
(2009) 04 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 27695 of 2007 and 9158 of 2008

Bhanu Constructions Company Limited

APPELLANT

Vs

Recovery Officer, Debts Recovery Tribunal and Others

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 39, 39(1)
Constitution of India, 1950 — Article 226
Income Tax Rules, 1962 — Rule 60, 61
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(22), 19(23), 19(25), 22, 28

Citation : (2009) 3 ALT 757

Hon'ble Judges : Anil R. Dave, C.J.; Vilas V. Afzulpurkar, J

Bench : Division Bench

Advocate : S. Ravi, in W.P. No. 27695 of 2007 and D. Prakash Reddy, sisted by B. Venkatadri and V. Dyumani, in W.P. No. 9158 of 2008, for the Appellant; S. Ravi, in W.P. No. 9158 of 2008, A. Rajasekhar Reddy, Assistant Solicitor General assisted by M. Ratna reddy for Central Government for Respondent No. 1, B. Adinarayana Rao, for Respondent Nos. 2 and 3 in W.P. No. 27695 of 2007 and Respondent Nos. 3 and 4 in W.P. No. 9158 of 2008, D. Prakash Reddy, assisted by B. Venkatadri and V. Dyumani, for Respondent Nos. 4 to 7 in W.P. No. 27695 of 2007 and Ch. Srinivas, in W.P. 27695 of 2007, for the Respondent

Final Decision : Allowed

Judgement

Anil R. Dave, C.J.—As common questions of law and fact have fallen for consideration in these two writ petitions, at the request of the learned advocates, both the petitions were heard together and are decided by this common order. Facts of both the cases, in a nutshell, are as under:

W.P. No. 27695 of 2007

2. Writ Petition No. 27695 of 2007 has been filed by M/s. Bhanu Constructions Company Ltd. seeking a direction to set aside the auction conducted on 13.12.2007 and 14.12.2007 by the Recovery Officer, Debts Recovery Tribunal,

Hyderabad (respondent No. 1 herein) for sale of the properties mortgaged by it in favour of respondent Nos. 2 and 3. The petitioner has also sought for a direction to transfer the proceedings of R.P. No. 420 of 2001 in O.A. No. 460 of 1999 pending on the file of the Debts Recovery Tribunal, Hyderabad to the Debts Recovery Tribunal, Visakhapatnam.

3. The petitioner is engaged in the business of construction. It availed certain loan facilities from Andhra Bank, Kothi, Hyderabad and State Bank of India, Secunderabad, respondent Nos. 2 and 3 herein respectively. For the purpose of securing repayment of the loans, the petitioner and its guarantors had mortgaged certain immovable properties like agricultural lands situated in Krishna and Guntur Districts and open lands with a building in Hyderabad. When the petitioner failed to repay the loan amount, respondent Nos. 2 and 3 had filed O.A. No. 460 of 1999 before the Debts Recovery Tribunal, Hyderabad, and in pursuance of the said proceedings, a recovery certificate was issued on 31.10.2000. Subsequent to the constitution of a Bench of the Debts Recovery Tribunal at Visakhapatnam, the petitioner had filed M.P. No. 28 of 2007 in R.P. No. 420 of 2001 in O.A. No. 460 of 1999 before the Debts Recovery Tribunal, Hyderabad, seeking transfer of the recovery certificate to the Debts Recovery Tribunal, Visakhapatnam, on the ground that the Tribunal at Visakhapatnam had got jurisdiction to try the proceedings as certain mortgaged properties are situated in Krishna and Guntur Districts. M.P. No. 28 of 2007 was rejected by an order dated 10.12.2007 and the said order became final, as validity of the same was not challenged by the petitioner. While M.P. No. 28 of 2007 was pending for its consideration, respondent No. 1 herein issued an auction notice dated 10.10.2007 for sale of the mortgaged properties and the auction was held on 13.12.2007 and 14.12.2007. In the meanwhile, the Chairperson, Debts Recovery Appellate Tribunal, Chennai, by a letter dated 30.11.2007 conveyed his approval for transfer of recovery appeals in R.P. No. 420 of 2001 in O.A. No. 460 of 1999 to the file of the Debts Recovery Tribunal, Visakhapatnam. The grievance of the petitioner is that in spite of the specific direction from the Debts Recovery Appellate Tribunal, Chennai for transfer of the recovery appeals under letter dated 30.11.2007, respondent No. 1 had passed an order dated 10.12.2007 in M.P. No. 28 of 2007 holding that the recovery certificate need not be transferred to the Debts Recovery Tribunal, Visakhapatnam. In the said order dated 10.12.2007, it was also held that since the petitioner was carrying on business at Hyderabad and was having its registered office in Hyderabad, respondent No. 1 was competent to execute the recovery certificate in respect of all the mortgaged properties irrespective of the fact that some of them fell urftier the jurisdiction of another Tribunal. Thereafter, on 14.12.2007, the petitioner had filed another petition being IAIR No. 1205 of 2007 u/s 19(23) and (25) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "the RDB Act") seeking stay of all further proceedings including stay of the auction proceedings scheduled to be held on 14.12.2007 at Vijayawada. However, the said petition was returned on the ground that the proceedings in OANo.460 of

1999 had been transferred to Debts Recovery Tribunal, Visakhapatnam.

4. Subsequent to the filing of the writ petition, the petitioner had filed WPMP.No.3851 of 2008 seeking to implead the auction purchasers of the property in the auction held on 13.12.2007 and 14.12.2007 as respondent Nos. 4 to 7 in the writ petition, and the said application was granted by this Court on 11.3.2008.

5. It is the grievance of the petitioner that at the first instance, respondent No. 1 had ignored the directions contained in the letter dated 30.11.2007 for transfer of the recovery proceedings to the file of the Debts Recovery Tribunal, Visakhapatnam, and thereafter, he could not have returned the petition seeking stay of the auction proceedings scheduled to be held on 14.12.2007 at Vijayawada. By doing so, the petitioner was put to irreparable damage. It is also the case of the petitioner that the proceedings pertaining to O.A. No. 460 of 1999 could not have been transferred in a piecemeal manner and the entire proceedings should have been transferred to the Debts Recovery Tribunal, Visakhapatnam. Therefore, the action of respondent No. 1 in passing order dated 10.12.2007 and in conducting auction on 13.12.2007 and 14.12.2007 is arbitrary, illegal and violative of the principles of natural justice.

W.P. No. 9158 of 2008

6. This petition has been filed by Sri Mohd. Saleem claiming to be the Proprietor of M/s. Hotel Anmol Continental, Nampally, Hyderabad, which was impleaded as respondent No. 7 in Writ Petition No. 27695 of 2007 on 11.3.2008.

7. It is the case of the petitioner in this petition that he had participated in the auction conducted on 13.12.2007 and he was the highest bidder having quoted Rs. 7,16,00,000/-in respect of item No. 1 of the property mentioned in the auction notice dated 10.10.2007. He had also deposited 25% of the bid amount on the date of auction and the remaining 75% within 15 days thereafter. Subsequently, the sale was also confirmed in favour of the petitioner by proceedings dated 21.2.2008 issued by respondent No. 1.

8. In this petition, the petitioner has prayed for a direction to respondent No. 1 to issue sale certificate and to deliver possession of the property bearing Municipal No. 259/488 (old), No. 855 (new) admeasuring 1123.5 Sq.mtrs. situated at Panjagutta, Hyderabad consisting of ground plus four upper floors.

9. According to the petitioner, M/s. Bhanu Constructions Company Ltd. (respondent No. 2 in this petition), had filed M.P.Nos.4 and 5 of 2008, during the pendency of Writ Petition No. 27695 of 2007, praying for a direction to set aside the sale held on 13.12.2007 and 14.12.2007, which were dismissed by respondent No. 1 by an order dated 18.2.2008 on the ground that the mandatory requirement of Rule 61(b) of the Second Schedule to Income Tax Act had not been complied with. It is, therefore, his grievance that even though the sale has become absolute, respondent No. 1 is not executing sale certificate in his favour.

10. In Writ Petition No. 27695 of 2007, affidavit in reply has been filed on behalf of respondent Nos. 2 and 3 banks denying the allegations made by the petitioner. It has been stated that the appeal proceedings in R.P. No. 420 of 2001 in O.A. No. 460 of 1999 have already been transferred to the Debts Recovery Tribunal, Visakhapatnam, and now the said proceedings have nothing to do with the recovery proceedings in R.P. No. 420 of 2001, as the recovery proceedings are pending before respondent No. 1, who is concerned with execution of the recovery certificate. It has also been stated that respondent No. 1 and the Tribunal are different and distinct authorities and according to Section 19(23) of the RDB Act, respondent No. 1 had also jurisdiction to act as Recovery Officer in respect of the properties situated even outside the territorial jurisdiction of the Debts Recovery Tribunal, Hyderabad. It has been further stated that under Sections 19(22) and (25), the Recovery Officer is obliged to execute the recovery certificate sent to him.

11. Respondent Nos. 4 to 6, who are the auction purchasers of the properties described at item 3 of the auction notice dated 10.10.2007, have filed a separate affidavit in reply. It has been stated that sale in respect of the afore-stated properties has been confirmed by the Recovery Officer on 21.2.2008 and possession of the properties has also been delivered to them, and that if the petitioner is aggrieved by the sale conducted by the Recovery Officer, the petitioner could have initiated appropriate proceedings under Rule 60 or 61 of the Second Schedule to the Income Tax Act, but no such application was made by any person including the petitioner, and as the sale had been confirmed, the petitioner could have preferred an appeal u/s 30 of the RDB Act. It has also been stated that instead of pursuing the statutory remedies provided under the RDB Act, the petitioner had invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution and, therefore, the petition deserved rejection for not availing equally efficacious alternative remedy. It has been further stated that once a recovery certificate is issued, the Recovery Officer is vested with the jurisdiction to execute the same u/s 28 of the RDB Act unless the certificate is transferred to another Recovery Officer/Tribunal.

12. An affidavit in reply has also been filed on behalf of M/s. Hotel Anmol Continental (respondent No. 7 in Writ Petition No. 27695 of 2007) reiterating the averments made in Writ Petition No. 9158 of 2008.

13. A rejoinder has been filed by the petitioner in Writ Petition No. 27695 of 2007. It has been stated that respondent No. 1 is a part of the Debts Recovery Tribunal and is, therefore, bound by the direction of the Debts Recovery Appellate Tribunal in its letter dated 30.11.2007.

14. Shabbir Ahmed Khan and Associates, Vijayawada had filed WPMP. No. 31023 of 2008 for impleadment as party respondent in Writ Petition No. 27695 of 2007 and the said application was granted by this Court on 20.2.2009. It is the case of Shabbir Ahmed Khan and Associates that in the auction held on 16.11.2007 at Vijayawada, it was the highest bidder in respect of the properties shown at

SI.Nos.1 and 2 of item No. 4 of the auction notice and it had paid the amount payable by it and, therefore, it has prayed for a direction to respondent No. 1 for issue of sale certificate in respect of these properties.

15. For the sake of convenience, the parties are referred to hereinafter as they are arrayed in Writ Petition No. 27695 of 2007.

16. Sri S. Ravi, learned Counsel appearing for the petitioner, has submitted that since the then Presiding Officer of the Tribunal had earlier appeared on behalf of the borrower before this Court in respect of certain transactions, the Tribunal had addressed a letter dated 22.11.2007 to the Appellate Tribunal, Chennai seeking instructions to transfer the recovery proceedings to any other Tribunal, and though the Appellate Tribunal accorded its approval vide its letter dated 30.11.2007 for transfer of the same to the Debts Recovery Tribunal, Visakhapatnam, the entire proceedings were not transferred. He has also submitted that respondent No. 1 ought to have transferred the entire file to the Debts Recovery Tribunal, Visakhapatnam instead of transferring only appeal proceedings in a piecemeal manner.

17. Sri Ravi has further submitted that the value of the property shown at item No. 1 in the auction notice dated 10.10.2007, which is a multistoreyed complex situated in Panjagutta, Hyderabad, was about Rs. 14-15 Crores, whereas it was auctioned for Rs. 7.16 Crores only. Moreover, the upset price of the said property was also not fixed in consultation with the petitioner. Similarly, the property shown at item No. 3, comprising of agricultural lands situated in Paritala Village of Krishna District, was sold for Rs. 17.88 Crores, whereas the market value of the same was Rs. 25 Crores. He has also submitted that the bidders, who participated in the auction, had formed a cartel and, therefore, the properties sold at the auction did not fetch its proper market value. Thereafter, he has submitted that M.P. No. 28 of 2007 was decided by respondent No. 1 without intimating the date of hearing to the petitioner or its Counsel on 10.12.2007 and the auction was conducted on 13.12.2007 and 14.12.2007 without affording reasonable opportunity to file an appeal and, therefore, the entire proceedings are contrary to the principles of natural justice.

18. Sri Ravi has thereafter submitted that on 14.12.2007, the petitioner had filed a petition being IAIR No. 1205 of 2007 u/s 19(23) and (25) of the RDB Act seeking stay of all further proceedings including stay of the auction proceedings scheduled to be held on 14.12.2007 at Vijayawada, However, the said petition was returned on the ground that the entire proceedings in O.A. No. 460 of 1999 had been transferred to Debts Recovery Tribunal, Visakhapatnam, and respondent No. 1 had proceeded with the auction.

19. It has also been submitted by Sri S. Ravi that in January, 2007, the petitioner had approached the respondent Banks for one time settlement, but no action had been taken on the said proposal. He has also submitted that the petitioner was agreeable to deposit the amount required to be deposited under Rule 60 of the

Second Schedule to the Income Tax Act.

20. Thereafter, Sri Ravi has submitted that respondent No. 1 had no jurisdiction to execute the recovery certificate in respect of the properties situated outside the jurisdiction of the Debts Recovery Tribunal, Hyderabad. He has submitted that on one hand, respondent No. 1 had ignored the directions contained in the letter dated 30.11.2007 of the Appellate Tribunal for transfer of the recovery proceedings to the file of the Debts Recovery Tribunal, Visakhapatnam, and on the other, returned the petition seeking stay of the auction, which was scheduled to be held on 14.12.2007 at Vijayawada, on the ground that the proceedings had been transferred to the Tribunal at Visakhapatnam. He has drawn attention of the Court to the provisions of Section 19(23) of the RDB Act and also to the judgment of a learned Single Judge of this Court in *Pokuri Venkata Subba Rao Vs. Vinnakota Peda Nageswara Rao*, , a judgment of the Division Bench of the Bombay High Court in *Khurshed Sorabji Cooper Vs. Bombay Electric Supply and Transport Undertaking*, ; and judgments of the Hon'ble Supreme Court in the cases of *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI)*, and *Mohit Bhargava Vs. Bharat Bhushan Bhargava and Others*, .

21. Sri Ravi has submitted that the language used in Sub-section (23) of Section 19 of the RDB Act is that the Tribunal "may" send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated and, therefore, respondent No. 1 had no jurisdiction to auction item No. 3 of the properties, which are situated in Krishna District. The word "may" should be read as "shall" in the instant case and, therefore, the recovery certificate ought to have been transferred to the Tribunal having jurisdiction over Krishna and Guntur Districts, where the properties are situated. He has also submitted that even according to Section 39(1) of the CPC (CPC), on the application made by the decree holder, the court, which passed the decree, may send it for execution to another court of competent jurisdiction.

22. Sri B. Adinarayana Rao, learned Counsel appearing for respondent Nos. 2 and 3 banks, has submitted that the petitioner is not concerned as to who sells the property mortgaged to the banks pursuant to the recovery certificate issued by the Tribunal. He has also submitted that the petitioner had not availed the statutory remedy of appeal provided u/s 30 of the RDB Act against the order passed by respondent No. 1 (Recovery Officer) in M.P. No. 28 of 2007, dated 10.12.2007, and has invoked jurisdiction of this Court to evade the payment of the loan amount.

23. Sri Adinarayana Rao has also drawn attention of the Court to the objects of the RDB Act and has submitted that to avoid delay in recovery of loans advanced by the banks, the RDB Act was enacted and Debts Recovery Tribunals were constituted. He has also submitted that the provisions of the CPC do not apply to the proceedings initiated under the RDB Act. He has further added that in the instant case, the recovery certificate was issued on 31.10.2000, whereas the Tribunal at Visakhapatnam was constituted on 26.2.2002. According to him, only

the Tribunal has power to transfer the recovery certificate and once the certificate is issued to the Recovery Officer under the provisions of the RDB Act, he is bound to execute the same.

24. Sri Adinarayana Rao has also submitted that the provisions of the Second Schedule to the Income Tax Act, 1961 apply to the proceedings under the RDB Act and as the petitioner had not deposited the amount specified in the recovery certificate as per the provisions of Rule 60 of the Second Schedule to the Income Tax Act within 30 days from the date of sale and by way of penalty, a sum equal to 5% of the purchase money along with an application to respondent No. 1, the auction sale cannot be set aside. Moreover, the petitioner did not file any appeal u/s 30 against the order of respondent No. 1. He has finally submitted that no prejudice was caused to the petitioner by effecting sale of the mortgaged properties for recovery of the loan advanced to the borrower and, therefore, the petition deserves rejection.

25. Sri D. Prakash Reddy, learned Senior Advocate appearing for the respondent Nos. 4 to 7 (auction purchasers) has submitted that his client had paid the amount and sale of the mortgaged properties had been confirmed by respondent No. 1 on 21.2.2008. He has also submitted that the petitioner had not filed any appeal against the order dated 10.12.2007 passed by respondent No. 1 in M.P. No. 28 of 2007. He has also submitted that there is no provision in the RDB Act for transfer of the recovery certificate after it is transferred to the Recovery Officer for execution and, therefore, the action taken by the Recovery Officer cannot be said to be illegal or irregular. In support of his submission, Sri Reddy has relied on the judgment of a Division Bench of this Court in Lalithamba v. Mangamma 1958 (2) A.W.R. 511 : AIR 1958 A.P 763.

26. We have heard the learned Advocates at length and have also considered the facts of the case and the judgments referred to by the learned Advocates.

27. It is not in dispute that recovery certificate dated 30.10.2000 for Rs. 44,06,30,954.79p. had been issued as the petitioner (borrower) did not repay the amount payable to the creditor banks. The said fact denotes that the petitioner is a defaulter who did not repay the amount of loans borrowed by it from both the banks. It is important to note the object with which the RDB Act has been enacted. The object with which the special statute has been enacted is to see that there is expeditious adjudication and recovery of debts due to banks and financial institutions. It is also pertinent to note that so as to see that the recovery is not delayed, the legislature has incorporated Section 22 in the RDB Act providing that the Tribunal as well as the Appellate Tribunal would not be bound by the procedure laid down by the CPC. However, the said Section provides that the principles of natural justice should be followed by the Tribunal as well as by the Appellate Tribunal.

28. It is thus clear that strict provisions of the CPC are not to be followed by the Tribunal as well as the Appellate Tribunal while discharging its duties. It is a

settled legal position that all the rules of procedure are the handmaid of justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice Smt. Rani Kusum Vs. Smt. Kanchan Devi and Others, .

29. So as to see that the defaulters do not procrastinate repayment of their debts due to banks and financial institutions by taking undue advantage of the procedural laws, the legislature was constrained to incorporate the afore-stated provision in Section 22 of the RDB Act.

30. Thus, not only Tribunals and Appellate Tribunals, even this Court should also try to see that the defaulters, who are trying to avoid or delay repayment of money borrowed from banks and financial institutions, which are by and large public institutions dealing with public money, are not given any assistance on the ground that some procedural law was not strictly followed in the matter of recovery of the amount payable by the defaulters. This Court is conscious about the afore-stated fact and accordingly, this Court will have to decide whether the recovery certificate should have been transferred to a Tribunal which had been established after issuance of recovery certificate for the purpose of recovery of the amount. It is not in dispute that the recovery certificate for Rs. 44,06,30,954.79p., was issued on 30.10.2000 by Debts Recovery Tribunal, Hyderabad and at that time Debts Recovery Tribunal, Visakhapatnam was not in existence. In the circumstances, the amount referred to in the recovery certificate could have been recovered by respondent No. 1 i.e. Recovery Officer of Debts Recovery Tribunal, Hyderabad.

31. It is pertinent to note that the recovery certificate dated 31.10.2000 was issued by the Debts Recovery Tribunal, Hyderabad and the Recovery Officer had to initiate recovery proceedings in R.P. No. 420 of 2001. It is an admitted fact that Debts Recovery Tribunal, Visakhapatnam was not in existence when the recovery certificate was issued because Debts Recovery Tribunal, Visakhapatnam was established on 26.2.2002 i.e. long after recovery certificate was issued. The learned Advocate appearing for the petitioner has placed much reliance upon the approval given by the Chairperson of Debts Recovery Appellate Tribunal, Chennai under letter dated 30.11.2007, for transfer of recovery appeals filed in R.P. No. 420 of 2001 in O.A. No. 466 of 1999 to Debts Recovery Tribunal, Visakhapatnam. Admittedly, long after establishment of Debts Recovery Tribunal at Visakhapatnam, letter dated 22.11.2007 was addressed to the Registrar, Debts Recovery Appellate Tribunal, Chennai seeking necessary instructions to transfer recovery appeals relating to O.A. No. 460 of 1999 to any other Tribunal under the jurisdiction of the Chairperson, Debts Recovery Appellate Tribunal, Chennai, on the ground that the then Presiding Officer had appeared in certain matters on behalf of some borrowers in respect of other transactions before the High Court of Andhra Pradesh. It is pertinent to note that transfer of appeals and transfer of recovery certificate are absolutely different things. Upon issuance of recovery certificate, what was required to be done was to recover the amount mentioned

in the recovery certificate, whereas, in case of transfer of appeals, the appeals which were pending before Debts Recovery Tribunal, Hyderabad were to be transferred to Debts Recovery Tribunal, Visakhapatnam under letter dated 30.11.2007, and the Chairperson of Debts Recovery Appellate Tribunal, Chennai had given approval for transfer of appeals, which were pending before the Debts Recovery Tribunal, Hyderabad. In the said letter, there was no mention of transfer of recovery certificate or recovery proceedings. In pursuance of the recovery certificate, the amount covered by the recovery certificate had to be recovered by the Recovery Officer. Thus, the submission made by the learned Advocate appearing for the petitioner that in spite of direction by the Chairperson of Debts Recovery Tribunal, Chennai under letter dated 30.11.2007, the recovery certificate was not transferred, is not sustainable.

32. As a matter of fact, the recovery certificate had been issued on 30.10.2000, but for the reasons best known to the parties, needful could not be done for recovery of the afore-stated amount for several years. As already stated, transfer of recovery appeals and transfer certificate are absolutely different things. Therefore, the Recovery Officer - respondent No. 1 had issued auction notice dated 10.10.2007, whereby properties described in the notice were notified for auction in pursuance of the recovery certificate dated 30.10.2000 on 13th and 14th December, 2007. Auction had taken place as per the schedule and the properties which are subject matter of these petitions had been sold to the buyers and the sale in pursuance of the said auction has also been confirmed.

33. Now the question which is to be decided by this Court is whether the auction which had taken place on 13th and 14th December, 2007 in pursuance of notice of auction dated 10.10.2007 can be said to be invalid.

34. The learned Advocate appearing for the petitioner has mainly submitted that the auction had been conducted by respondent No. 1 - Recovery Officer, Hyderabad and some of the properties covered under the auction notice are situated in Krishna District, outside his jurisdiction. The learned Advocate has relied upon the provisions of Section 39 CPC so as to substantiate his case that the properties to be auctioned were not within the jurisdiction of respondent No. 1 - Recovery Officer and, therefore, he could not have dealt with the properties situated in Krishna District. According to him, the recovery certificate ought to have been transferred to Debts Recovery Tribunal, Visakhapatnam, especially in view of the fact that by an order dated 30.11.2007, proceedings had been transferred to the Tribunal at Visakhapatnam. He has, therefore, submitted that auction of properties situated outside the jurisdiction of respondent No. 1 is bad in law.

35. The afore-stated submission cannot be accepted for the reason that the provisions of CPC are not applicable to the Tribunal as per the provisions of Section 22 of the RDB Act. It is pertinent to note that the object behind enactment of the RDB Act is to ensure speedy recovery of the huge amount involved, to punish the guilty and restore confidence in and maintain the basic

integrity and credibility of banks and financial institutions as observed by the Hon'ble Supreme Court in the case of Bank of India v. Ketan Parekh (2008) 8 SCC 148 : 2008 (7) SCJ 411. So as to see that procedural technicalities are avoided and the banks and financial institutions managing public funds get their funds back from the defaulting borrowers, the afore-stated Section 22 has been incorporated in the Act. Intention of the legislature is thus very clear. Even after knowing the afore-stated intention of the legislature, if the courts become technical or super-technical, then the entire purpose with which the Act has been enacted would be frustrated. It is, however, pertinent to note that all principles of natural justice are to be followed by the Tribunal. In the instant case, there is no violation of any of the principles of natural justice or no harm has been caused to the petitioner because respondent No. 1 - Recovery Officer of Debts Recovery Tribunal, Hyderabad auctioned the properties situated at a place outside his jurisdiction. It has been established that the auction notification had been duly published. In such a case, the petitioner has to prove that some prejudice had been caused to the petitioner because respondent No. 1 auctioned the properties, which were situated beyond his jurisdictional limit. In the instant case, the petitioner (borrower) has failed to establish any such prejudice. The only averment which has been made in the petition is that the property was disposed of at a lesser price, but no evidence giving details with regard to market value of the properties has been given in the petition. Mere allegation to the effect that the property did not fetch proper market value would not be sufficient to quash and set aside the auction sale which has been already confirmed. If on such a frivolous ground, the auction sale is quashed or set aside, as stated hereinabove, the entire object with which the RDB Act has been enacted would be frustrated and, therefore, we do not agree with the submission made by the learned Advocate for the petitioner that the auction was conducted in violation of the provisions of the CPC, especially when the provisions of the CPC are not applicable in the instant case. In view of the said fact, all judgments, cited to substantiate case of the petitioner that the recovery certificate should have been transferred, need not be discussed as they are not relevant.

36. We may add here that at the time when the recovery certificate was issued on 30.10.2000, respondent No. 1 was the only officer who could have dealt with the properties situated in Krishna and Guntur Districts for the reason that the said properties were within his jurisdiction. Another Tribunal had been constituted on 26.2.2002. An application for transfer of recovery certificate was made somewhere in 2007. Recovery certificate for Rs. 44,06,30,954.79p. had been issued on 30.10.2000. Nothing was done for effecting recovery of the amount covered by the recovery certificate for considerably long period. It appears that with great difficulty, the properties could be disposed of in 2008, and on some technical ground, if the auction is quashed and set aside, the creditor banks would be deprived of the funds which they have already, and lawfully, received upon auction of the properties in question.

37. Another submission which has been made by the learned Advocate appearing

for the petitioner is that his client was ready and willing to deposit the entire amount payable under the recovery certificate with the Recovery Officer as provided in Rule 60 of the Second Schedule to Income Tax Act, 1961 so as to get the auction sale set aside. The provisions of Section 29 of the RDB Act provide that the provisions of Second and Third Schedules to the Income Tax Act shall be applicable to the recovery of debt due under the RDB Act. Rules 60 and 61 of the Second Schedule to Income Tax Act, 1961 are as under:

60. (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing-

(a) the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of one and one-fourth per cent for every month or part of a month, calculated from the date of the proclamation of sale to the date when the deposit is made; and

(b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.

(2) Where a person makes an application under Rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

61. Where immovable property has been sold in execution of a certificate, such Income Tax Officer as may be authorized by the Chief Commissioner or Commissioner in this behalf, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that-

(a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.

It is an admitted fact that the petitioner had not deposited the amount covered under the recovery certificate. Willingness of the petitioner to deposit the entire amount covered by the recovery certificate, without depositing any amount with the Recovery Officer, would not be of any help to him for the reason that Rules 60 and 61 of the Second Schedule provide for deposit of the entire amount

covered by the certificate dated 30.10.2000fJ within 30 days from the date of the sale. The amount covered by the certificate is more than Rs. 44 Crores. We need to add here that the afore-stated amount was payable on 30.10.2000 and as on today, substantial amount of interest would be added thereto and without depositing any amount, simply because the petitioner (borrower), who is a defaulter, makes a statement that it is ready and willing to deposit the entire amount, cannot be of any help to it. Had the petitioner made the afore-stated submission with a bona fide intention, it would have deposited the amount with the Recovery Officer within 30 days from the date of the sale. In view of the above fact, we do not accept the submission of the learned Advocate to the effect that the sale conducted is contrary to the provisions of Rule 61 of the Second Schedule to Income Tax Act, 1961 because the conditions stated in the said rule have not been complied with by the petitioner.

38. Another submission made by the learned Advocate for the petitioner is that the auction sale is invalid for the reason that upset or reserve price for the properties, which had been auctioned, had not been determined and, therefore, the auction sale should be quashed and set aside. The said submission is far from truth for the reason that reserve price for the properties to be auctioned had been stated in the notice dated 10.10.2007. Perhaps, the petitioner wants to contend that value of each and every piece of land had not been stated separately. In our opinion, such a submission cannot be accepted. If one looks at the notification dated 10.10.2007, he would find that the properties referred to in the said notice under different heads have been not only described, but the reserve price has also been stated in the column meant for that. We are, therefore, not in agreement with the submission made by the learned Advocate for the petitioner that reserve price of the properties in question had not been stated in the auction notice.

39. The learned Advocate appearing for the petitioner (borrower) has also submitted that the petitioner had made an effort to approach the creditor banks with an offer for One-time Settlement, but the said offer had not been accepted. In our opinion, the aforestated submission is absolutely irrelevant. Sufficient opportunities were given by the creditor banks even before approaching the Debts Recovery Tribunal. Moreover, it was not obligatory on the part of the creditor banks to accept One-time Settlement offer, which might have been proposed by the defaulter, if the proposal was not reasonable, and it is always for the creditor bank to decide whether the proposal is reasonable. Prima facie, it appears that the petitioner has made all possible efforts to delay the proceedings. The amount of loan was borrowed long ago and possibly before more than ten years from today. Recovery certificate was issued on 30.10.2000, and till today, the entire amount covered by the certificate has not been recovered by the creditor banks. In such a set of circumstances, it cannot be said that the creditor banks should have accepted the proposal for One-time Settlement made by the petitioner even if the proposal was not just and proper according to the creditor banks.

40. Yet another submission of the learned Advocate appearing for the petitioner-borrower is that an application for stay had been submitted to Debts Recovery Tribunal, Vijayawada, but the same had been returned on the ground that the proceedings had been transferred to the Tribunal at Visakhapatnam. In our opinion, the afore-stated submission would also not help the petitioner for the reason that if the petitioner was aggrieved by the afore-stated action of the Tribunal, it should have challenged the validity of the said action.

41. Upon considering the afore-stated facts of the case and the law on the subject, we are of the view that the petitioner-borrower is making all possible efforts to thwart the recovery proceedings by all possible means. In our opinion, all these efforts must fail for the reason that the petitioner is a defaulter, who has not paid money legitimately due and payable by it to the creditor banks. Any effort to render any assistance to such a defaulter would frustrate the object with which the RDB Act has been enacted. In our opinion, this Court, under its writ jurisdiction, would never render any help to a defaulter who does not want to pay its dues to the creditor banks which are dealing with public money. In view of the fact that no prejudice has been caused to the petitioner and as no principle of natural justice has been violated, in our opinion, it cannot be said that the petitioner has made out a case in its favour.

42. For the reasons stated hereinabove, in our opinion, no case has been made out by the petitioner in Writ Petition No. 27695 of 2007 for any interference and, therefore, the said petition is rejected with no order as to costs. As the auction sale in respect of the properties in question has already been confirmed, possession of the properties in question, if not handed over to the auction purchasers so far, shall be delivered to them.

43. So far as Writ Petition No. 9158 of 2008 is concerned, in view of rejection of Writ Petition No. 27695 of 2007, prayer made in Writ Petition No. 9158 of 2008 deserves to be granted. As the prayer in the said petition is with regard to issuance of sale certificate and handing over possession of the property purchased by the petitioner, the Recovery Officer, Debts Recovery Tribunal, Hyderabad is directed to issue sale certificate and do the needful for handing over possession of the properties in question to the auction purchaser. Writ Petition No. 9158 of 2008 is accordingly allowed with no order as to costs.