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A.F.R.

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HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 1002220 of 2012

Dharmendra Kumar and another

…..Petitioner(s)

Versus

State Bank of India Central Office at State Bank Bhawan Andors

…..Respondent(s)

Counsel for Petitioner(s)	:	Akhilesh Kalra, Sanjeev Singh
Counsel for Respondent(s)	:	Pradeep Agrawal, Alok Kumar Gupta, Amar Mani Tiwari, Anurag Srivastava, Avdhesh Kumar Pandey, Bhanu Prakash Dubey, Pradeep Agrawal, Radhika Varma, Shishir Chandra, Shreshth Srivastava, Sudeep Kumar, Trisha Singh, Vashu Deo Mishra

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Court No. - 4

HON'BLE IRSHAD ALI, J.

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

2. The petitioners purchased the property in question (Khasra plot no. 245, 246, 247 measuring 2 bigha and 8 biswa) situated at Village Anaura, Pargana, Tehsil and District Lucknow vide sale deed executed on 07.09.2000, from the respective owners. Petitioner No.1 also purchased the Khasra plot no. 248 (measuring 2 bigha) situated at Village Anaura, Pargana, Tehsil and District Lucknow vide sale deed executed on 12.04.2001 and since then they both are in possession

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thereof without any hindrance. The said property was purchased after due enquiry and verification from the concerned departments regarding no encumbrance and the petitioners' name have also been mutated in revenue records.

3. On 25.03.1998, opposite party no. 1 sanctioned loan to M/s Trikone Rubber Industries on the basis of alleged mortgage of the property in question situated at Lucknow, mortgage by way of two sale deeds, executed by some power of attorney holders at Bombay and also registered in Mumbai on 26.03.1996.

4. As soon as the petitioners got to know about the fact that their properties have been advertised for auction under some orders, passed by Debt Recovery Tribunal for recovery of certain dues against M/s. Trikone Rubber Industries, the petitioner approached this Court by filing Writ Petition No.5613 (M/B) of 2003.

5. This Court after hearing the petitioners and the Bank, disposed of the writ petition vide order dated 20.11.2003 with certain observations and direction to the petitioners to file their objections before the Recovery Officer, DRT, Allahabad, at whose instance the auction notice was published.

6. The Recovery Officer after hearing the objections of the petitioners as well as of two other objectors and auction purchasers, who had already challenged the auction and demanded their money back, allowed the objections vide order dated 31.05.2004 thereby setting aside the auction sale and releasing all the properties including that of the petitioners, by giving a finding that the petitioners are not liable for attachment and sale.

7. The respondent-Bank being aggrieved from the order dated 31.05.2004 of Recovery Officer preferred an appeal before the Presiding Officer, DRT, Allahabad. The appeal was allowed vide order dated 06.08.2007 on the ground that the Recovery Officer transgressed his jurisdiction vested in him under Rule 11, while passing the order.

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8. On 12.09.2007, being aggrieved by the order dated 06.08.2007 the petitioners preferred an appeal before Debt Recovery Appellate Tribunal, Allahabad which was admitted and an interim order dated 05.11.2007 was passed to stay the recovery proceedings. However, later on, the appeal was dismissed vide order dated 26.04.2011.

9. Thereafter, the Recovery Officer, Allahabad issued notice to the auction purchaser to appear before him on 12.01.2012 for depositing the then auction amount for the entire immovable properties and proceeded to confirm the sale.

10. On 20.03.2012, petitioners applied for the certified copy of the order sheets of the DRC (Execution) Case No.224 of 2002 and thereafter filed application dated 30.03.2012 before the Recovery Officer objecting the recovery proceedings as well as the act of inviting the auction purchasers who themselves have withdrawn from the proceedings.

11. The Recovery Officer, however, rejected the application as not maintainable and confirmed the auction sale in favour of the joint auction purchasers vide order dated 10.04.2012.

12. 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.

13. The present petition has been filed with the following prayer :

> *"i) To issue a writ, order or direction or writ in the nature of certiorari quashing the orders dated 26th April, 2011, 06th August, 2007, passed by the learned DRAT, Allahabad and DRT, Allahabad, respectively, as also the order dated 10th April, 2012, passed by the Recovery Officer, DRT, Allahabad, as contained in Annexure Nos. 1, 2 and 3, respectively, to the writ petition;*
>
> *ii) To issue a writ, order or direction or writ in the nature of mandamus commanding the Recovery Officer, DRT, Allahabad, not to proceed in DRC*

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No.224 of 2002 (State Bank of India Vs. M/s. Trikone Rubber Industries & Others) in so far as it relates to the property in question belonging to the petitioners;

iii) …

iv) ...”

14. Submission of learned counsel for the petitioners is that the impugned order dated 06th August, 2007 and 26th April, 2011, passed by the learned DRT and learned DRAT respectively are erroneous, unjust, misconceived, contrary to the record, against the relevant provisions, specially the RDDBFI Act, the Rules framed thereunder, the IInd Schedule of the Income Tax Act and the Rules, and the Registration Act, 1908 and the Stamp Act and are therefore, not sustainable in the eyes of law, hence are liable to be set aside.

15. It is submitted that while passing the impugned orders dated 06th August, 2007 and 26th April, 2011 the learned Courts below arrived at a misconceived finding that the Recovery Officer has travelled beyond the decree. The learned Court below, while passing impugned orders, have mislead and misinterpreted Rule 11 of the IInd Schedule of the Income Tax Act.

16. Further submission is that the order dated 26th April, 2011, passed in appeal did not state anything about the legality and validity of the order passed under appeal dated 06th August, 2007. Both the learned courts below while passing the impugned order dated 06th August, 2007 did not address the merits and demerits of the objections, preferred by different objectors including the petitioners, against the auction of their properties, but primarily dealt with only the jurisdiction of the Recovery Officer.

17. Learned counsel for the petitioners submits that the Recovery Officer is fully authorized and empowered under Rule 11 to examine and scrutinize the documents/evidence, placed before him by claimant with regard to attachment/sale of a property under execution, who upon being prima facie satisfied on the basis of such materials, can pass appropriate orders and if the documents are not convincing, he is entitled to reject

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the claim and this is the only manner in which he can investigate the claim of the claimant as envisaged by Rule 11. The order under appeal is against the provisions, as contained in Section 30 and Section 67 (as they stood prior to their omission) as well as Section 28 and Section 49, amongst others of the Registration Act, 1908.

18. Next submission is that the present appellants adduced sufficient evidence and materials, before the Recovery Officer, to prove their ownership and possession, over the property in question, and that the property is not liable for attachment and sale and the Recovery Officer only after investigating the claim under Rule 11, passed appropriate orders, releasing the property from such attachment and sale. The property, in question, was neither owned/possessed by any of the judgment debtors herein, at any time including the date of the serving of the demand notice and the petitioners have been the owners in possession of property in question, right from their purchase and, as such, the Recovery Officer, vide its order dated 31st May, 2004, has rightly released the property from execution of the recovery certificate.

19. In view of the above, submission is that both the learned courts below did not consider and appreciate the facts and circumstances under which the credit facility was granted to the borrowers based at Gorakhpur, by the Bank also situated at Gorakhpur, but mortgaging the immovable property situated at more than 250 km away from Gorakhpur at Lucknow and that too equitably mortgaging the Sale Deeds registered at Bombay through alleged Attorney holders of the original owner and that too without noticing or verifying the sanctity and veracity of the Power of Attorneys. Both the learned Courts below, ignored to see the apparent collusion of the borrowers with the then Bank officials, for the illegal grant of loan.

20. Learned counsel submits that the Appellate Tribunal misread the provisions of Rule 11 and erroneously held that Rule 11 does not authorize the officer to decide the question relating to right, title and interest in the attached immovable property. Rule 11 (6) again has further been misread by the learned Appellate Tribunal, as it has wrongly

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been observed that Rule 11(6) prescribes that the right, title and interest in an attached property would be decided by the Civil Court and not by the Recovery Officer and again Rule 11 (6) gives liberty to the party against whom an order has been passed by the Recovery Officer, to approach the Civil Court.

21. The learned Appellate Tribunal has erroneously observed that the powers of the Executing Court under Order 21 Rule 58 C.P.C is wider than the powers of the Recovery Officer under Rule 11, though it has not been disputed by the petitioners, as the power of the Executing Court/Recovery Officer has well been defined under C.P.C and IInd Schedule of the Income Tax Act, respectively and, as such, there cannot be any interpretation otherwise interpretation of the said applicable provisions. Both the orders, passed by the learned courts below are against the relevant provisions of, specially the Recovery of Debts Due to Banks & Financial Institutions Act (hereinafter referred to as the RDDBFI Act), the rules framed thereunder, the Second Schedule of the Income Tax Act & Rules, and the Registration Act 1908.

22. It is further submitted that the findings arrived at, in the order under Appeal, are based on misinterpretation of the fact as well as the provision of law, amongst other, as contained in Rule 11 of the Second Schedule of the Income Tax Act (hereinafter referred to as the Rule 11), as well as under section 28, 30 & section 49 of the Registration Act. Both the learned Courts below, did not consider the provision of law, as laid down in Rule 11, that a party (respondent-Bank in this case), aggrieved by an order of Recovery Officer, passed under Rule 11, has a right to institute a Suit in Civil Court to establish the right, which it claims to the property in question, and therefore, the Appeal, filed by the respondent-Bank, ought to have been rejected on this count alone. The orders, passed by the learned Courts below, in setting aside the order, passed by the Recovery Officer, amounts to curtailing the power of the Recovery Officer, conferred upon him by the Rule 11.

23. Learned counsel for the petitioners submits that it can never be said that the Recovery Officer, cannot examine the documents and can

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overlook the patent defects or flaws in the documents, which are tendered before him, on which the claimant's claim is based. If the statutory authority of the Recovery Officer will be curtailed in such a manner then unscrupulous and dishonest borrowers can always take undue benefit and misuse the public money, by availing credit facility on the basis of false and frivolous documents, and putting the genuine owner in possession of the property to face the consequences during the course of the recovery proceedings. The fact that none of the judgment debtors, borrowers and guarantors, have come forward, at any stage, to claim the valuable property, whose worth is several times more than the outstanding against them, is quiet sufficient to draw an inference that they have no claim in the property in question and the alleged sale deeds are false, fabricated and invalid.

24. Next submission is that the observation of the learned D.R.A.T that apparently the petitioners were not in possession of the property on the date of attachment, is baseless, erroneous and without any substance. The bank did not bring anything on record to show that the attachment on the property was actually carried out. The learned courts below did not consider and appreciate that the petitioners immediately on gaining knowledge of the auction, through publication, adopted legal recourse and since then have been diligently pursuing their case before different courts. The learned Appellate Tribunal did not consider and appreciate that the property in question at the time of alleged attachment by the bank, was an open field and was an inhabited area. The Appellate Tribunal totally misread Rule 11 (6), to state that the civil suit ought to have been filed by the petitioners.

25. The learned Appellate Tribunal’s observation that the original owner who allegedly executed the sale deed in favour of the Guarantor did not contest the original application or was not examined, is erroneous & misconceived as in the Original Application (O.A.) before the D.R.T., filed by the Bank only the borrower and guarantor are impleaded as a party, against whom or their property, the recovery of money is sought to be made and the original owner of the property who

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executes the sale deed in favour of the borrower or guarantor, which is kept as equitable mortgage, has no occasion to have knowledge of the O.A., nor he has any concerned with the said proceedings as after sale of the property he is an absolute non-interested party.

26. The learned Appellate Tribunal has without any justified grounds presumed the validity and sanctity of the sale deeds allegedly executed at Bombay. The learned Appellate Tribunal has erroneously observed that the earlier sale cannot be set at naught at the instance of the subsequent purchaser, without considering and appreciating and without weighing the sanctity and veracity of the sale deeds and documents of ownership and possession produced by the petitioners, as against the documents of title, on which basis, the bank claimed their right, title and interest over the property in question.

27. Submission advanced by learned counsel for the petitioners is that the learned Appellate Tribunal erroneously and contrary to the record observed that the Recovery Officer held one sale deed to be void, in a collator proceedings which cannot be permitted, though the learned Recovery Officer did not hold the sale deed to be void. The learned Appellate Tribunal erroneously held that the voidness of a document continues unless the same is set aside by a competent Court. The observation of the learned Appellate Tribunal that the execution of the Bombay sale deeds are not illegal but its registration may be illegal, is also without basis and contrary to the record as the learned Appellate Tribunal did not appreciate that the respondent-bank did not bring anything on record to prove the veracity, sanctity and genuineness of the alleged power of attorneys, forming basis of the execution of the Bombay Sale deeds.

28. The observation of the learned Appellate Tribunal in the impugned order dated 24.04.2012 that "there is nothing on record to show that the appellants in what way were the bonafide purchaser and all the steps were taken by them to verify the title before the purchase of the property" is erroneous and contrary to the record because the petitioners produced all the documents of their title and possession, before the

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courts below and further documents that they took all precautions regarding no encumbrance on the property, were also produced by them before the courts below.

29. Learned counsel for the petitioners submits that the learned Appellate Court without considering the validity and legality of the alleged registration of Bombay Sale deeds, has concluded that its effect will continue unless they are set aside by the competent court. Both the learned Courts below did not consider and appreciate that none of the procedures of Stamping and Registration under the Stamp Act and Registration Act respectively, were followed with respect to the alleged Bombay Sale deeds which render them invalid and inoperative. The judgments referred by the learned Appellate Tribunal on its own, to back its impugned decision, are not applicable in the facts and circumstances of the present case. The finding of the learned Appellate Tribunal that the mortgage in favour of the Bank is a valid mortgage, is erroneous, illegal, unjustified, against the record and based on wrong interpretation of law and rulings. The finding of the learned Appellate Tribunal that the original owner Sri Dulare did not come forward to challenge the Bombay sale Deeds, which give sanctity to the said sale deeds, is misconceived as there was nothing on record that said Sri Dulare was having any knowledge of either the power of attorney, the Bombay Sale deeds or the subsequent proceedings.

30. Next submission is that the respondent-Bank till date has not made any effort to challenge the duly executed registered sale deeds, standing in favour of the petitioners, knowing well that the said sale deeds form the basis of the petitioners' claims. The learned Recovery Officer illegally proceeding in the recovery case, after the order of the learned Appellate Tribunal, has required the then auction purchaser of the 2003 to deposit the then auction money, though the said auction purchaser himself challenged the auction and took his money back in the year 2004. Once the auction purchaser himself has withdrawn from the auction proceedings and took his money back then he does not remains an auction purchaser and, as such, there was no occasion for re-inviting

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such a person in 2012 and requiring him to deposit the auction amount of 2003 auction.

31. Even otherwise the 2003 auction is non existent and the auction purchaser of the said auction has no locus now to join the auction proceedings. Moreover, the learned Recovery Officer while inviting the then auction purchaser, ignored the fact and did not apply mind that since 2003 the value of the immovable properties in question has increased leaps and bounds and moreover there is no order of the Appellate Tribunal to invite the auction purchasers of year 2003 and take the then auction amount. It is totally 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. The proceedings of the learned Recovery Officer creates reasonable doubt of collusion between the auction purchasers, the respondent Bank and the Recovery Officer. The orders under challenge are even otherwise illegal, erroneous, unjustified, misconceived and are liable to be interfered with by this Court in the present writ petition.

32. 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. The petitioners further submit that the order dated 31.05.2004 was passed pursuant to the liberty and directions granted by this Court and a copy thereof has already been brought on record at page 363 of the writ petition.

33. 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

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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.

34. 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."*

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

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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.

36. 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".*

37. 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*

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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".

38. 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.

39. 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."*

40. 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.*

41. 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

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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.

42. 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.

43. 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.

44. 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".*

45. 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

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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.

46. 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.

47. 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*

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> *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".*

48. 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*

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

49. 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)".*

50. 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.

51. 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**.

52. 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,**

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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".*

53. 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**.

54. 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 &

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Trikone, there was a fixed consideration of sale, was in writing, was duly signed and transferee was in possession.

55. 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.

56. 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.*

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(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*

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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

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> ***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*

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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

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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."

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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.

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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

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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."

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57. 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)".*

58. Having heard the rival submissions of learned counsel for the parties, I perused the material on record as well as the law report cited.

59. From the aforesaid, following issues are being framed :-

i. Whether the Recovery Officer acted within his statutory jurisdiction under Rule 11 of the Second Schedule to the Income Tax Act, 1961 read with Section 29 of the RDDBFI Act in releasing the subject property from attachment and setting aside the auction sale?

ii. Whether the sale deeds dated 26.03.1996 registered before the Sub-Registrar at Mumbai conferred any valid right, title, or interest upon the guarantor so as to enable the creation of a valid equitable mortgage in favour of Respondent No. 1 Bank, in light of the Registration (U.P. Amendment) Act, 1994?

iii. Whether the Bank or the alleged mortgagor could claim the benefit of Section 53-A of the Transfer of Property Act, 1882 to defeat the registered title and possession of the petitioners?

iv. Whether the action of the Recovery Officer in reviving the defunct 2003 auction and confirming the sale in favour of the auction purchasers vide order dated 10.04.2012 was legally sustainable?

60. By virtue of Section 29 of the RDDBFI Act, the provisions of the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962 apply mutatis mutandis to recovery proceedings before the Recovery Officer.

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61. Rule 11(1) of the Second Schedule expressly provides that where any claim or objection is preferred to the attachment or sale of any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Recovery Officer "shall proceed to investigate the claim or objection". Under sub-rule (4) of Rule 11, where upon such investigation the Recovery Officer is satisfied that the property was not in the possession of the defaulter or of some person in trust for him, or that being in the possession of the defaulter it was possessed not on his own account or as his own property, the officer "shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale".

62. The learned DRT and DRAT fell into patent error in holding that the Recovery Officer transgressed his jurisdiction by scrutinizing the documents produced by the objectors. An investigation under Rule 11 cannot be reduced to a mechanical, hollow ritual. While the Recovery Officer does not sit as a plenary civil court to adjudicate contested boundaries or complex inheritance rights, the officer is mandated by law to determine whether the judgment debtor or mortgagor possessed a genuine, attachable interest in the property. If an attached property does not belong to the certificate debtor, it cannot be brought to hammer.

63. The DRAT fundamentally misconstrued the decision of the Hon'ble Supreme Court in **Tax Recovery Officer II v. Gangadhar Vishwanath Ranade [(1998) 6 SCC 658]**. In this case, the Apex Court held that the Tax Recovery Officer has to examine who is in possession of the property and in what capacity. The Court observed that the officer cannot declare a transfer made by the assessee to a third party void under Section 281 of the Income Tax Act; if the Department finds that a transfer was made to defraud the Revenue, it must file a civil suit under Rule 11(6).

64. In the present case, the Recovery Officer did not declare any transfer void under special tax avoidance statutes; rather, the Recovery Officer found as a matter of primary fact that the judgment debtors/mortgagors never had any valid title or lawful possession of the

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subject land to begin with. The property was an open, agricultural field. The mere symbolic claim of drum beating on 03.01.2003 cannot dislodge the lawful possession flowing from registered sale deeds and undisputed revenue entries standing in favour of the petitioners.

65. Under Rule 11(6), if the Bank was dissatisfied with the Recovery Officer's order releasing the property, its statutory remedy was to institute a civil suit to establish the right which it claimed in the property. The DRT and DRAT acted with material irregularity in setting aside the well-considered order of the Recovery Officer dated 31.05.2004 without any finding that the judgment debtor had title or possession.

66. Secondly, so far as the validity of the sale deeds dated 26.03.1996 is concerned, it is undisputed that the foundation of the Bank's recovery against the subject plots is an alleged equitable mortgage created on 25.03.1998 by deposit of title deeds executed and registered in Mumbai on 26.03.1996. The Registration Act, 1908 falls under Entry 6 of the Concurrent List (List III) of the Seventh Schedule to the Constitution. 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 U.P. Gazette on 23.09.1994. By Section 3 of the said Amendment Act, sub-section (2) of Section 30 and Section 67 were omitted from the Registration Act, 1908 in its application to Uttar Pradesh.

67. Prior to this amendment, Section 30(2) permitted the Registrar of a Presidency Town (such as Mumbai) to register documents without regard to the situation in India of the property. Section 67 provided the corresponding transmission procedure. However, by virtue of Article 254(2) of the Constitution of India, the U.P. Amendment Act, having received the assent of the President, prevailed in the State of Uttar Pradesh over any inconsistent existing law.

68. Consequently, on 26.03.1996, there was no legal sanction for any document concerning immovable property situated in Uttar Pradesh to

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be presented or registered before the Sub-Registrar in Mumbai. Under Section 28 of the Registration Act, every document affecting immovable property must be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property is situated.

69. The judgments in **Rumi Sen v. Sanjay Sureka (supra) and Gati Cargo Management Services v. SBL Industries Ltd. (supra)** relied upon by the respondents do not advance their cause. Those decisions observed that a state amendment restricts its applicability to the state concerned. In the present case, the immovable property itself is situated in Lucknow, Uttar Pradesh. The substantive rights, encumbrances, and transfer of title regarding land situated in Uttar Pradesh are strictly governed by the law in force in Uttar Pradesh. A Registrar in Mumbai could not usurp jurisdiction over soil situated in U.P. in direct defiance of the law governing U.P. properties.

70. Under Section 54 of the Transfer of Property Act, 1882, transfer of ownership in tangible immovable property of value exceeding one hundred rupees can only be made by a registered instrument. Under Section 49 of the Registration Act, an instrument compulsorily registrable under Section 17 or the Transfer of Property Act, if not validly registered, cannot affect any immovable property comprised therein or be received as evidence of any transaction affecting such property.

71. The registration in Mumbai was wholly without jurisdiction, ultra vires, and non-est. The reliance placed on the case of **Muhammad Abdul Razack (supra)** is completely misplaced; this is not a bona fide clerical mistake or a boundary ambiguity between adjoining sub-districts within the same state, but a brazen registration across interstate boundaries in total negation of the U.P. statutory mandate. Such a jurisdictional defect is neither curable nor procedural under Uday Shankar Triyar or Haryana State Coop. because the sale deeds dated 26.03.1996 were void and conferred no title on the borrower, the subsequent deposit of those invalid instruments with the Bank on

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25.03.1998 could not create a valid equitable mortgage (*nemo dat quod non habet*). The Bank held no mortgage interest over the petitioners' lands.

72. In the next issue regarding the applicability of Section 53-A, this Court finds that the respondents' invocation of Section 53-A of the Transfer of Property Act is legally untenable. As reaffirmed by the Supreme Court in **Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi [(2002) 3 SCC 676]**, Section 53-A is an equitable doctrine designed strictly as a defensive shield for a transferee who has taken possession in part performance of a contract in writing, to prevent the transferor from enforcing rights against the property.

73. Section 53-A does not create title, nor can it be used as an active weapon by a lending institution to defeat the rights of genuine, registered owners and tenure holders. The decision of the Delhi High Court in **Asha M. Jain v. Canara Bank (supra)**, which dealt with power-of-attorney sales in the distinct statutory and factual environment of Delhi properties, has no application to agricultural land in Uttar Pradesh, where the statutory mandate of Section 54 of the Transfer of Property Act and the U.P. Registration amendments applies strictly. The Bank has failed to show that the borrowers were in lawful physical possession; the petitioners hold registered sale deeds, revenue mutation, and possession.

74. Lastly, it is undisputed that the record reveals that the joint auction purchasers, following the 13.11.2003 auction, filed an application on 10.05.2004 explicitly conceding that the certificate debtor had no saleable interest, sought cancellation of the auction, and took their auction money back. Once an auction sale is set aside and the bid money refunded, the auction purchasers cease to have any subsisting right, title, or interest in the auction. The 2003 auction stood completely extinguished.

The action of the Recovery Officer in 2012, after a lapse of nearly eight years, in summoning the erstwhile 2003 auction purchasers to re-deposit

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the 2003 auction price and confirming the sale on 10.04.2012 was entirely without jurisdiction, collusive, and an egregious abuse of statutory authority. Immovable property could never have been alienated at 2003 prices in the year 2012 without a fresh attachment, fresh valuation, and a transparent public auction. The confirmation order dated 10.04.2012 is a nullity on this ground alone.

75. In view of the fact that the U.P. Amendment Act No. 27 of 1994 had received the assent of the President of India, the provisions of Article 254(2) of the Constitution of India are attracted to the present case. Consequently, the State Amendment would prevail in the State of Uttar Pradesh to the extent of its repugnancy with the provisions of the Central Act. Accordingly, the alleged sale deed executed and registered at Mumbai on 26.03.1996, in respect of the property situated within the State of Uttar Pradesh, cannot be treated as a valid document conferring any right, title or interest in favour of the alleged transferee. No right or claim can, therefore, be founded upon the said sale deed.

76. 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.”*

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77. 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.

78. For the reasons recorded above, the impugned first appellate order of the DRT dated 06.08.2007 and the impugned appellate order of the DRAT dated 26.04.2011 cannot be sustained in law and are liable to be quashed. The consequential order dated 10.04.2012 passed by the Recovery Officer confirming the auction sale is equally illegal and void. The order dated 31.05.2004 passed by the Recovery Officer releasing the subject property from attachment and setting aside the auction was lawful, just, and proper.

80. Accordingly, the writ petition is **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.

(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.

(iii) The impugned order dated 10.04.2012 passed by the Recovery Officer, DRT, Allahabad in DRC (Execution) Case No. 224 of 2002 confirming the auction sale in favour of the auction purchasers is hereby quashed.

(iv) The order dated 31.05.2004 passed by the Recovery Officer, DRT, Allahabad, releasing Khasra Plot Nos. 245, 246, 247, and 248 situated at Village Anaura, Pargana, Tehsil, and District Lucknow belonging to the petitioners from attachment and execution, stands restored and affirmed.

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81. A writ of mandamus is issued commanding the Recovery Officer, DRT, Allahabad and respondent No.1-Bank not to proceed in DRC No. 224 of 2002 against the aforesaid properties belonging to the petitioners.

The Bank remains at liberty to proceed with recovery against the borrowers/guarantors personally or against any other assets legitimately owned by them, strictly in accordance with law.

82. There shall be no order as to costs.

(Irshad Ali,J.)

November 23, 2026
Gautam