

(2016) 04 MAD CK 0051

In the Madras High Court

Case No : W.P. Nos. 26633 and M.P. Nos. 1 and 1 of 2014.

Akthar Hussain

APPELLANT

Vs

K. Pappireddiyar and Others

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(1), 31

Citation : (2016) AIR(Madras) 114 : (2016) 3 BankJ 275 : (2016) 4 BC 657 : (2016) 4 BC 401 : (2017) 1 DCR 106 : (2016) 2 DRTC 296 : (2016) 4 MLJ 192 : (2016) 135 SCL 341

Hon'ble Judges : M. Venugopal; Satish K. Agnihotri, JJ.

Bench : Division Bench

Advocate : Dr. T. Ramasamy, Advocate and F.B. Benjamin George, Advocate, for the Appellant; F.B. Benjamin George, Advocate and S.R. Rajagopal both the WPs for G. Sai Baba, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Satish K. Agnihotri, J. - Assailing the order dated 11 September 2014 rendered by the Debts Recovery Appellate Tribunal, Chennai, in R.A. (SA) No.43 of 2014, the auction purchaser of the secured asset has preferred the writ petition being W.P. No.26633 of 2014 and the secured creditor, viz., Indian Bank, has preferred the writ petition being W.P. No.32208 of 2014. Since the order under assail in both these writ petitions are one and the same, both the writ petitions are considered and decided by this common order.

2.1 The facts in a nutshell, as projected by the petitioner bank are that N.K. Arumugham (now deceased), V. Sathish Raj and R. Nandagopal, Partners of Yelagiri Dairy Farm, availed a term loan of Rs.17 lakhs in the year 1989 to set up a dairy farm in Peddakallupalli Village, Vaniyambadi, on mortgaging the land admeasuring 6.10 acres in S. No.203/2, 3, 4, 5 and 202/1A in the said village. The property was mortgaged through the attorney holder viz., N.K. Arumugham, who was appointed as the Power of Attorney vide a Power of Attorney deed

executed on 26 October 1988, authorising him to mortgage or sell the property or construct building thereon. The said dairy farm discontinued to make repayment of the loan and as such, the petitioner bank filed a civil suit being O.S. No.437 of 1995 on the file of the Sub-Court, Thirupathur, for recovery of a sum of Rs. 31,00,238/- as outstanding as on that date, with interest and costs from the principal borrower, viz., Yelagiri Dairy Farm, its Partners and guarantors, including the first respondent, viz., Pappireddiar. On creation of the Debts Recovery Tribunal, the said suit was transferred from the file of the Sub-Court, Tirupattur, to the file of the Debts Recovery Tribunal-I, Chennai and renumbered as T.A. No.1755 of 1997 and later re-numbered as T.A. No.93 of 2007 on the file of the Debts Recovery Tribunal-III, Chennai, under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for brevity "the RDDBFI Act"). In the said pending case, an order was passed on 11 June 2010 in the following terms: -

"a The applicant bank is entitled for a recovery certificate as against the defendants No.1 to 6 and 8 to 12 for recovery of a sum of Rs.31,00,238/- (Rupees Thirty one lakhs two hundred and thirty eight only) together with interest @ 9% (simple) per annum on the claim amount adjudged from the date of filing of this application till the date of realisation and the costs of the OA.

b. It is further ordered that, in case of default of payment of the amounts adjudged by the defendants, the applicant bank is at liberty to get sold the OA schedule mentioned properties, i.e., Schedule "A" to "D" offered by D5, 6 and 8 in execution of Recovery Certificate and to adjust the sale proceeds thereof towards the amounts due in the claim.

c. If the sale proceeds are not found sufficient, after defraying the expenses of such sale for payment of the amount adjudged, the defendants No.2 to 6 and D8 are personally liable for such deficiency until realisation. However, the liability of D9 to D12 is restricted to the value of the estates, if any, inherited by them from deceased D7.

d. It is further ordered that any amount remitted by the defendants or realised by the applicant bank during the pendency of this OA, shall be given due credit to the claim amount adjudged.

e The Schedule of properties in the OA shall form part of this order."

Besides, a direction was given to prepare the Recovery Certificate.

2.2 Accordingly, Recovery Certificate for a sum of Rs.74,31,233.14 was issued on 10 February 2011. Assailing the order dated 11 June 2010 passed by the Debts Recovery Tribunal-III in TA No.93 of 2007, the partnership firm, viz., Yelagiri Dairy Farm, N.K. Arumugham, his wife Santha and Pappi Reddiar, the first respondent herein, preferred an appeal before the Debts Recovery Appellate Tribunal in R.A. No.120 of 2011, which is still pending consideration.

2.3 The Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002, (for brevity "the SARFAESI Act"), came into force with effect from 21 June 2002. The petitioner bank issued a fresh demand notice under Section 13(2) of the SARFAESI Act on 02 August 2011 demanding a sum of Rs.85,41,662/- as stated to be outstanding on 31 July 2011. N.K. Arumugham, Partner of the firm-cum-Power of Attorney holder of the first respondent herein, objected to issuance of notice vide letter dated 27 September 2011, which was rejected by the petitioner bank on 03 October 2011.

2.4 It is the case of the petitioner bank that possession of the secured asset was taken over on 31 October 2011, which remained unchallenged. During pendency of the appeal, as afore stated, a notice for sale of the secured asset was issued on 02 February 2012, which was cancelled in view of some error in the schedule of property and again, vide sale notice dated 02 April 2012, the secured asset was put on sale. N.K.Arumugham assailed the said sale notices dated 02 February 2012 and 02 April 2012 in O.S. No.32 of 2012 and O.S. No.74 of 2012 on the stated ground of the secured asset being an agricultural land. One Ananda Kumar also preferred a civil suit being O.S. No.184 of 2011 on the file of the District Munsif Court, Ambur, in respect of one part of the secured asset. On sale, the second respondent herein, who is the petitioner in W.P. No.26633 of 2014, being the successful bidder, purchased the property and also obtained sale certificate on 14 June 2012. On auction, the purchaser was put on possession of the property.

2.5 The sale certificate dated 14 June 2012 and the rectification made therein were assailed by the first respondent herein in S.A. No.118 of 2013 before the Debts Recovery Tribunal-III, Chennai, alleging that the property being agricultural land, could not have been sold as the same is exempted under the provisions of Section 31(i) of the SARFAESI Act. It was also alleged therein that no notice was served on him. The said application was dismissed as being barred by limitation on 17 May 2013.

2.6 There against, an appeal being R.A. (S.A.) No.43 of 2014 was preferred by the first respondent herein before the Debts Recovery Appellate Tribunal, Chennai. The said appeal was allowed by the impugned order holding that the secured asset is an agricultural land and as such, the provisions of the SARFAESI Act would not be applicable; thus, issuance of demand notice itself is invalid and consequential sale certificate dated 14 June 2012 is also invalid. Accordingly, the Debts Recovery Appellate Tribunal set aside the order of the Debts Recovery Tribunal, insofar as it relates to the finding that the secured asset is not an agricultural land. Thus, R.A. (SA) No.43 of 2014 was allowed by the Debts Recovery Appellate Tribunal, leading to the filing of the instant writ petitions by the secured creditor and the auction purchaser.

3. The main plank of contention of the learned counsel for the petitioner bank is that the secured asset is not an agricultural land, inasmuch as, it is a dry land, which is cultivable only occasionally and it is not a wet land as contended by the first respondent-mortgagor and no document is also produced by the first

respondent/mortgagor to fortify his stand that the secured asset is an agricultural land. Even if the secured asset is classified in the revenue records as an agricultural land, non-conversion of the same into non-agricultural land does not make it an agricultural one. In support of the said contention, the learned counsel relies on the judgment of the Supreme Court in *Sarifabibi Mohmed Ibrahim (Smt.) and others v. Commissioner of Income Tax, Gujarat*, 1993 Supp (4) SCC 707.

4. Referring to and relying on Clause 2(m) of the Statement of Objects and Reasons of the SARFAESI Act, he would submit that the rationale behind Section 31(i), *ibid*, is only to exempt security interest in the agricultural land and hence, the said provision cannot be given a meaning to contend that the nature of the land at the time of creation of security interest is relevant and not the nature of property at the time of enforcement of security interest. In this context, to fortify his contention that interpretation of a statute should be in a manner that it advances the object of the statute and makes the particular provision purposeful, the learned counsel has relied on the judgments of the Supreme Court in *Union of India v. Sankalchand Himatlal Sheth and another*, (1977) 4 SCC 193 and *D. Saibaba v. Bar Council of India and another*, (2003) 6 SCC 186. Further, in respect of the stand of the first respondent/mortgagor that the secured asset is exempted from the SARFAESI proceedings under the provisions of Section 31(i) of the SARFAESI Act, garnering support from the judgment of the Supreme Court in *State of Gujarat and Others v. Essar Oil Ltd. and another*, (2012) 3 SCC 522, he would submit that a person invoking an exemption provision to relieve him of a liability is under an obligation to establish beyond any doubt that he is covered by the said provision and in case of ambiguity, the benefit of doubt should go to the State.

5. The learned counsel would next submit that a civil suit, being O.S.No.74 of 2012 filed by the first respondent seeking for permanent injunction on the ground that the secured asset was an agricultural land was dismissed for default. The dismissal of the suit would operate as *res judicata* in the subsequent proceedings even under the provisions of the SARFAESI Act and as such, the challenge to the sale certificate by filing S.A. No.118 of 2013 is not maintainable.

6. Besides, pointing out that because of non-grant of order of stay either before the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal, the auction purchaser (the petitioner in W.P. No.26633 of 2014) has formed a layout and sold more than 100 plots, leading to creation of third party rights. Thus, any interference at this stage, would prejudice not only the bank but also the rights of those third parties.

7. In his last limb of argument, the learned counsel for the petitioner bank would submit that what the Debts Recovery Tribunal has passed under the RDDBFI Act is only an order for recovery of money and the Recovery Certificate is equivalent to a money decree. Thus, on passing of an order, the nature of the mortgaged property as a secured asset is not lost.

8. The learned counsel appearing for the auction purchaser / petitioner in W.P.No.26633 of 2014 supports the contentions advanced by the learned counsel for the Bank.

9. Per contra, Mr. S.R. Rajagopal, learned counsel appearing for the first respondent Mr.K.Pappireddiyar would contend that incontrovertibly, the land was an agricultural land at the time of creation of security interest. The change of usage subsequently would not change the classification and nature of the land, which was at the time of its mortgage. The learned counsel would further contend that the aim and object of the SARFAESI Act is to recover the defaulted amount expeditiously by way of enforcement of security interest as contemplated under Section 13, *ibid*. In the event, the provisions of the SARFAESI Act are not applicable in case of agricultural land, the Bank is not remediless. Though the bank had already obtained Recovery Certificate in the proceedings initiated under the RDDBFI Act, but, the said Recovery Certificate may not form the basis to classify the loan as a Non Performing Asset for the purpose of invoking the provisions of the SARFAESI Act. It is pertinent to point out that against the order passed by the Debts Recovery Tribunal in T.A. No.93 of 2007 under the RDDBFI Act, an appeal preferred before the Debts Recovery Appellate Tribunal is still pending consideration. It is further contended that the bank ought not to have precipitated the entire proceedings by putting the property for sale, invoking the procedure under the SARFAESI Act, wherein, the agricultural land is exempted.

10. The learned counsel would further contend that even if the secured asset is sold to several other persons, it is not necessary to implead all successive purchasers as all the purchasers are represented through the auction purchaser, who is a party here and also filed the instant petition. Thus, the Debt Recovery Appellate Tribunal has come to just, proper and legal conclusion, which deserves to be affirmed and the writ petitions be dismissed.

11. Heard the learned counsels appearing for parties and perused the pleadings and documents appended thereto.

12. First, we will decide as to whether the subsequent purchaser of the plots from the auction purchaser are necessary parties and need to be impleaded.

13. The issue came into consideration in the matter of Escorts Farms Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. and Others, (2004) 4 SCC 281, wherein, the Supreme Court had settled the issue holding that the subsequent transferees and interveners deserve no indulgence in the appeal. The subsequent transferees have stepped into the shoes of the original transferees. If the original auction purchaser / transferee is impleaded as proper party, for want of impleadment of subsequent purchasers, the application filed by the first respondent and the subsequent proceedings need not be dismissed for non joinder of parties. The relevant paragraph reads as under :

"68. Before parting with the case, only mention has to be made of the submissions made by the learned counsel appearing for subsequent transferees

of the lands involved and by some of the interveners who claim to have been allotted some lands. In our opinion the subsequent transferees and such interveners deserve no indulgence in this appeal. The subsequent transferees have stepped into the shoes of the original transferees. They can claim no different or better rights than their transferors. The contentions raised on their behalf are, therefore, not entertained. No relief can be granted to them. The interveners have to work out their independent rights and remedies, if any, and can claim no right of hearing in these appeals."

14. The second question which needs adjudication is whether the land in question which was indisputably an agricultural land at the time of mortgage, i.e., creation of security interest, is exempted, even if subsequently the usage of the land has changed and the land was thereafter sold for residential purposes by creation of plots.

15. To appreciate the ambit and scope of the provisions of the SARFAESI Act, which does not apply in certain cases, including any security interest created in agricultural land, it is apt to extract the relevant provisions:

16. "Security interest" is defined under Section 2(zf) of the SARFAESI Act, which reads as under:

"(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31."

17. Section 13 of the SARFAESI Act provides for enforcement of security interest. Section 13(1) of the SARFAESI Act reads as under:

"13.Enforcement of security interest. -(1) Notwithstanding anything contained in section 69 or section 69-A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the Court or tribunal, by such creditor in accordance with the provisions of this Act."

18. Section 31(i) of the SARFAESI Act reads as under :

"31. Provisions of this Act not to apply in certain cases. -

The provisions of this Act shall not apply to -

** ** *

(i) any security interest created in agricultural land;"

19. Thus, the security interest, as defined, means right, title and interest of any kind whatsoever upon the property created in favour of any secured creditor, i.e., bank or financial institution, and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31.

20. Under the provisions of the SARFAESI Act "secured asset" is defined as under :

"(zc) "secured asset" means the property on which security interest is created;"

21. Section 13 of the SARFAESI Act provides for process to enforce the security interest for the purpose of recovery of the outstanding amount. Under the provisions of Section 13 of the SARFAESI Act, the secured creditor may enforce the security interest created in the property at the time of mortgage, charge, hypothecation and assignment. Further, Section 13 of the SARFAESI Act does not contemplate the recovery of money, ipso facto. The recovery of outstanding amount is by way of enforcement of security interest. Thus, the main object of the provisions of the Act is to recover the defaulted amount by enforcement of the security interest. All security interest can be enforced, except as exempted under the provisions of Section 31 of the SARFAESI Act, which creates exclusion clause, wherein, the provisions of the SARFAESI Act for any purpose would not be applicable. Out of 10 conditions, one is any security interest created in agricultural land. Obviously, the relevant point of time is the creation of security interest and what was the nature and classification of the land at the time of creation of security interest. The subsequent change or conversion is not contemplated under the provisions of the Act.

22. The statement of object and reasons, particularly Clause 2(m) gives an indication as to what is the intention of the legislature. Clause 2(m) reads as under :

"(m) non-application of the proposed legislation to security interests in agricultural lands, loans not exceeding rupees one lakh and cases where eighty per cent of the loans are repaid by the borrower." Thus, it is manifest that the legislation, i.e., SARFAESI Act will have no application to the security interest created in agricultural land and loans not exceeding rupees one lakh and cases where eighty per cent of the loans are repaid by the borrower."

23. On a bare perusal of the object read with the relevant provisions, as afore stated, it is luculent that the nature of the property at the time of creation of security interest is the relevant consideration for the purpose of application of the provisions of the SARFAESI Act.

24. The word "agriculture" is defined under the Tamil Nadu Patta Pass Book Act, 1983, as under :

"** ** *

(1) "agriculture" includes, -

(a) horticulture;

(b) the raising of crops, grass or garden produce;

(c) the use by a agriculturist of land held by him, or part thereof, for grazing;

- (d) the use of any land for the purpose of raising manure crops ;
- (e) dairy farming;
- (f) poultry farming;
- (g) livestock breeding;
- (h) growing of trees;

and "agricultural" shall be construed accordingly;

25. Under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, the word "agriculture" is defined as under:

"3.Definitions. - In this Act, unless the context otherwise requires, -

(1) "agriculture" includes -

- (a) horticulture;
- (b) the raising of crops, grass or garden produce;
- (c) the use by a agriculturist of land held by him, or part thereof, for grazing;
- (d) the use of any land for the purpose of raising MANU re crops ;
- (e) dairy farming;
- (f) poultry farming;
- (g) livestock breeding;
- (h) growing of trees;

and "agricultural" shall be construed accordingly;"

26. Under the Tamil Nadu Town and Country Planning Act, 1971, the agricultural zone is defined, where under the lands used for all agricultural purposes, farm houses and buildings for agricultural activities, dairy and cattle farms, piggeries and poultry farms, water tanks and reservoirs, forestry, storing and drying of fertilizers and installation of electric machinery of not exceeding 15 horsepower may be allowed for the uses mentioned above, are the agricultural zone.

27. The contention of the learned counsel for the Bank is that the property is the punja land, i.e., dry land, which was thereafter converted and no agricultural activity was carried out. Thus, the said land, which was the dry land at the time of creation of security interest and subsequently, the dairy farm was set up, is not exempted from the applicability of the provisions of the SARFAESI Act. The learned counsel has relied on a decision of the learned Single Judge of the Delhi High Court in Bijender KR. Gupta v. Corporation Bank of India, CDJ 2013 DHC 1712, W.P.(C)No. 2132 of 2012, dated 22.11.2013, wherein, it was observed that the provisions of Section 31(i) of the SARFAESI Act appear to have been incorporated to only protect the land where actual agricultural activity is being

carried on. We are in respectful dis-agreement with the observation, as the words employed in the exemption clause have to be understood in the light of the other provisions.

28. The learned counsel Mr. Benjamin George further relied on the observation made in a decision of this Court in *Dr. S. Mani v. State Bank of India, Kodumudi Branch, Erode District* and another, W.P.No.2857 of 2013, dated 7.8.2013., that the character of the property had changed to residential property and hence, the provisions of Section 31(i) of the SARFAESI Act are not applicable. On the date of issuance of notices under Section 13(2) and 13(4) of the SARFAESI Act, the nature of the land is to be seen. The afore stated observation was made without examining the exemption clause in proper perspective and as such, the same is not applicable to the facts of this case.

29. Referring to the ratio laid down in *Union of India v. Sankalchand Himatlal Sheth* (supra), the learned counsel for the Bank places heavy reliance, seeking interpretation of the provisions of Section 31(i) of the SARFAESI Act to construe the word in such a manner, wherein, the basic purpose of recovery of money may be compatible. The Constitution Bench of the Supreme Court of India, in the said matter, in the context of interpreting the provision of Article 222 of the Constitution of India, observed as under :

"54. Now, it is undoubtedly true that where the language of an enactment is plain and clear upon its face and by itself susceptible to only one meaning, then ordinarily that meaning would have to be given by the Court. In such a case the task of interpretation can hardly be said to arise. But language at best is an imperfect medium of expression and a variety of significations may often lie in a word or expression. It has, therefore, been said that the words of a statute must be understood in the sense which the legislature has in view and their meaning must be found not so much in a strictly grammatical or etymological propriety of language, nor in its popular use, as in the subject or the occasion on which they are used and the object to be attained. It was said by Mr Justice Holmes in felicitous language in *Town v. Eisner* that "a word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used". The words used in a statute cannot be read in isolation: their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context. And when I use the word "context", I mean it in its widest sense "as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in *pari materia* and the mischief which ? the statute was intended to remedy". The context is of the greatest importance in the interpretation of the words used in a statute. "It is quite true", pointed out Judge Learned Hand in *Helvering v. Gregory* "that as the articulation of a statute increases, the room for interpretation must contract; but the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate

recourse to the setting in which all appear, and which all collectively create". Again, it must be remembered that though the words used are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing, be it a statute, or contract, or anything else, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary, but to remember that a statute always has some purpose or object to accomplish, whose sympathetic and imaginative discovery, is the surest guide to its meaning. The literal construction should not obsess the Court, because it has only prima facie preference, the real object of interpretation being to find out the true intent of the law maker and that can be done only by reading the statute as an organic whole, with each part throwing light on the other and bearing in mind the rule in Heydon case which requires four things to be "discerned and considered" in arriving at the real meaning: (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed; and (4) the reason of the remedy. There is also another rule of interpretation which is equally well settled and which seems to follow as a necessary corollary, namely, where the words, according to their literal meaning "produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification", the Court would be justified in "putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear". Vide *River Wear Commissioners v. Adamson*. It is in the light of these principles of interpretation that I must proceed to consider what is the true meaning and effect of clause (1) of Article 222: whether it permits transfer of a Judge from one High Court to another, irrespective of his consent."

30. The afore stated ratio is a well settled principle of interpretation. However, we have to examine the provisions of the instant Act. As afore stated, the object of the Act is to ensure expeditious recovery by enforcement of security interest created in the property. However, the security interest created in agricultural land is exempt from the provisions of the SARFAESI Act. There is no ambiguity, incompatibility and incongruity to give any other meaning or to substitute the word by supplying the other word.

31. The decision relied on by the learned counsel for the Bank in *Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs and others v. Special Land Acquisition Officer and others*, (2012) 7 SCC 595 deals with the Land Acquisition Act, 1894 and as such, the same is not of any assistance.

32. The decision in *State of Gujarat and others v. Essar Oil Limited (supra)* arose out of sales tax exemption / deferment, which is also not of any assistance in the case on hand.

33. In *Nagar Palika Nigam v. Krishi Upaj Mandi Samiti and others*, (2008) 12 SCC 364, while examining the basic requisites for interpretation of the provisions of a statute, the Supreme Court held as under:

"20. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *CST v. Popular Trading Co.*) The legislative *casus omissus* cannot be supplied by judicial interpretative process.

21. Two principles of construction ? one relating to *casus omissus* and the other in regard to reading the statute as a whole ? appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. ?An intention to produce an unreasonable result?, said Danckwerts, L.J., in *Artemiou v. Procopiou* (All ER p. 544 I), ?is not to be imputed to a statute if there is some other construction available?. Where to apply words literally would ?defeat the obvious intention of the legislation and produce a wholly unreasonable result?, we must ?do some violence to the words? and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* where at AC p. 577 he also observed (All ER p. 664 I): ?This is not a new problem, though our standard of drafting is such that it rarely emerges.?.]

34. Further, it is well settled that words should not be read into an Act, unless it is absolutely necessary to do so and it is wrong to proceed by substituting some other word for a word which has clear, unambiguous meaning, as has been held by the Supreme Court in *Great Offshore Limited v. Iranian Offshore Engineering and Construction Company*, (2008) 14 SCC 240. The relevant paragraphs of the said judgment read as under:

"53. Where the statute has gone to great lengths to define exactly what is meant by the term "in writing", we are precluded from adding another term to definition. Indeed, "it is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so". [See Justice G.P. Singh's *Principles of Statutory Interpretation*, 11th Edn., 2008, at p. 62.63, citing *Renula Bose v. Rai Manmatha Nath Bose*, AIR PC, p. 110; *Stock v. Frank Jones (Tipton) Ltd.*, All ER, p. 951; *Assessing Authority-cum-Excise and Taxation Officer v. East India Cotton Mfg. Co. Ltd.*]

54. An exception to this rule can be made. But before adding words to a statute,

"... the Court must be abundantly clear of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in

question; and (3) the substance of the provision Parliament would have used, had the error in the Bill been noticed." [See Justice G.P. Singh's Principles of Statutory Interpretation, 11th Edn., 2008 at p. 75 citing Inco Europe Ltd. v. First Choice Distribution, All ER at p. 115.]

As I mention below, one of the main objectives of the Arbitration and Conciliation Act, 1996 is to minimise the role of the Court; adding additional requirements to the Act is antithetical to such a goal."

35. It is also to be borne in mind that the provisions of a statute must be understood as a whole, not looking into one particular clause.[See: Pallawi Resources Limited v. Protos Engineering Company Private Limited, (2010) 5 SCC 196].

36. In the case on hand, as afore stated, a conjoint reading of the statement of objects and reasons and various provisions of the Act, leaves no room for any doubt or ambiguity to adopt any interpretation other than the nature of the land at the time of creation of security interest.

37. The next question that emerges for consideration of this Court is as to whether the dismissal of a suit for default would create res judicata, in the subsequent proceedings taken under other provisions of law. In this context, it is apropos to point out that the jurisdiction of the Civil Court is barred under the provisions of the SARFAESI Act. As pleaded by the learned counsel for the petitioners, the suit filed by the partnership firm, on the basis of security interest being agricultural land, was dismissed for default. The dismissal of a suit for default without any adjudication would not create res judicata, particularly, when the suit was filed in the Civil Court, the jurisdiction of which is barred under the provisions of the SARFAESI Act. The Supreme Court, in Bajranglal Shivchandrai Ruia v. Shashikant N. Ruia and others, (2004) 5 SCC 272, while examining the principle of res judicata, in a case, where the suit was dismissed for default, held as under:

"41. It is not possible to accept that the principle of res judicata will apply to bar the appeal. Section 11 CPC would bar the court from trying any suit or issue in which the matter "directly and substantially in issue" between the same parties or between the parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit or suit in which such issue has been subsequently raised, has been "heard and finally decided by such court". In the present case, Bajranglal and Shyamsunder were defendants in Original Suit No. 118 of 1973. The suit was dismissed and the plaintiff Satyavati carried an appeal to the Division Bench. In the appeal, both Bajranglal and Shyamsunder were respondents. The Division Bench, reversed the Single Judge's judgment and decreed the suit by its judgment. As the respondents in the appeal before the Division Bench both Bajranglal and Shyamsunder were aggrieved by the decree against them. The present appellant Bajranglal filed SLP No. 8425 of 1993 on 27-5-1993, while Shyamsunder filed his appeal SLP No.

18492 of 1993 on 17-12-1993.

42. Leave was granted in Bajranglal's appeal on 4-10-1993 while leave was granted in Shyamsunder's case on 17-12-1993. Subsequently, Bajranglal's appeal was numbered as Civil Appeal No. 5293 while Shyamsunder's appeal was numbered as Civil Appeal No. 7490 of 1993. Shyamsunder's appeal was dismissed for default for non-removal of office objections on 15-1-2001. Thus, it is obvious that both in the matter of filing the SLP and granting of leave, Bajranglal's appeal was earlier and Shyamsunder's was later in time. In these circumstances, we are unable to accept the contention that an order dismissing a subsequent appeal for default can operate as *res judicata* in respect of an earlier appeal. Neither Section 11 CPC, nor any principle derivable therefrom, would bar the appeal as contended by the respondents. The contention is misconceived and we see no merit in the contention. In our judgment, the appeal is perfectly maintainable."

38. Having held herein above that security interest created was in agricultural land, we have no hesitation to hold that all the proceedings initiated under the SARFAESI Act are nullity, as the security interest in agricultural land cannot be enforced inasmuch as the same is exempted under the provisions of Section 31(i), *ibid*. However, we make it clear that the decision in this matter shall not preclude other proceedings initiated by the bank under the RDDBFI Act, which, seemingly, is pending consideration before the Debts Recovery Appellate Tribunal. In view of this finding, we are not required to advert to the other grounds, viz., whether the Recovery Certificate constitutes Non Performing Asset or other similar grounds. As such, we do not propose to delve into the same in the instant writ petitions.

39. As a sequitur, both the writ petitions fail and are accordingly dismissed with the afore stated observations. Costs made easy. Connected Miscellaneous Petitions are closed.