owner, at any stage came forward to claim the ownership/possession over the property in question and this very factum that the said alleged owner of the property M/s. Trikone Leisure Resorts Ltd., never ever appeared/contested the aforesaid recovery proceedings against them and their alleged property, sufficiently proves that the said property was never owned and possessed by the said company and falsifies the claim of the Bank.

38. It is next submitted that the joint auction purchasers of the properties put to auction, which also includes the property which is the subject matter of the present writ petition, themselves withdrew from the auction and demanded their money back, by filing an application dated 10.5.2004 for setting aside the auction and return of the auction amount. In para 5 of the said application they have stated that from perusal of the record it is clear that the borrowers/judgment debtors had no saleable right, title and interest in the auctioned properties, which could be transferred to the auction purchasers.

39. It is submitted that the learned Recovery Officer, while deciding the first issue, regarding his jurisdiction to examine the validity of the mortgage, rightly concluded in affirmative and correctly gave a finding that under rule 11 of the Second Schedule of Income Tax Act, 1961, read with section 29 of the RDDBFI Act, 1993, the Recovery Officer is authorized to investigate the questions that whether the property, which is being attached and being put to auction, for the recovery of the creditor-Bank, is liable for attachment or sale or not, as to whether the

said property, is owned and possessed by the judgment debtors or not and while investigating the ownership/possession of any immovable property, based on a sale deed, the proper execution, registration and the validity of the sale deed to convey any right, title and interest to the owner, has necessarily to be looked into, by the Recovery Officer, in order to ascertain that the property being attached/auctioned is the property belonging to the borrower/judgment debtor, as such, the Recovery Officer is fully empowered and authorized to go into all these details while proceeding for recovery from any immovable property.

40. Learned counsel submits that this Court vide its judgment dated 20th November, 2003 has also observed and provided that the Recovery Officer is authorized to investigate the questions regarding the ownership of the property and also the right of the creditor to get property auctioned and to pass necessary orders, in this regard, as such, the learned Recovery Officer was well within his jurisdiction and authority, under the applicable rules, as also derived from the order passed by this Court, while passing the order dated 31st May, 2004.

41. The learned Recovery Officer while adjudicating the second issue i.e. whether the mortgage, created in favour of the Bank is lawful and whether the Bank is entitled to recover its dues, by the sale of mortgage property, rightly arrived at the finding that the sale deeds dated 26th March, 1996, deposited by the judgment debtors, have been registered by an authority at Mumbai, who was not competent and having no jurisdiction to register such sale deeds and as such, they cannot be treated to be properly registered and therefore as per Section 49 of the Registration Act, they cannot be read for any purposes, and equitable mortgage so created in favour of the State Bank of India are unlawful and does not confer any right or title in favour of the State Bank of India, for recovery of its dues, out of the properties mentioned in the sale deeds, and moreover, the learned Recovery Officer also recorded that since the said property is not owned and possessed by any of the judgment debtors, it cannot be auctioned as a personal asset of the judgment debtors and thus he rightly passed the order dated 31st May,

2004, allowing the applications of the present appellants as well as the other objectors.

42. It is submitted that a bare perusal of the aforementioned impugned appellate order dated 26.04.2011 would reveal that the same has been passed in a mechanical manner without appreciating the facts of the matter, material and evidences available on record and ignoring the law on point. Further, no observation has been made in the impugned appellate order, regarding the order passed by the Debts Recovery Tribunal. The learned Appellate Tribunal also did not notice the conduct of the respondent-Bank and that of the borrower that the very grant of loan to a party at Gorakhpur by a Bank, situated at Gorakhpur, by mortgaging a property situate at Lucknow and through sale deeds registered at Mumbai and that too through General Power of Attorney, who in turn gave Special Power of Attorney, smacks of foul play and apparent collusion between the banker and the borrower, which is further fortified from the fact that the borrower after taking the loan never turned back, did not contest any of the proceedings and did not take any step to save the valuable properties, which goes to show that the Mumbai sale deeds were sham documents and the properties in question as also the other mortgaged properties were never owned and possessed by them.

43. Further, it is submitted that a bare perusal of the impugned appellate order dated 26.4.2011 and the impugned order dated 6.8.2007 would reveal that neither the learned Debts Recovery Appellate Tribunal nor the learned Debts Recovery Tribunal could appreciate the law on point and both the judgments have been passed on mere technicalities without dealing with the actual controversy involved in the matter. Neither the learned Debts Recovery Appellate Tribunal nor the learned Debts Recovery Tribunal could consider and appreciate that neither the names of the alleged owners i.e. the judgment debtor was recorded in the concerned revenue records nor the respondent No. 1, bank produced the originals of the alleged sale deeds, allegedly registered at Mumbai or the approval of the Power of Attorney through which the sale deed has been

shown to have been executed at Mumbai. It was also not considered that the sale deed and revenue records of Khasra and Khatauni produced for rebuttal on the other side were original.

44. A chunk of land, measuring 0.045 hect. of Khasra Plot No. 248, now belonging to petitioner No. 1, which was earlier owned by respondent no. 7, was acquired in the year 2007-08 for National Highway Authority of India for the purposes of road widening i.e. widening of National Highway. The award for compensation in lieu of the aforesaid acquisition was made in the name of respondent No. 7. Subsequently even the name of National Highway Authority was also mutated in the revenue records in place of Respondent No. 7 on 24.5.2008. No claim or objection for payment of compensation in lieu of acquisition was ever made either by respondent No. 8 and 9 nor by respondents No. 3, 4 and 5, which fact also goes on to say that the respondents No. 8 and 9 have no concern with the aforesaid land, which is part of the property in question. Not only so, the respondent no. 10 while in ownership and in possession of the part of the property in question belonging to petitioner no. 1, had got its land declared as abadi under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, vide order dated 6.9.2010 passed by Sub-Divisional Magistrate, Sadar, Lucknow. Even at the aforesaid point of time, no objection of any kind was ever raised and hence, it is evident that even at the time of acquisition, the Government has also recognized ownership of the previous owners of petitioners and not of respondent No. 8 and 9 or respondent Nos. 3, 4 and 5.

45. A perusal of the order dated 10th April, 2012 gives reasons to believe that apparently there is collusion between the auction purchasers, the respondent-Bank and also the learned Recovery Officer. When the joint auction purchasers themselves withdrew from the auction and took their money back and ceased to be auction purchasers, as such, there was no occasion for the respondent Bank to request the learned Recovery Officer to call the said auction purchasers in 2011 and requiring them to deposit the then auction amount.

46. A perusal of the order-sheet of the DRC Case, bearing case No. 224/2002, further reveals that although the impugned appellate order dated 26.4.2011 passed by learned Debts Recovery Appellate Tribunal was filed before, the Recovery Officer i.e. respondent No. 6 on 28.12.2011, with undue haste even prior to the filing of the aforesaid impugned appellate order, issue notice to the auction purchasers of 2003, who had willingly withdrawn from auction i.e. respondent No. 3, 4 and 5.

47. It is submitted that it is absolutely illegal and arbitrary on the part of the learned Recovery Officer, to accept and proceed only on the request of the Bank's Counsel, ignoring the recovery certificate dated 04th June, 2002, issued by the Presiding Officer. As such, the recovery proceedings are also liable to be stayed by this Court or else it may lead to creation of third party interest and multiplicity of proceedings.

48. Learned counsel submits that the impugned appellate order dated 26.04.2011 and the impugned first appellate order dated 6.8.2007 and the impugned order dated 10.4.2012 have been passed on account of extraneous consideration and ulterior motive. These orders have been passed in whimsical and capricious manner and as such are in violation of principles of natural justice, as enshrined in Article 40 of the Constitution of India.

49. It is submitted that the order dated 31.05.2004 passed by the Recovery Officer was in conformity with and in compliance with the directions issued by this Court vide order dated 20.11.2003 in Writ Petition No. 5613 (M/B) of 2003. The said order had attained finality, as neither the respondent-Bank nor the auction purchasers had challenged the same. It is, therefore, contended that the DRT and DRAT could not have proceeded to examine the jurisdiction exercised by the Recovery Officer in a manner contrary to the directions contained in the aforesaid order of this Court.

50. It is further submitted that the Registration (U.P. Amendment) Act, 1994 (U.P. Act No. 27 of 1994) received the assent of the President of India on 16.09.1994 and was published in the U.P. Gazette on

23.09.1994. The alleged sale deeds relied upon by the respondent-Bank were registered at Mumbai on 26.03.1996, i.e., much after the aforesaid amendment had come into force. Therefore, according to the petitioners, the validity of the registration of the documents relating to the immovable property situated in Uttar Pradesh was required to be examined in the light of the provisions of the Registration Act as amended by the aforesaid U.P. Amendment Act.

51. Learned counsel for the petitioners further submits that the Registration Act, 1908 falls within Entry 6 of the Concurrent List of the Seventh Schedule to the Constitution of India. In view of Article 246 read with Article 254(2) of the Constitution of India, where a State law relating to a subject in the Concurrent List receives the assent of the President, such State law shall prevail within that State to the extent of its repugnancy with the existing law made by Parliament. It is, therefore, contended that although Section 30(2) of the Registration Act continued to remain in the Central enactment until its subsequent omission by the Registration and Other Related Laws (Amendment) Act, 2001, the said provision had ceased to operate in the State of Uttar Pradesh by virtue of the U.P. Amendment Act, 1994, which had received the assent of the President.

For ready reference, Article 254 (2) of the Constitution of India is being quoted as under :-

> *"Article 254 (2) : Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.*
>
> *Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."*

52. On the basis of the aforesaid submissions, learned counsel for the petitioners contends that the alleged sale deeds dated 26.03.1996,

registered at Mumbai in respect of the immovable properties situated in Uttar Pradesh, did not confer any valid right, title or interest upon M/s. Trikone Leisure Resorts Ltd. Consequently, the subsequent deposit of the said documents with the respondent-Bank could not create a valid mortgage in respect of the properties in question. It is, thus, contended that neither the alleged mortgagor nor the respondent-Bank nor the auction purchasers acquired any enforceable right, title or interest in the properties belonging to the petitioners and all consequential proceedings founded upon the alleged mortgage are liable to be set aside.

53. The impugned appellate order dated 26.04.2011 and the impugned first appellate order dated 6.8.2007 and the impugned order dated 10.4.2012 do not withstand the litmus test of reasonableness, equality and fairness, it is submitted by learned counsel for the petitioners.

54. On the other hand, learned counsel for the respondents submit that Recovery Officer could not have gone behind the decree and he was not the proper forum to decide ownership of a property, nor the creation of mortgage and had transgressed his jurisdiction. A perusal of para 26 of the judgment dated 26.04.2011 shows that after comparing the powers of Recovery Officer of DRT under Rule 11 of IInd Schedule of Income Tax Act with those of Order 21 Rule 58 of CPC in detail, the learned DRAT has held as under:

> *"So far as Rule 11 of IInd Schedule of Income Tax Act which applies to recovery of amount while executing a decree passed U/S 20 of Recovery of Debts Due to the Banks and Financial Institutions Act 1993 does not authorize the Recovery Officer to decide the questions relating to the right, title and interest in the attached property, though Sub-Rule 6 of Rule 11 prescribes that such questions would be decided by the Civil Court and not by Recovery Officer and order passed by the Recovery Officer would only be conclusive subject to result of such suit if any filed. Thus the Sub-Rule 2 of Rule 58 of Order 21 of CPC is wider enough than Rule 11 and thus the analogy of CPC in relation to the power of executing court to decide about title, right and interest in property attached cannot be equated with the powers vested with the Recovery Officer under Rule 11".*

55. It is further submitted that the DRAT relied upon judgment of Hon'ble Supreme Court passed in the case of **Tax Recovery Officer-II**

Sadar, Nagpur vs Gangadhar Vishwanath Ranade, reported in (1998)6 SCC Page 658, relevant para 9 where it has been held: *"The Tax Recovery officer, therefore, has to examine who is in possession of the property and in what capacity. He can only attach property in possession of the assesee in his own right, or in possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the assesse in favour of a third party as void. If the Department finds that a property of the assessee is transferred by him to a third party with the intention to defraud the Revenue, it will have to file a suit under Rule 11(6) to have the transfer declared void under Section 281".*

56. It is submitted that as held by DRAT, mortgaged properties were attached vide order dated 03.01.2003 and attachment order was executed on spot by Recovery Inspector of DRT with announcement on loudspeakers and drum beating but no one made any objections, which makes it clear that the property was not in possession of the petitioners on the date it was attached by DRT hence the aforesaid judgment supports the case of respondent bank.

57. The DRAT has further held as under:

> *"XXX It is apparent that the appellants were not in possession of the property on the date when the property was attached, otherwise they would have challenged the attachment immediately rather than waiting to auction sale to complete and then to file objection to set aside the auction sale. Thus the property was not in possession of the appellants on the date when it was attached."*

58. DRAT also held in para 47 of impugned judgment as under:

> *"On basis of aforesaid, it is clear that since Shri Dulare has not come forward to challenge the sale deed executed on 26.3.1996 and accepted deeds of its attorney, therefore, fraudulently Shri Dulare has transferred the property to Smt. Sangeeta Shukla, who re-sold the property to the present appellants by executing two sale deeds on 7.9.2000 and 2.04.2001 and the said fraudulent transfer which is subsequent to the earlier, will not invalidate the earlier transfer". It also held that until the sale deeds are declared void by a competent court, the effect of registration of such sale deeds continue to exist.*

59. In the case of **Mohd. Abdul Razack Vs. Syed Meera Ummal, reported in AIR 1967 Madras (Page 212)**, it was held that deed is only violable in respect of registration in wrong jurisdiction but not void-ab-initio. The mortgage was created on 25.03.1998 while the objectors purchased the properties through Sale deed dated 07.09.2000/13.04.2001. Dulare sold the property to M/s. Trikone Leisure Resorts Ltd. in 1996 and then made fraudulent transfer to Smt. Sangeeta Shukla who also sold the same to the objectors.

60. It is further submitted that everybody colluded with the first owner Dulare and nobody initiated any criminal proceedings against him for selling his properties twice & that too through his different attorneys. Accordingly, the judgments passed by DRT and DRAT impugned in the writ petition do not suffer from any illegality and are not liable to be interfered with by the Hon'ble Court.

61. Learned counsel for the respondents next submitted that UP Amendment could not have taken away the right of Registrar in Mumbai and otherwise also, the State could not have exceeded to such an extent so as to nullify the power of Central Legislation under concurrent list provided under the Constitution of India. On the relevant date, provisions of registration of properties belonging to any place were still effective in the cities of Kolkata, Mumbai and Chennai and no State Amendment could overrule the provisions of the Central Act. Mortgaged properties were still in the charge of Bank which was also created before Registrar of Companies, Kanpur and which continued.

62. Submission of learned counsel for the respondents is that the Registrar, Mumbai was competent to receive and register document of property in question on 26.03.1996. The **Section 30(2)** of the Registration Act, as it existed in the Registration Act prior to 2001, reads as under :

> *"X X X 30(2). The Registrar of a district in which a Presidency-Town is included and the Registrar of the Delhi District may receive and register any document referred to in Section 28 without regard to*

> *the situation in any part of India of the property to which the document relates".*

63. It continued to be found a valid provision under the Act up to the year 2001 when it was deleted by Act No.48 of 2001. The Registrar of Assurances at Mumbai was governed by the provisions of the Registration Act as it existed in Mumbai on 26.03.1996 and, clearly, on that date, the aforesaid provision did exist in the Registration Act and the Sub-Registrar of Assurances was well within his jurisdiction and authority to receive and register any instrument under his authority for any document which was in respect of any property situated anywhere in the country. By U.P. Act No. 27 of 1994 dated 23.09.1994 the Section 30(2) as well as section 67 of the Registration Act were omitted.

64. The Registration Act, 1908 falls under entry 6 of the Concurrent List, thus, by virtue of Article 246 (2) of the Constitution of India, the Parliament as well as the State Legislature would have power to legislate in respect of the subject matter. Section 30(2) as well as Section 67 of the Registration Act, 1908 were omitted finally by the Central Legislation by virtue of the "Registration and other related Laws (Amendment) Act, 2001 (Act No. 48 of 2001 w.e.f. 24.9.2001) enacted by the parliament.

65. Said issue has been considered by Hon'ble Calcutta High Court in the case of **Rumi Sen vs. Sanjay Sureka & others in C.S. No. 41 of 2011 decided on 30.6.2011**, wherein it was held that the Registrar in Mumbai continued to be governed by Section 30(2) of the Registration Act till it was obliterated in 2001 by Act No.48 of 2001,relevant portion is reproduced hereunder :

> *"X X There is a further technical objection to the power of attorney taken by the plaintiffs. They say that Section 28 of the Registration Act, as is relevant in the context, provides that a document affecting immovable property shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document relates is situate. The plaintiffs refer to Section 30 of the Act and the effect of such provision following its amendment. Prior to the relevant amendment of Section 30 of*

> *the Act, sub-section (2) thereof permitted, inter alia, the registrar of a district in which a presidency town was included to receive and register any document referred to in Section 28 without regard to the situation in any part of India of the property to which the document related. Sub-section (2) was omitted from Section 30 of the Act by a West Bengal amendment that came into effect in 1997. Subsequently, there was a Central amendment that altogether removed Section 30(2) from the statute. The plaintiffs suggest that upon the West Bengal amendment coming into effect in 1997, no document affecting any immovable property in West Bengal could have been received or registered by any registrar in Mumbai. Prima facie, such argument is not acceptable. Upon the West Bengal amendment coming onto effect, no registrar of a district in West Bengal in which a presidency town was included could have received or registered a document affecting any immovable property irrespective of where the property was situate. But the registrar in Mumbai was not subject to this amendment and, notwithstanding the West Bengal amendment, the registrar in Mumbai continued to be governed by Section 30(2) of the Registration Act till it was obliterated in 2001. Since the two Mumbai documents were executed in 1999, notwithstanding the West Bengal amendment, there does not appear to have been any infirmity in the Mumbai registrar receiving and registering the same".*

66. Relying on the aforesaid judgment, Hon'ble Delhi High Court in the case of **Gati Cargo Management Services Vs. SBL Industries Ltd** wherein it was held that *"By virtue of Article 254(1) of the Constitution, in the event of any conflict of laws enacted by a State Legislature and by the Parliament in respect of matters listed in the concurrent list, the legislation as enacted by the Parliament would prevail"*

It was further held that:

> *"24. By virtue of Article 254(1) of the Constitution, in the event of any conflict of laws enacted by a State Legislature and by the Parliament in respect of matters listed in the concurrent list, the legislation as enacted by the Parliament would prevail. In a situation, where a State Legislation has obtained the President's assent, the same would prevail in that State. Although, in the present case, there are no two different enactments, however, the principles that are enunciated in Article 254 of the Constitution of India would be applicable. Thus in my view, the Registration Act, 1908 as amended by the Registration (Bihar Amendment) Act, 1991, would prevail over the existing law (i.e. pre-*

> *constitutional legislation) as applicable to the State of Bihar. However, it is relevant to note that the same does not imply that the law as amended by the Bihar Legislature would have extraterritorial application. The law four words of Article 254(2) of the Constitution of India; "prevail in that State" clearly restrict the applicability of the amendment to the State of Bihar. That being so the Registration of the sale deeds in question by the registering authorities in Mumbai by virtue of Section 30(2) of the Act are not flawed".*

67. So far as the impact of omission of Section 67 from the Registration Act, 1908 by the U.P. Act No.27 of 1994 is concerned, it is submitted that the same is procedural. **Section 67**, which existed prior to amendment, reads as under:-

> *"67. Procedure after registration U/S 30, Sub Section (2)- On any document being registered u/s 30, Sub Section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose districts any part of the property to which the instrument relates is situate and the Registrar receiving such copy shall follow the procedure prescribed for him in Section 66, Sub Section (1)".*

68. It is submitted that the heading of the Section itself suggests that Section 67 deals with the procedure. It is settled law that procedural defects and irregularities should not be allowed to defeat substantive rights or to cause injustice. Procedure-a hand maiden to justice should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The exception to this principle is

a. Where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.

In the present matter the U.P. Act No. 27 of 1994 does not specifically provides the consequences of non compliance, thus the exception does not apply in the present matter.

69. Reliance is placed on **Udai Shanker Triyar vs. Ram Kalewar Prasad Singh reported in (2006) 1 SCC Page 75**, which was subsequently relied upon by the Hon'ble Apex Court in the case of **Haryana State Cooperative Supply & Marketing Federation Ltd. vs. Jayan Textiles & another reported in (2014) 4 SCC Page 704**.

70. Otherwise also, the respondent-bank also gets benefit of Section 53-A of Transfer of Property Act as held by Hon'ble Supreme Court in its judgment dated 22.01.2002 in **Shrimant Shamrao Suryavanshi & another vs Prahlad Bhairoba Suryavanshi by LRs & others, reported in AIR 2002 SC Page 960,** relevant portion of the same is as under:

> *"14. The aforesaid recommendation of the Special Committee were accepted by the Govt. of India as the same is well reflected in the aims and objects of amending Act, 1929 whereby Section 53-A was inserted in the Act.*
>
> *15. The Special Committee's report which is reflected in the aims and objects of amending Act 1929 shows that one of the purposes of enacting Section 53-A was to provide protection to a transferee who in part performance of the contract had taken possession of the property even if the limitation to bring a suit for specific performance has expired. In that view of the matter, Section 53-A is required to be interpreted in the light of the recommendation of Special Committee's report and aims, object contained in amending Act 1929 of the Act and specially when Section 53-A itself does not put any restriction to plea taken in defence by a transferee to protect his possession under Section 53-A even if the period of limitation to bring a suit for specific performance has expired.*
>
> *16. But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are-*
>
> *1) there must be a contract to transfer for consideration any immovable property.*
>
> *2) the contract must be in writing, signed by the transferor, or by someone on his behalf;*
>
> *3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained:*
>
> *4) the transferee must in part performance of the contract take possession of the property, or of any part thereof:*
>
> *5) the transferee must have done some act in furtherance of the contract; and*
>
> *6) the transferee must have performed or be willing to perform his part of the contract".*

71. Reliance is also made on the judgment dated 15.10.2001 of Hon'ble Delhi High Court given in **Asha M Jain vs Canara Bank, reported in 2001 LawSuit(Del) 1447**.

72. In view of the facts given above, it becomes clear that the respondent bank is otherwise also entitled to get the benefit of Section 53-A of the Act as in any case, there was a contract between Dulare & Trikone, there was a fixed consideration of sale, was in writing, was duly signed and transferee was in possession.

73. Learned counsel for the respondents submits that in view of the above, it is clear that:

a. Till the time Section 30(2) as well as Section 67 of the Registration Act, 1908 were finally omitted by virtue of 'Registration & others Related Law (Amendment) Act, 2001 (Act No. 48 of 2001 w.e.f. 24.9.2001), since enacted by the Parliament, Registrar in the Presidency Town at Mumbai remained empowered to receive and register sale deeds regarding properties situated at any place, hence the sale deeds in question executed on 26.03.1996 are valid and by depositing them with the Bank, a valid mortgage was created.

b. As discussed above, the Recovery Officer did not have a jurisdiction to declare the sale deeds or the mortgage invalid hence the impugned orders do not suffer from any illegality and are otherwise also not liable to be interfered with by the Hon'ble Court.

74. Learned counsel for the respondents placed reliance upon the following judgments :-

(i) Tax Recovery Officer II v. Gangadhar Vishwanath Ranade, (1998) 6 SCC 658

> *9. The Tax Recovery Officer, therefore, has to examine who is in possession of the property and in what capacity. He can only attach property in possession of the assessee in his own right, or in possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the assessee in favour of a third party as void. If the Department finds that a property of the assessee is transferred by him to a third party with the intention to defraud the*

Revenue, it will have to file a suit under Rule 11(6) to have the transfer declared void under Section 281.

(ii) Muhammad Abdul Razack v. Syed Meera Ummal, 1965 SCC OnLine Mad 289

The learned Judges answered the question to the effect that the registration was invalid because the concerned Sub-Registrar had no jurisdiction to accept the document for registration, the property comprised in it being outside the territorial limits of his jurisdiction, and that was enough to enable the parties to present the document for registration and was enough to enable the proper registering officer to proceed as if the document was being presented before him for the first time, and that no question of limitation could arise because there was no limitation for the re-registration of a documeat. In this case also, anything might have happened, namely, the parties, without knowing the correct registration office, might have registered the document in a wrong office. Or the property might have been situated on the border between two registration districts and that the parties might have presented the document at the correct registration office and the Sub-Registrar might have thought that the document presented to him could not be registered in his office and directed them to the other registration office. Or the Sub-Registrar of the office might have been under the genuine impression that he could register the document in his office and he might have registered it in good faith. The plaintiff-respondent has not at all pleaded this fact of fraud on registration in her plaint and her plaint is completely silent on this point. This point was neither raised nor argued at the stage of trial and there is no evidence also on the point. The lower appellate Court, therefore ought not to have allowed the plaintiff to raise a new plea. As

observed by the Privy Council in Siddik Mohamed Shah v. Mt. Saran(3) no amount of evidence can be looked into upon a plea which was never put forward. The general rule is that the appellant cannot be allowed to raise in his memorandum of appeal a new ground; nor can he raise in his memorandum of appeal any objection, which if it had been taken in the trial Court, might have been cured by appropriate amendment or otherwise. It is true that there are certain exceptions to this rule such as question of law, question of limitation, res judicata, etc., which can be substantiated on the facts already on record. But a matter which, though of law, depends upon the question of fact for its determination cannot be raised for the first time in appeal. As I said, in this case, there is no plea taken either in the plaint or is there anything in evidence as to the document being registered at a wrong Registrar's office, where the property is not situate. Unless there is evidence on the record that the property is situate in a wrong place or the parties had deliberately chosen a wrong registration office, this fact cannot be urged in the Court of Appeal as an act of fraud on registration. In Bajraga v. Province of Bengal the learned Judges observed that where the facts are not clear and undisputed the question of limitation should not be allowed to be raised in appeal as the necessary facts had not been pleaded and so attention had not been drawn to them at the time of the trial.

Once I come to the conclusion that the document is not void, because it has been registered in a wrong office, I must hold that it is only voidable in character. If it is voidable in character, then it is clear and settled law that a suit to recover possession by a ward should be filed within 3 years of attaining majority, to set aside the alienation made by her guardian.

(iii) Uday Shankar Triyar v. Ram Kalewar Prasad Singh, (2006) 1 SCC 75 : 2005 SCC OnLine SC 1618 at page 83

> ***17.*** *Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:*
>
> *(i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;*
>
> *(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;*
>
> *(iii) where the non-compliance or violation is proved to be deliberate or mischievous;*
>
> *(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;*
>
> *(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.*

(iv) Haryana State Coop. Supply & Mktg. Federation Ltd. v. Jayam Textiles, **(2014) 4 SCC 704 : (2014) 2 SCC (Civ) 732 : (2014) 2 SCC (Cri) 410 : (2014) 184 Comp Cas 266 : 2014 SCC OnLine SC 309 at page 706**

> ***6.*** *Having heard the learned counsel for the parties and after perusing the material on record, we find that admittedly authorisation by the Board of*

Directors of the appellant Federation was not placed before the courts below. But, we may notice that a specific averment was made by the appellant Federation before the learned Judicial Magistrate that the said general power of attorney had been filed in connected case being CC No. 1409 of 1995, which has neither been denied nor disputed by the respondents. In any case, in our opinion, if the courts below were not satisfied, an opportunity ought to have been granted to the appellant Federation to place the document containing authorisation on record and prove the same in accordance with law. This is so because procedural defects and irregularities, which are curable, should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. (See Uday Shankar Triyar v. Ram Kalewar Prasad Singh [(2006) 1 SCC 75] .)

7. *In view of the fact that in spite of arbitration award against the respondents, there was non-payment of amount by the respondents to the appellant Federation, and also in the light of authorisation contained in Annexure P/7, we are of the opinion that, in the facts and circumstances of the case, an opportunity should be given to the appellant Federation to produce and prove the authorisation before the trial court, more so, when money involved is public money. We, therefore, set aside the judgments of the courts below and remit the matters back to the trial court with a direction to conduct trial afresh taking into consideration the authorisation placed before us and dispose of the matter as expeditiously as possible in accordance with law.*

***(v) Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi*, (2002) 3 SCC 676 : 2002 SCC OnLine SC 109 at page 682**

16. But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are:

(1) there must be a contract to transfer for consideration of any immovable property;

(2) the contract must be in writing, signed by the transferor, or by someone on his behalf;

(3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;

(4) the transferee must in part-performance of the contract take possession of the property, or of any part thereof;

(5) the transferee must have done some act in furtherance of the contract; and

(6) the transferee must have performed or be willing to perform his part of the contract.

***17.** We are, therefore, of the opinion that if the conditions enumerated above are complied with, the law of limitation does not come in the way of a defendant taking plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract is barred by limitation.*

***18.** The matter may be examined from another angle. The established rule of limitation is that law of limitation is not applicable to a plea taken in defence unless expressly a provision is made in the statute. The law of limitation applies to the suits and applications. The various articles of the Limitation Act show that they do not apply to a defence taken by a defendant in a suit. Thus, the law of limitation bars only an action in a court of law. In fact, what the Limitation Act does is, to take away the remedy of a plaintiff to enforce his rights by bringing an action in a court of law, but it does not place any restriction to a defendant to put forward any defence though such defence as a claim made by him may be barred by limitation and cannot be enforced in a court of law. On the said principle, a defendant in a suit can put forward any defence though such defence may not be enforceable in a court of law, being barred by limitation.*

***19.** In M.K. Venkatachari v. L.A.R. Arunachalam Pillai [AIR 1967 Mad 410 : (1967) 2 MLJ 265] it was held, thus: (AIR p. 414, para 10)*

"[T]hat the defence to limitation is a creature of positive law and therefore cannot be extended to cases which do not strictly fall within the enactment. It is an established canon of construction of the law of limitation not to enlarge the scope of statutory provisions of limitation by analogy or logic."

20. *It is, therefore, manifest that the Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part-performance of the contract to protect his possession, though he may not be able to enforce that right through a suit or action.*

21. *In the present case, it is not disputed that the transferee has taken possession over the property in part-performance of the contract. It is also not disputed that the transferee has not brought any suit for specific performance of the agreement to sell within the period of limitation. It is also not disputed that the transferee was always and is still ready and willing to perform his part of the contract. Further, the view taken by the High Court in judgment under appeal was overruled by the Full Bench of the Bombay High Court in the case of Mahadeo Nathuji Patil v. Surjabai Khushalchand Lakkad [1994 Mah LJ 1145 (FB)] which, according to our view, lays down the correct view of law. In that view of the matter these appeals deserve to be allowed.*

22. *Since the High Court has allowed the appeals solely on the ground that the remedy for bringing a suit for specific performance is lost, therefore, the defendant is not entitled to protect his possession under Section 53-A of the Act, we, after setting aside the judgment under challenge, send the matters back to the High Court to decide any other question of law, if arises in these appeals.*

(vi) Rumi Sein v. Sanjay Sureka, 2011 SCC OnLine Cal 1846

"There is a further technical objection to the power of attorney taken by the plaintiffs. They say that Section 28 of the Registration Act, as is relevant in the context, provides that a document affecting immovable property shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document relates is situate. The plaintiffs refer to Section 30 of the Act and the effect of such provision following its amendment. Prior to the relevant amendment of Section 30 of the Act, sub-section (2) thereof permitted, inter alia, the registrar of a district in which a presidency town was included to receive and register any document referred to in Section 28 without regard to the situation in any part of India of the property to which the document related. Sub-section (2) was omitted from Section 30 of the Act by a West Bengal amendment that came into effect in 1997. Subsequently, there was a Central amendment that altogether removed Section 30(2) from the statute.

The plaintiffs suggest that upon the West Bengal amendment coming into effect in 1997, no document affecting any immovable property in West Bengal could have been received or registered by any registrar in Mumbai. Prima facie, such argument is not acceptable. Upon the West Bengal amendment coming onto effect, no registrar of a district in West Bengal in which a presidency town was included could have received or registered a document affecting any immovable property irrespective of where the property was situate. But the registrar in Mumbai was not subject to this amendment and, notwithstanding the West Bengal amendment, the registrar in Mumbai continued to be governed by Section 30(2) of the Registration Act till it was obliterated in 2001. Since the two Mumbai documents were executed in 1999, notwithstanding the West Bengal amendment, there does not appear to have been any infirmity in the Mumbai registrar receiving and registering the same.

(vii) Gati Cargo Management Services vs. SBL Industries Ltd Delhi High Court (Judgment dated 27.05.2014)

"24. By virtue of Article 254(1) of the Constitution, in the event of any conflict of laws enacted by a State Legislature and by the Parliament in respect of matters listed in the concurrent list, the legislation as enacted by the Parliament would prevail. In a situation, where a State Legislation has obtained the President's assent, the same would prevail in that State. Although, in the present case, there are no two different enactments, however, the principles that are enunciated in Article 254 of the Constitution of India would be applicable. Thus in my view, the Registration Act, 1908 as amended by the Registration (Bihar Amendment) Act, 1991, would prevail over the existing law (i.e. pre-constitutional legislation) as applicable to the State of Bihar. However, it is relevant to note that the same does not imply that the law as amended by the Bihar Legislature would have extraterritorial application. The law four words of Article 254(2) of the Constitution of India; "prevail in that State" clearly restrict the applicability of the amendment to the State of Bihar. That being so the Registration of the sale deeds in question by the registering

authorities in Mumbai by virtue of Section 30(2) of the Act are not flawed".

(viii) **Asha M Jain vs Canara Bank, reported in 2001 LawSuit(Del) 1447**

"16. We have considered this aspect taking into consideration these judgments and we are in agreement with the view that the concept of power of attorney sales have been recognised as a mode of transaction. These transactions are different from mere agreement to sell since such transactions are accompanied with other documents including General Power of Attorney, Special Power of Attorney and Will and affidavits and full consideration is paid. This is what also has happened in the present case. There are two general power of attorneys, special power of attorney and the Will apart from the agreement to sell. One of the general power of attorney is registered. Further the will is also registered. Thus there are two contemporaneous documents which are registered and they lend authenticity to the date of execution of documents. The power of attorneys are for consideration within the meaning of Section 202 of the Contract Act, 1872. Thus there is no doubt that interest has been created in the property in favour of the appellant. Possession is also been handed over. Thus the provisions of Section 53A of the Transfer of Property Act would also come into play. The bank is debarred from enforcing any right qua the property other than the right conferred by the agreement to sell. The agreement to sell has nowhere reserved any right on the transferor either for resuming the property or payment of any additional money. The transferor is debarred from claiming back the property from the appellant. The net result of all this is that the rights have been created in favour of the appellant which cannot be defeated by the attachment order.

18. We are thus of the considered view that it is not a fit case where valuable rights of the appellant should be put under jeopardy by the attachment order in respect of the property in question which for all practical purposes vests in the appellant. It is also relevant to add at this stage that though there was a scheme of conversion from lease hold to free hold learned counsel for the appellant has stated that the appellant was unable to seek conversion and get a registered document executed in her favour on account of the pendency of the present proceedings since the term of conversion require that there should be no litigation pending in respect of the property in question."

75. So far as the impact of omission of Section 67 from the Registration Act, 1908 by the U.P. Act No.27 of 1994 is concerned, it is submitted that the same is procedural. **Section 67**, which existed prior to amendment, reads as under:-

"67. Procedure after registration U/S 30, Sub Section (2)- On any document being registered u/s 30, Sub Section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose districts any part of the property to which the instrument relates is situate and the Registrar receiving such copy shall follow the procedure prescribed for him in Section 66, Sub Section (1)".

76. In view of the aforesaid submissions, the following issues arise for determination :-

a) Whether the Recovery Officer possesses statutory authority under Rule 11 of the Second Schedule to the Income Tax Act, 1961 read with Section 29 of the RDDBFI Act to release property from attachment upon finding that the judgment debtor had no title or possession?

b) Whether the registration of the sale deeds in Mumbai on 26.03.1996 in respect of land situated in Lucknow was void ab initio in view of the Registration (U.P. Amendment) Act, 1994, thereby rendering the equitable mortgage in favour of the Bank invalid?

c) Whether the Bank or mortgagor can claim the benefit of Section 53-A of the Transfer of Property Act, 1882 against registered owners in possession?

d) Whether the Recovery Officer acted illegally in confirming the auction sale on 10.04.2012 in favour of auction purchasers who had withdrawn their bid and accepted a refund in 2004?

77. Section 29 of the RDDBFI Act incorporates the Second Schedule to the Income Tax Act, 1961 into recovery proceedings. Rule 11(1) obligates the Recovery Officer to investigate any objection raised against attachment or sale. Under Rule 11(4), if the Recovery Officer is satisfied that the property was not in the possession of the defaulter in his own right, the officer is mandated to release the property from attachment.

The DRT and DRAT misdirected themselves in holding that the Recovery Officer travelled beyond the recovery certificate. The recovery certificate directed recovery against the borrower and the assets belonging to them. It did not and could not authorize the sale of properties belonging to third parties who were complete strangers to the debt. The investigation into whether the judgment debtor had an attachable interest is the core purpose of Rule 11.

78. The DRAT misapplied the judgment in **Tax Recovery Officer II v. Gangadhar Vishwanath Ranade, (1998) 6 SCC 658**. It provides that a Tax Recovery Officer cannot adjudicate a transfer void under Section 281 of the Income Tax Act to assist the Revenue. However, the Supreme Court in the case of **Tax Recovery Officer II (supra)** categorically affirmed that the officer can only attach property in the possession of the assessee/defaulter in his own right. Where the defaulter possesses neither title nor physical possession, the property cannot be attached.

79. The drum beating on 03.01.2003 over open agricultural land did not confer physical possession on the Bank or extinguish the rights of the lawful tenure holders. Under Rule 11(6), the remedy of the party against whom an order is made under Rule 11 is to institute a civil suit to establish its right. If the Bank disputed the finding that its mortgagor was not the owner, the Bank was required to file a civil suit. The DRT and DRAT erred in upsetting the Recovery Officer’s order of 31.05.2004 on an erroneous perception of lack of jurisdiction.

80. Secondly, so far as the impact of U.P. Act No. 27 of 1994 on registration at Mumbai is concerned, it is undisputed that the foundation of the Bank’s mortgage is the sale deed executed and registered at Mumbai on 26.03.1996.

81. The State of Uttar Pradesh enacted the Registration (U.P. Amendment) Act, 1994 (U.P. Act No. 27 of 1994), which received the assent of the President of India on 16.09.1994 and was published in the official Gazette on 23.09.1994. By this legislative enactment, sub-section (2) of Section 30 and Section 67 were omitted from the Registration Act, 1908 in their application to Uttar Pradesh.

82. By operation of Article 254(2) of the Constitution of India, a state enactment regarding an item in the Concurrent List that has received Presidential assent prevails in that State over existing laws. The immovable property in question is situated entirely within the State of Uttar Pradesh. Consequently, the substantive law governing registration and conveyancing of this land on 26.03.1996 was the Registration Act as amended in U.P.. Under Section 28 of the Act, the deed could only be presented before the Sub-Registrar within whose sub-district the property was situated.

83. It is further relevant to notice that, in exercise of the powers conferred by sub-section (3) of Section 1 of the Registration (Uttar Pradesh Amendment) Act, 1994 (U.P. Act No. 27 of 1994), the Governor issued a notification dated 23.09.1994 appointing 01.10.1994 as the date on which the said Act would come into force. Thus, the aforesaid Amendment Act became operative with effect from 01.10.1994. The alleged sale deed in question, having been registered at Mumbai on 26.03.1996, was executed and registered subsequent to the commencement of the said Amendment Act.

For ready reference, the notification dated 23.9.1994 is being quoted under :-

> *"In exercise of the powers conferred by sub-section (3) of section 1 of the Registration (Uttar Pradesh Amendment) Act, 1994 (U.P. Act No.27 of 1994), the Governor is pleased to appoint October 1, 1994 as the date on which the said Act shall come into force."*

84. The registering authority at Mumbai had no jurisdiction to entertain, receive, or register an instrument conveying land situated in District Lucknow after 23.09.1994. The decisions in **Rumi Sen (supra) and Gati Cargo (supra)** are not applicable. While a state amendment does not operate extra-territorially over lands outside its borders, it governs all immovable properties situated within its territorial jurisdiction. Therefore, a transfer of U.P. land registered in Mumbai in 1996 was void ab initio in the State of Uttar Pradesh.

85. Moreover, under Section 54 of the Transfer of Property Act, 1882, a sale of immovable property can only be effected by a registered instrument. Under Section 49 of the Registration Act, an instrument compulsorily registrable, if unregistered or invalidly registered without jurisdiction, cannot affect the immovable property. This fundamental lack of jurisdiction is not a curable procedural irregularity covered by the case of **Uday Shankar Triyar (supra).**

86. As Respondent No. 9 acquired no right, title, or interest under the void deed of 26.03.1996, it could not create an equitable mortgage in favour of the Bank (nemo dat quod non habet). Therefore, the Bank acquired no mortgagee interest over the lands.

87. Coming on the next issue of applicability of Section 53-A of the Transfer of Property Act, the Court finds that the plea under Section 53-A of the Transfer of Property Act, 1882 raised by the respondents is misconceived. As held in **Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi [(2002) 3 SCC 676]**, Section 53-A provides a passive statutory defense to a transferee who has taken possession under an agreement to protect his possession against the transferor.

88. Section 53-A does not create title, nor can it be used affirmatively by a mortgagee bank to dispossess lawful registered third parties. The judgment of the Delhi High Court in **Asha M. Jain v. Canara Bank (supra)**, dealing with power-of-attorney transactions in Delhi, cannot override statutory mandates governing agricultural tenure in Uttar Pradesh.

89. Moreover, the uncontradicted facts demonstrate that the petitioners' predecessors in title remained the recorded tenure holders, exercised acts of ownership, received compensation for NHAI acquisition in 2007–08, and obtained an abadi declaration under Section 143 of the UPZA&LR Act in 2010. In contrast, the borrower and mortgagor never appeared, never sought mutation, and never claimed compensation.

90. Lastly, it is undisputed that the joint auction purchasers (Respondent Nos. 3, 4, and 5) submitted an application on 10.05.2004

under Order XXI Rule 91 CPC expressly conceding that the judgment debtors had no saleable interest, and took a full refund of their auction deposit.

91. Once the auction was set aside and the bid amount refunded in 2004, the 2003 auction proceedings stood extinguished.

86. The action of the Recovery Officer in 2011–2012, summoning the erstwhile auction purchasers nearly eight years later to re-deposit the obsolete 2003 consideration and confirming the auction sale on 10.04.2012, was illegal, collusive, and an abuse of power. It is unsustainable in law.

92. Also in regard to the First Information Report lodged against Vinay Kumar Singh-special power of attorney holder and against the auction purchasers, in the said case charge sheet was filed against which application under Section 482 Cr.P.C. was filed was filed before this Court for quashing of F.I.R., wherein on prima facie satisfaction, this Court observed that the said application is liable to be dismissed and the case was dismissed with direction to the trial court that without prejudice to the merits of the case, the case shall be decided.

93. For the reasons stated above, the impugned first appellate order of the DRT dated 06.08.2007 and the appellate order of the DRAT dated 26.04.2011 cannot be sustained. The order dated 31.05.2004 passed by the Recovery Officer releasing the property from attachment was fully warranted. The confirmation of sale dated 10.04.2012 is a nullity.

94. The writ petition is accordingly **allowed** with the following directions:

(i) The impugned order dated 26.04.2011 passed by the Debts Recovery Appellate Tribunal, Allahabad in Appeal No. R-866 of 2007 is hereby quashed in so far as it relates to the petitioners and their lands.

(ii) The impugned order dated 06.08.2007 passed by the Debts Recovery Tribunal, Allahabad in Misc. Appeal No. 9 of 2004 is hereby quashed in so far as it relates to the petitioners and their lands.

(iii) The impugned order dated 10.04.2012 passed by the Recovery Officer, DRT, Allahabad in DRC Case No. 224 of 2002 confirming the

auction sale in favour of Respondent Nos. 3, 4, and 5 is hereby quashed in its entirety in respect of the subject properties.

(iv) The order dated 31.05.2004 passed by the Recovery Officer, DRT, Allahabad, releasing Khasra Plot No. 248 (measuring 0.238 hectares) and Khasra Plot Nos. 230 and 231 (measuring 0.1401 hectares) situated at Village Anaura, Pargana, Tehsil, and District Lucknow from attachment and execution, stands restored and affirmed.

(v) A writ of mandamus is issued restraining the respondents from interfering in any manner with the peaceful possession and enjoyment of the petitioners over the subject land.

(vi) It is made clear that Respondent No. 1 Bank remains at liberty to execute its recovery certificate against the personal assets and other lawful properties of the borrowers and guarantors, in accordance with law.

95. Parties shall bear their own costs.

(Irshad Ali,J.)

November 23, 2026
Gautam

Digitally signed by :-
GAUTAM TECKCHANDANI
High Court of Judicature at Allahabad,
Lucknow Bench