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**(2011) 07 MP CK 0073**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 2171 of 2005**

Kamal Kishore Gupta

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

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**Date of Decision :** 01-07-2011

**Acts Referred:**

Companies Act, 1956 — Section 442, 446, 529A, 537  
Income Tax (Certificate Proceedings) Rules, 1962 — Rule 4, 53, 56, 57, 57  
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section  
19(19), 19(7), 22, 22(1), 22(2)

**Citation :** AIR 2012 MP 13

**Hon'ble Judges :** Shantanu Kemkar, J; Abhay M. Naik, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Abhay M. Naik, J.—This petition has been preferred against the judgment dated 23.07.2004 (Annexure P-15) passed by the Debt Recovery Tribunal, Jabalpur in appeal No. 09/2004 and judgment dated 20.07.2005 (Annexure P-17) passed by Debt Recovery Appellate Tribunal, Allahabad in appeal no. 433/2004. Relevant facts in short are that respondent No. 1 initiated C.S.No. 7-B/97 in the Court of District Judge, Shajapur for recovery of Rs. 12,59,589/- against the petitioner and respondents No. 2 to 11. On formation of Debt Recovery Tribunal, on enforcement of Recovery of Debts due to Banks and Financial Institutions Act, 1993, (hereinafter for brevity referred to as "Act of 1993") the civil suit was transferred to the Tribunal at Jabalpur as T.A.No. 160/1998 which was allowed on 20.09.1999 and accordingly the judgment was passed in favour of the Bank, against the petitioner and respondents No. 2 to 11 vide Annexure P-1. The property mortgaged in security of the loan was attached on 22.12.2001 vide Annexure P-3, in execution case bearing T.A.Ex.No. 49/2000. Notice for its auction was issued on 22.10.2002, vide Annexure P-4. According to the terms and conditions of the auction, successful bidder was required to deposit 25% of his bid amount with the Recovery Officer of the Debt Recovery Tribunal, Jabalpur

by Pay Order/Demand Draft. Balance 75% was required to be deposited with poundage fees within 15 days from the date of auction. Auction was held on 13.03.2003 and the highest bid of Rs. 16,80,000/- was made by respondent No. 12. He deposited 25% of the bid amount on 13.03.2003 amounting to Rs. 4,20,000/-. Balance amount of Rs. 12,60,000/- was to be deposited with the Recovery Officer upto 28.03.2003.

2. It has been stated in the writ petition that the balance amount was not deposited within the stipulated period. Objection to this effect was submitted by the petitioner on 12.06.2003, vide Annexure P-10, which was opposed by the Bank. The Recovery Officer vide his order dated 23.03.2004 held that the auction bidder failed to deposit the 75% of the balance auction bid within the stipulated period. He therefore, cancelled the auction dated 13.03.2003 and directed for refund of Rs. 12,60,000/- to the auction purchasers. It was further observed that an order would be passed separately on application being moved by the auction purchasers in respect of 25% of the bid amount. Bank was directed to re-auction the property. Copy of this order is on record as Annexure P-12.

3. Aggrieved by this order, the Bank submitted appeal No. 9/2004 before the Debt Recovery Tribunal, Jabalpur which was allowed on 23.07.2004, vide Annexure P-15 setting aside thereby the order of the Recovery Officer. The appeal preferred by the petitioner has also been dismissed by the Debt Recovery Tribunal, Allahabad on 20.07.2005, vide Annexure P-17. Hence, the present writ petition mainly with the allegation that the balance amount of the accepted bid was not deposited within 15 days with the Recovery Officer, as required mandatorily in the property auction notice contained in Annexure P-4 and P-5. Poundage fees was not deposited at all, contrary to the mandatory requirement contained in Annexure P-4 and P-5. This failure on the part of the purchasers (respondents No. 2 to 11) vitiated the auction and the order of Recovery Officer therefore, deserves to be restored.

Contention on behalf of the Bank as well as the auction purchasers is that the balance amount was handed over to the decree holder itself. Objection about non-deposit of poundage fees was not raised before the authorities below and therefore, the same cannot be allowed to be raised for the first time in the writ petition. Thirdly, there being substantial compliance, auction does not stand vitiated and the writ petition is liable to be dismissed.

4. Before entering into the legal disputes, we deem it proper to dwell upon certain essential facts. Undisputedly, the Debt Recovery Tribunal passed the judgment in favour of the Bank on 20.09.1999. The property which was mortgaged in security of loan was put to auction by the Debt Recovery Tribunal, vide property auction notice Annexure P-4 and P-5 which contained the following relevant conditions:

(i) The successful bidder shall have to deposit 25% of the sale proceeds by way of pay order/demand draft favouring the Recovery Officer, Debt Recovery

Tribunal, Jabalpur immediately after the fall of hammer falling which the earnest deposit shall be forfeited.

(ii) The purchaser shall deposit the balance 75% of the sale alongwith the poundage fees @ 2% upto Rs. 1000/- @ 1% exceeding Rs. 1000/- within 15 days from the date of auction sale.

Proclamation of sale in Form No. 13, was issued as revealed in Annexure P-6, which contained the following relevant clause:

The sale shall be subject to the condition prescribed in the Second Schedule to the Income Tax Act, 1961, and the rules made thereunder and to the following further conditions :--

(i).....

(ii).....

(iii).....

(iv).....

(v).....

(vi).....

(vii) In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration, a deposit of twenty-five percent of the amount of his purchase money to the officer conducting the sale and, in default of such deposit, the property shall forthwith be put up again and resold. The full amount of the purchase money payable shall be paid by the purchaser to the undersigned on or before the 15th day from the date of the sale of the property, exclusive of such day, or is the 15th day be a Sunday or other holiday, then on the first office day, after the 15th day. In default of payment within the period mentioned above, the property shall be sold, after the issue of a fresh proclamation of sale. The deposit, after defraying the expenses of the sale, may, if the undersigned thinks fit, be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

5. Annexure P-4 to P-6 were issued by the Recovery Officer of the Debt Recovery Tribunal, Jabalpur. Pursuant to Annexure P-4 to P-6, auction was held on 13.03.2003, wherein the highest bid offered by respondents No. 12 to 14 at Rs. 16,80,000/- was accepted. 25% of the same i.e. Rs. 4,20,000/- was deposited on the same day in the form of earnest money plus demand drafts of Rs. 2,64,000/-. Balance 75% amount i.e. Rs. 12,60,000/- was deposited with the Decree holder/Branch Manager of State Bank of India, Sarangpur vide demand drafts No. 825023, 825028 and 825029 each dated 27.03.2003 for sum of Rs. 4,20,000/-. This was on the same day informed to the Debt Recovery Tribunal, vide Annexure P-9 with a prayer for delivery of possession. It was opposed by

the petitioner vide Annexure P-10 dated 12.06.2003 mainly on the ground that the balance 75% amount was not deposited with the Recovery Officer. Amount of stamp duty, requisite form, sale certificate was also liable to be deposited up till 28.03.2003. Therefore, the auction stood vitiated. A prayer was accordingly made to cancel the sale proceedings.

Decree Holder/Bank vide its reply contained in Annexure P-11 stated that as per provision 57 of the General Provisions contained in Part I of the Schedule II of Income Tax Act, 1961, respondents No. 12 to 14 being successful bidders, immediately deposited 25% of the bid amount and the balance 75% has also been deposited by them within the stipulated period. Thus, the full amount of purchase money has been paid by the successful bidders and the objections are liable to be rejected.

The Debt Recovery Officer vide his order dated 23.03.2004 found that the balance 75% amount was not deposited with the Debt Recovery Officer, but was deposited with the Decree Holder/Bank itself and thus, the auction purchasers have failed to deposit the balance 75% with the Debt Recovery Officer. This being so, he cancelled the auction held on 13.03.2003 and directed the Bank to proceed with the re-auction. 75% of the amount to the tune of Rs. 12,60,000/- was directed to be refunded immediately to the auction purchasers. It was further observed that an order would be passed separately on application being moved by the auction purchasers in respect of 25% of the bid amount. Copy of this order is on record as Annexure P-12.

6. Aggrieved by the aforesaid, the respondent-Bank submitted appeal No. 09/2004 before the Debt Recovery Tribunal Jabalpur, which was allowed on 23.07.2004, as revealed in Annexure P-15. It has been held that the purchasers have made the payment within 15 days from the date of auction. Accordingly, the order of Debt Recovery Officer contained in Annexure P-12 was set aside. Auction proceedings were held valid since the payment by the auction purchasers was accepted to have been made within 15 days. Petitioner, preferred appeal No. 433/2004 before the Debt Recovery Appellate Tribunal, Allahabad, which having been dismissed vide Annexure P-17, dated 20.07.2005, present writ petition has been preferred.

Thus, the facts emerging from the aforesaid discussion are that the balance 75% amount of the highest bid was deposited with the Decree Holder/Bank within 15 days. Secondly, there is no finding about the deposit or non-deposit of the poundage fees by the auction purchasers.

7. Shri. S.C. Bagadia, learned senior counsel appearing for the petitioner contended that auction purchasers have failed to deposit 75% of the balance bid money within 15 days as required mandatorily vide Annexure P-4 to P-6. The deposit of the balance amount was made by them with the respondent/Bank and not with the Debt Recovery Officer. This did not amount to compliance of the specific condition contained in Annexure P4 to P-6, requiring thereby to make

deposit with the Debt Recovery Officer. Considering it, the Debt Recovery Officer vide his order dated 23.03.2004 Annexure P-12, set aside the impugned auction held on 13.03.2003. According to Shri Bagadia, learned senior counsel the Debt Recovery Tribunal as well as Debt Recovery Appellate Tribunal have erred in law in treating it to be a valid deposit.

Shri. G.M. Chaphekar, learned senior counsel appearing for the Decree Holder/Bank and Shri. P.K. Saxena, learned senior counsel appearing for the auction purchasers supported the impugned orders.

8. Procedure and powers of the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal are contained in Section 22 of the Act of 1993. Sub-section (1) thereof is relevant for the purpose of this petition, which is reproduced here below:

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

The aforesaid provision makes it clear that guidance is to be derived from the principles of natural justice in the absence of specific contrary provisions in the Act or Rules.

9. Clause (a) of Section 25 of the Act of 1993 provides that the Recovery Officer shall on receipt of copy of the Debt Recovery Certificate under sub-section (7) of Section 19 proceed to recover the amount of debt specified in the certificate by attachment and sale of immovable property of the defendant. It is undisputed that the Debt Recovery Tribunal, Jabalpur granted a decree in favour of respondent/Bank against the defendants including the petitioner for recovery of sum of Rs. 12,59,589/- as revealed in Annexure P-1. Bank was also given right to recover the amount, to auction the property equitably mortgaged with it in security of loan, which included the property in question. By virtue of Section 29 of the Act of 1993, certain provisions of Income Tax Act have been made applicable. For convenience, Section 29 is reproduced below:

29. Application of certain provisions of income tax Act-The provisions of the Second and Third Schedules to the income tax Act, 1961 (43 of 1961) and the income tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income tax:

Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the defendant under this Act.

Second Schedule of Income Tax Act, 1961 provides for a procedure for recovery

in pursuance of the certificate. Rule 4 is identical to Section 25 of the Act of 1993. Part III of Schedule II provides for attachment and sale of immovable property. Rule 56 to Rule 58 contained in Schedule II are reproduced below being relevant:

Sale to be by auction.

56. The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer:

[Provided that no sale under this rule shall be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under Clause (cc) of Rule 53.]

Deposit by purchaser and resale in default

57. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent. on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property. Procedure in default of payment.

58. In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

10. The effect of failure to deposit balance 75% amount with the Debt Recovery Officer and further the effect of deposit of the said amount with the Decree Holder/Bank itself within the stipulated time is now to be considered in the light of the various provisions of law, including the above mentioned Rules.

11. Shri Bagadia, learned senior counsel appearing for the petitioner submitted that the auction purchaser was required necessarily to deposit the balance 75% amount with the Debt Recovery Officer as prescribed in Annexures P-4 to P-6. The said condition is to be strictly adhered to and its contravention would vitiate the auction. According to him any deviation and non-compliance of the said prescribed condition would defeat the object and purpose of the Act of 1993. He has placed reliance on the decision of the Supreme Court of India in the case of Allahabad Bank Vs. Canara Bank and Another, to buttress his submissions. Specific reference has been made to the following passages:

24. There is one more reason as to why it must be held that the jurisdiction of the Recovery Officer is exclusive. The Tiwari Committee which recommended the constitution of a Special Tribunal in 1981 for Recovery of Debts Due to Banks and Financial Institutions stated in its Report that the exclusive jurisdiction of the

Tribunal must relate not only in regard to the adjudication of the liability but also in regard to the execution proceedings. It stated in Annexure XI of its Report that all "execution proceedings" must be taken up only by the Special Tribunal under the Act. In our opinion, in view of the special procedure for recovery prescribed in Chapter V of the Act, and section 34, execution of the certificate is also within the exclusive jurisdiction of the Recovery Officer.

25. Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act.

Point 1 is decided accordingly.

Points 2 and 3:

Does the Act override the provisions of Sections 442 and 537 and Section 446 of the Company Act?

49. For the aforesaid reasons, we hold that at the stage of adjudication under S.17 and execution of the certificate under S.25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction in the Tribunal and the Recovery Officer in respect of debts payable to banks and financial institutions and there can be no interference by the Company Court u/s 442 read with section 537 or u/s 446 of the Companies Act, 1956. In respect of the monies realised under the RDB Act, the question of priorities among the Banks and Financial Institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with section 19(19) read with section 529A of the Companies Act and in no other manner. The provisions of the RDB Act, 1993 are to the above extent inconsistent with the provisions of the Companies Act, 1956 and the latter Act has to yield to the provisions of the former. This position holds good during the pendency of the winding up petition against the debtor-company and also after a winding up order is passed. No leave of the Company Court is necessary for initiating or continuing the proceedings under the RDB Act, 1993. Points 2 and 3 are decided accordingly in favour of the appellant and against the respondents.

Learned senior counsel Shri Bagadia derived strength from the aforesaid passages to contend that the exclusive jurisdiction of the Recovery Officer in respect of the Recovery of Debts due to Banks and Financial Institutions has been upheld by the Supreme Court of India and the payment of balance 75% amount to the Decree Holder/Bank is of no consequence.

On perusal of the entire judgment, we find that the Supreme Court was considering the scope of exclusiveness of jurisdiction of the Tribunal/Recovery Officer under the Act of 1993 viz-a-viz that of the Company Court, which is clear from paragraphs 24, 25 and 49 in the case of Allahabad Bank (supra).

12. At this juncture, we may refer to the decision of the Apex Court in the case

of Union of India and Another Vs. Delhi High Court Bar Association and Others, wherein it has been observed :

16. The aforesaid section prescribes the manner in which an application to the Tribunal filed by a bank or a financial institution is to be dealt with. Section 22 provides that the Tribunal and the appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice and, subject to the rules framed. They shall have powers to regulate their own procedure as given to them. The Tribunal and the appellate Tribunal under S.22 (2) are given the same powers as are vested in a Civil Court with regard to the matters specified in the said sub-section which include the power of summoning and enforcing the attendance of any person and examining him on oath.

13. It has been contended by learned senior counsel appearing on behalf of the petitioner that looking to the object and purpose of the Act of 1993, the deposit made by the auction purchasers with the respondent/Bank cannot be treated as valid and the auction was rightly set aside by the Recovery Officer. Respondent/Bank was not an agent of the Recovery Officer and had no authority to accept the balance 75% amount directly.

Countering the aforesaid submissions, it has been submitted by Shri Chaphekar, learned senior counsel appearing for the respondent/Bank that the Debt Recovery Tribunal as well as Debt Recovery Appellate Tribunal are to be guided by the principles of natural justice and the provisions of the Income Tax Act, 1961 and the Income Tax Rules, 1962 may be invoked as far as possible with necessary modifications with object to achieve the purpose of the Act. Section 22 makes it clear that the CPC is not binding on the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal and the requisite guidance is to be derived from the principles of natural justice. He has placed reliance on the decision of the High Court of Andhra Pradesh reported as P. Mohanreddy and Others Vs. Debts Recovery Appellate Tribunal and Others, It has been observed as under:

29. In exercise of his powers, the Debt Recovery Officer issued auction notice which notified that the sale will take place in accordance with the Second Schedule to the income tax Act, 1961; further notifying that the successful bidder has to deposit 25% of the bid amount within seven days and the balance on or before 16th January, 1999. Thus, by the auction notice the Recovery Officer informed the general public that auction of the immovable property will be conducted under the Act to recover the debt due and the sale will be in accordance with the Rules. Thus, the Debt Recovery Officer while issuing auction notice deviated from what is provided in Rule 57 which says that deposit of 25% of the amount shall be made by the purchaser immediately after declaration of the successful bidden, by incorporating in the auction notice that deposit of 25% of bid money shall be paid within seven days. Can it be said that the Recovery Officer was not justified in making this deviation/modification requiring the successful bidder to deposit 25% of the bid amount within seven days instead of

the same day. Had the words as far as possible not been incorporated in Section 29, there was no option with the Recovery Officer except to notify that time Schedule referred to in Rules 57 and 58 of the Rules will be followed. But incorporation of the said words in Section 29 has made all the difference. This phrase has been made and understood by the Recovery Officer that the sale proceedings will be conducted as per the procedure for recovery of tax contained in the Second Schedule to income tax Act but the Debt Recovery Officer will follow the rules contained in the Second Schedule as far as possible and with necessary modification to the extent necessary.

30. In the instant case, the Debt Recovery Officer, having regard to the discretion conferred on him by Section 29 of the Act, instead of providing that 25% of the amount will be deposited immediately on declaration of the successful bidder as is provided in Rule 57 (1), fixed a period of seven days from date of auction to deposit 25% of the bid amount. In view of the phraseology employed in Section 29 of the Act, the discretion exercised by the Debt Recovery Officer while following the Rule 57, in our considered view, would not vitiate the auction proceedings. This modification thus cannot make the sale as illegal and without authority of law. In case this interpretation as opined by us is given to the Rules that Section 29 of the Act makes Rule 57 as directory only, the argument of the learned counsel for the petitioners that auction proceedings became null and void would fail and for the same reason the ratio of the decisions relied upon will not apply to the facts of the case.

31. The entire emphasis of the learned counsel for the petitioners was that Rule 57 is mandatory which is also the interpretation given to this rule by Supreme Court. But as already observed by us this rule has to be read only with Section 29 of the Act, which makes this Rule applicable as far as possible and with necessary modifications. Supreme Court interpreted the corresponding provisions of the Code of Civil Procedure, which are similarly worded, but had no occasion to deal with the phraseology as is used in Section 29 of the Act. We are, therefore, of the view that Section 29 of the Act does not enjoin upon the Recovery Officer, DRT to follow the provisions for recovery of Tax Rules provided in Second Schedule of income tax Act, 1961 in letter and spirit but gives him discretion to follow the same as far as possible.

Reliance has also been placed on the following passage of Bombay High Court decision in the case of Keshrimal Jivji Shah and Another Vs. Bank of Maharashtra and Others,

32. Considering the importance of the matter and as the issue frequently crops up for consideration we proceed to answer question No. 2 as well. In our view, we cannot ignore the plain words of the statute. Section 29 in clearest terms states that the provisions of the Second and Third Schedules to the income tax Act and the 1962 Rules, as in force from time to time, shall as far as possible, apply with necessary modifications as if, the said provisions and Rules refer to the amount of debt due under this Act instead of the income tax Act. Whenever

the Legislature uses words such as "as far as possible", "as far as practicable" etc., the intent is not to apply the provisions in their entirety.

14. Now, coming to the case in hand we find that, the decree for recovery of sum of Rs. 12,59,589/- having been admittedly passed in favour of respondent/Bank, the Bank has a right to recover the amount by auctioning the property equitably mortgaged with it through Debt Recovery Officer. It is true that the auction purchasers did not make deposit of balance 75% with the Debt Recovery Officer, instead they deposited the same within the prescribed period of 15 days with the respondent/Bank for whose recovery the auction was effected by the Debt Recovery Officer. Ultimately, the money was to be deposited with the Decree Holder/Bank and not with the Debt Recovery Officer. It is the respondent/Bank only who is having a judgment in its favour from the Debt Recovery Tribunal for making recovery of sum of Rs. 12,59,589/- from the petitioner and respondents No. 2 to 11. By the judgment of the Debt Recovery Tribunal, the defendants (which is inclusive of the present petitioner) were directed to pay sum of Rs. 12,59,589/-. The entire exercise in the nature of execution of the recovery certificate was/is being made to ensure that amount mentioned in the recovery certificate is realized from the petitioner and respondents No. 2 to 11 and is paid to the respondent/Bank being Decree Holder.

Shri Bagadia, learned senior counsel appearing for the petitioner has been unable to demonstrate or establish that any kind of prejudice is suffered by the petitioner on account of the deposit having been made with the respondent/Bank instead of the Debt Recovery Officer. Interest of the respondent/Bank and Debt Recovery Officer is not in conflict, rather it is, the Debt Recovery Officer who was making the entire exercise to recover the amount under the recovery certificate for the benefit of the respondent/Bank. This being so, if 75% balance amount is directly deposited with the respondent/Bank within the prescribed period of limitation, it cannot be stated that any provision of the Act of 1993 or any relevant Rules is violated in letter and spirit. Section 29 of the Act of 1993 provides flexibility while applying the relevant provision of the Income Tax Act and the concerning Rules. This being so, the Debt Recovery Tribunal has not committed any error in treating the deposit of 75% balance money with the respondent/Bank within the prescribed period of limitation, as a valid deposit of the entire auction money.

15. It has been contended by Shri Bagadia, learned senior counsel for the petitioner that the words "as far as possible" appearing in Section 29 of the Act of 1993 are to be construed for giving relaxation in favour of the Recovery Officer and not in favour of the defaulter. According to him, the auction purchasers having failed to make deposit of balance 75% amount with the Debt Recovery Officer, cannot be permitted to gain by misconstruing Section 29 in its favour.

We are not impressed with the said submission because purposive interpretation is to be made in order to achieve the object and purpose of the Act. Act of 1993 has been enacted for the establishment of Tribunals for expeditious adjudication

and recovery of debts due to Banks and Financial Institutions and for matters connected therewith or incidental thereto. Section 22 is specific that the Debt Recovery Tribunal as well as the Debt Recovery Appellate Tribunal shall be guided by the principles of natural justice without having limitations prescribed by the Code of Civil Procedure. The plea of the petitioner that 75% balance money was deposited with the respondent/Bank, instead of Debt Recovery Officer, is not violative of principles of natural justice. It is not the case of the petitioner that the deposit of the balance money with the respondent/Bank has in any way caused prejudice to him by fetching a lesser amount. This being so, the plea of the petitioner seems to be hyper technical, looking to the object and purpose of the Act of 1993 and the provisions contained in Section 22 and Section 29 thereof.

16. Shri Bagadia, learned senior counsel appearing for the petitioner further contended that the sale in violation of Annexures P-4 to P-6 is nullity and the Appellate Tribunal have acted illegally in reversing the order of the Debt Recovery Officer. Reliance for this purpose has been placed on the Apex Court judgment in the case of Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another,

Decision in the case of Manilal Mohanlal (supra) cannot be invoked because the same was governed by the provisions of Code of Civil Procedure, whereas the case in hand is governed by the principles of natural justice and the specific provisions of the Act of 1993 and relevant Rules without having any limitations of Code of Civil Procedure.

17. It is also further contended on behalf of the petitioner that the Manager of the respondent/Bank acted as an agent of the Recovery Officer. Learned senior counsel Shri P. K. Saxena while countering the submissions referred to Chapter 10 of the Indian Contract Act, which deals with the field of agency. Without much entering into the provisions contained in Sections 182 to 197, we observe that the deposit of 75% balance amount by the auction purchasers with the respondent/Bank within the stipulated period of 15 days is not disputed at all. Respondent/Bank who being Decree Holder was entitled to the amount awarded by the Debt Recovery Tribunal, Jabalpur. Neither the Recovery Officer nor the respondent/Bank has disputed the said deposit. This being so, it is not open to the petitioner to assail the auction on such flimsy ground, which is opposed to the various provisions of the Act of 1993 which are meant to secure the object and purpose of the Act. Lastly, it has been contended on behalf of the petitioner that the poundage fees was to be necessarily deposited with the 75% auction bid as mentioned in Annexure P-4 and P-5.

The submission is not much impressive firstly because Rule 56 to Rule 58 of Second Schedule of Income Tax Act does not make it mandatory to deposit the poundage fees with the balance auction money. Even the Recovery Officer while setting aside the sale vide Annexure P-12 has nowhere observed about the failure of the auction purchasers to deposit the poundage fees with the balance

money. Secondly, the poundage fees is in the nature of revenue meant for the Government. No prejudice is caused to the petitioner in the absence of poundage fees which may be recovered at the time of issuance of sale certificate. Moreover, there is no such mandatory requirement by virtue of Rule 56 to Rule 58 (supra).

It may be seen that the proclamation of sale in form No. 13 is provided under the Debt Recovery Tribunal Regulations of Practice, 1998. Clause (vii) of the prescribed format reads as under:

(vii) In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration, a deposit of twenty-five per cent. of the amount of his purchase money to the officer conducting the sale and, in default of such deposit, the property shall forthwith be put up again and resold. The full amount of the purchase money payable shall be paid by the purchaser to the undersigned on or before the 15th day from the date of the sale of the property, exclusive of such day, or if the 15th day be a Sunday or other holiday, then on the first office day, after the 15th day. In default of payment within the period mentioned above, the property shall be sold, after the issue of a fresh proclamation of sale. The deposit, after defraying the expenses of the sale, may, if the undersigned thinks fit, be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

The aforesaid Clause nowhere requires the purchaser to deposit the poundage fees along with 75% balance bid amount. It requires the purchaser to pay full amount of the purchase money on or before 15th day from the sale of the property. The Debt Recovery Officer has not given specific finding about compliance or non-compliance pertaining to poundage money. We decline to interfere in the present writ petition on the said ground, more so, when no prejudice is caused to the petitioner. This being so, the auction sale upheld by the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal cannot be interfered by this Court on such ground, in exercise of writ jurisdiction.

Resultantly, the petition fails and is hereby dismissed. No order as to costs.