
(2011) 07 MAD CK 0140
In the Madras High Court
Case No : Writ Petition No. 20225 of 2009

P. Kumaran

APPELLANT

Vs

The Debts Recovery Appellate Tribunal and Others

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72, Order 21 Rule 84, Order 21 Rule 85, Order 21 Rule 86, Order 21 Rule 90
Income Tax Act, 1961 — Rule 57(1)(2)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 29
Tamil Nadu Revenue Revenue Act — Section 36

Citation : (2011) 6 CTC 369

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : Vijay Narayan, for Thomas T. Jacob, for the Appellant; AR.L. Sundaresan, for M. Venkadeshnan, for R3 and Jeyesh B. Dolia, for Aiyar and Dolia for R4, for the Respondent

Final Decision : Dismissed

Judgement

D.Murugesan, J.—The writ petition raises an important question as to whether sub-rules (1) and (2) of Rule 57 of the Second Schedule to

the Income Tax Act, 1961 empower the Debt Recovery Officer to extend the time prescribed therein for the auction purchaser to pay the

purchase money?

2. The Petitioner is the auction purchaser and the third Respondent is the borrower. The third Respondent failed to settle the loan amount, which

made the fourth Respondent-Indian Bank, Kolathur Branch to initiate recovery proceedings in O.A. No. 28 of 2001 before the Debts Recovery

Tribunal-II, Chennai and the same was decreed for a sum of Rs. 4,46,77,168.31 and a recovery certificate was also issued in D.R.C. No. 169 of

2003 on 15.9.2003. After the recovery certificate was issued, the secured asset was put to public auction on 23.11.2006 and the Petitioner being the successful bidder for Rs. 60,00,000/-, his bid was confirmed and he was directed to make the payment of 25 percent of the purchase money, i.e., Rs. 15,00,000/-, which was complied with on the same day. Subsequently, as the Petitioner was bedridden, he made a request to the Recovery Officer to give him time. Accordingly, he was given time to make the further payment of 75percent. He also paid the balance purchase money of 75 percent only on 15.2.2007 along with the poundage fee and the amount was appropriated by the fourth Respondent bank. In the meantime, the case stood transferred to the file of the Debts Recovery Tribunal-III and renumbered as O.A. No. 206 of 2007. Pending issuance of the sale certificate, the third Respondent approached the Recovery Officer by filing I.A. No. 4 of 2007 u/s 29 of the Recovery of Debts Due to Banks and Financial Institutions Act read with Rules 11, 57 & 58 of the Second Schedule to the Income Tax Act to set aside the sale on the ground that the auction purchaser failed to pay the balance of purchase money within 15days from the date of confirmation. However, the said application was dismissed on 5.4.2007 on the ground that the auction purchaser had paid the entire balance amount in the extended period and the sale certificate was issued to the Petitioner. Aggrieved by that order, the third Respondent preferred appeal in M.A. No. 14 of 2007 in R.P. No. 3 of 2007 in O.A. No. 206 of 2007 and the same was allowed by the Debt Recovery Tribunal-III, the second Respondent on 27.7.2007 on the ground that the Petitioner had not deposited the balance amount within 15days and ordered for resale after forfeiting 15% of the amount deposited by the Petitioner. As against the said order, the Petitioner filed M.A. No. 124 of 2008 and the fourth Respondent bank filed M.A. No. 225 of 2008 before the Debts Recovery Appellate Tribunal and both the appeals were dismissed on 18.9.2008. Thereafter, the order of the Appellate Tribunal was questioned by the fourth Respondent bank in W.P. No. 30781 of 2008 and the same was dismissed on 24.4.2008 confirming the order of the Appellate Tribunal. Subsequently, the third Respondent filed M.A. No. 20 of 2008 in O.A. No. 206 of 2007 before the second Respondent seeking to cancel the sale certificate issued in favour of the Petitioner and to order fresh auction sale. The said application was allowed

by the Tribunal on 8.9.2009 and the sale certificate issued in favour of the Petitioner was cancelled and the fourth Respondent bank was directed

to return the sale proceeds. The above orders are questioned by the Petitioner in this writ petition.

3. Mr. Vijay Narayan, learned senior counsel appearing for the Petitioner would submit that Rule 57(1) of the Second Schedule to the Income Tax

Act, 1961 obligates the purchaser to deposit 25 percent of the purchase money immediately on the date of sale. The Petitioner has complied with

the said condition. However, the Petitioner has not paid the balance of 75 percent of the bid amount within 15 days as required under Rule 57(2).

Nevertheless, on his request, the Petitioner was allowed to deposit the amount even after the prescribed period of 15 days. Hence, the question of

forfeiting the 25 percent of the amount deposited under Rule 57(1) on the ground that the Petitioner failed to deposit 75 percent as per Rule 57(2)

does not arise. Though as per Rule 57(2), the successful bidder should deposit the balance of 75 percent within 15 days from the date of

confirmation, in the wake of Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, a discretion is conferred on the

Recovery Officer to grant extension. The extension, if any, granted by the Recovery Officer for the auction purchaser to deposit 75 percent of the

amount beyond the period of 15 days immediately on confirmation of bid would not vitiate the auction proceedings. In support of the said

submission, he would rely upon the judgment of the Andhra Pradesh High Court in P. Mohanreddy and Others Vs. Debts Recovery Appellate

Tribunal and Others, .

4. On the other hand, Mr. AR.L. Sundaresan, learned Senior Counsel appearing for the third Respondent would submit that in the absence of any

specific rules under the Recovery of Debts Due to Banks and Financial Institutions Act, the provisions of Part-III of the Second Schedule to the

Income Tax Act relating to the sale of immovable property would alone be applicable. For the present case, Rule 57(1) and (2) are relevant.

Admittedly, the Petitioner had not deposited the remaining 75 percent of the bid amount within a period of 15 days as required under Sub-rule (2)

of Rule 57. He only made a request for extension and that too after a period of 18 days of the prescribed time limit and on such request, the

Recovery Officer has extended the period and accepted the balance amount. The action of the Recovery Officer in extending the time for the

purchaser to pay the balance of 75 percent is without jurisdiction and hence the sale is a nullity. In support of the said submission, he would rely

upon the following judgments of the Apex Court.

(i) Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, .

(ii) Sardara Singh (Dead) by Lrs. and Another Vs. Sardara Singh (Dead) and Others, .

(iii) Lakshmanasami Gounder Vs. Commissioner of Income Tax , Selvamani and Others, .

(iv) Rao Mahmood Ahmed Khan Vs. Sh. Ranbir Singh and others, .

(v) Balram Vs. Ilam Singh and others, .

5. We have considered the submissions of Mr. Vijay Narayan, learned Senior Counsel for the Petitioner, Mr. AR.L. Sundaresan, learned Senior

Counsel for the third Respondent and Mr. Jeyesh B. Dolia for the fourth Respondent bank.

6. Before we consider the question as to whether in terms of sub-rules (1) and (2) of Rule 57, the Recovery Officer would have power to extend

the time beyond the period prescribed therein to enable the purchaser to pay the full purchase money, we may firstly refer to the judgments cited

by Mr. AR.L. Sundaresan, learned Senior Counsel for the third Respondent. In Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed

Sayed Mahamad and Another, , the Apex Court had an occasion to consider the question as to whether the payment of full purchase money within

the stipulated period is mandatory in terms of Order XXI Rules 84 and 85 of the CPC Code. That was a case where certain properties were

brought for sale in execution of the decree. On the ground that 25 percent of the amount of purchase money was not paid, the sale was sought to

be set aside in the wake of the provisions of Order XXI Rule 84, which contemplates that on every sale of immovable property, a person declared

to be the purchaser shall pay immediately after such declaration 25 percent of the amount of his purchase money to the officer or other person

conducting the sale. On the interpretation of Order XXI, Rule 84 of CPC Code, the Apex Court has held that in the event a decree holder

purchasing the property in Court auction, failure on his part to deposit 25 percent immediately after sale as required under Rule 84 shall not render

the sale invalid and application for setting aside such sale under Rule 90 cannot be entertained and allowed on that ground. However, the Apex

Court found the rule mandatory in the case where the purchaser is other than the decree holder. As the above judgment of the Apex Court is

quoted with approval in all the subsequent judgments, we are inclined to extract the relevant paragraphs 6, 7, 8 & 11 which read hereunder:

6... The principal question which falls to be considered is whether the failure to make the deposit under Order XXI Rules 84 and 85, is only a

material irregularity in the sale which can only be set aside under Rule 90 or whether it is wholly void. It is argued that the case falls within the

former category and the application under Rule 90 being barred by limitation, the sale cannot be set aside. It is also contended that the Court

having once allowed the set-off and condoned the failure to deposit, the mistake of the Court should not be allowed to prejudice the purchasers

who would certainly have deposited the purchase price but for the mistake. We are of the opinion that both the contentions are devoid of

substance. In order to resolve this controversy a reference to the relevant rules of Order XXI of the CPC will be necessary. These Rules are 72,

84, 85 and 86:

7. The scheme of the rules quoted above may be shortly stated. A decree holder cannot purchase property at the court-auction in execution of his

own decree without the express permission of the court and that when he does so with such permission, he is entitled to a set-off, but if he does so

without such permission, then the court has a discretion to set aside the sale upon the application by the judgment-debtor, or any other person

whose interests are affected by the sale (Rule 72). As a matter of pure construction this provision is obviously directory and not mandatory - See

Rai Radha Krishna v. Bisheshar Sahay. The moment a person is declared to be the purchaser, he is bound to deposit 25 per cent of the purchase

money unless he happens to be the decree holder, in which case the court may not require him to do so (Rule 84).

8. The provision regarding the deposit of 25 per cent by the purchaser other than the decree-holder is mandatory as the language of the rule

suggests. The full amount of the purchase-money must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set off. The provision for payment is, however, mandatory ... (Rule 85). If the payment is not made within the period of fifteen days, the court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the court to resell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claim to the property... (Rule 86).

11. Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question, of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all.

7. In *Balram Vs. Ilam Singh and others*, , the Apex Court once again considered a similar auction sale with reference to Order XXI, Rules 84, 85, 86 and 90 of the CPC and ultimately held that the deposit of 25 percent into Court under Rule 84 is mandatory and then on-compliance of the said Rule renders the sale a complete nullity. In fact the Apex Court has relied upon its earlier judgment in *Manilal Mohanlal Shah's* case in that judgment. In both the above cases, the Apex Court considered the issue when the auction purchaser failed to deposit 25 percent of the amount immediately on the date of sale and accordingly held that Order XXI Rule 84 is mandatory and there is no option for the Recovery Officer except

to bring the property for resale.

8. The Apex Court in the judgment in Rao Mahmood Ahmed Khan Vs. Sh. Ranbir Singh and others, considered Rule 285D of the U.P. Zamindari

Abolition and Land Reforms Act providing that 25 percent of the bid amount should be deposited immediately on the date of sale and on the

failure of the purchaser to deposit the 25 percent of the bid amount immediately, the land shall be re-sold. The rule is similar to Rule 84 of Order

XXI of CPC and Rule 57(1) of the Second Schedule to the Income Tax Act and the Court found that the rule is mandatory.

9. In Lakshmanasami Gounder Vs. Commissioner of Income Tax , Selvamani and Others, , the Apex Court considered the provisions of Section

36 of the Tamil Nadu Revenue Recovery Act. Under that section, the bidder should deposit 15% of the price of the land at the time of purchase

and the balance consideration within thirty days, failing which the money deposited is liable to forfeiture. As the provision employed the word

shall", the Apex Court ultimately found that the provisions of Section 36 are mandatory. With that finding, the Apex Court held that the

confirmation of sale without compliance of the provision was illegal and accordingly declared the sale vitiated by manifest error of law.

10. A similar question came up before the Apex Court in the judgment in Sardara Singh (Dead) by Lrs. and Another Vs. Sardara Singh (Dead)

and Others, under Sections 85, 86 and 88 of the Punjab Land Revenue Act which are substantially the same as Order XXI Rules 84 and 85 of the

CPC Code, where the auction purchaser was required to deposit 25 percent of the price of the property on the same date u/s 85 of the said Act. u/s

86, if the highest bidder fails to pay the deposit as required u/s 85, the person conducting the sale is required to put the property forthwith to sale

once again. u/s 88, after the highest bidder is declared the purchaser on payment of 25 percent of the amount of bid, he shall pay the full amount of

the purchase money before the close of 15th day from the date on which he was declared the purchaser. Considering the above provisions, the

Apex Court held that the deposit of 25 percent of the bid amount on the same day is mandatory. The Apex Court further held that in terms of

Section 86 of the Act, if the highest bidder fails to pay the deposit as required u/s 85, the person conducting the sale is required to put the property

forthwith to sale once again. The Apex Court further held that in terms of Section 88, the purchaser, whose bid has been confirmed, shall pay the entire balance amount before the close of 15th day from the date on which he was declared the purchaser, meaning thereby that the payment of deposit within the stipulated time u/s 85 is mandatory. The Apex Court has also held that even if the confirmation of sale was made and the sale certificate was also granted, they are of no consequence, as the sale had become void on the expiry of fifteenth day for default of payment as required by Section 88. The Apex Court quoted with approval the judgment in Manilal Mohanlal Shah's case.

11. In the light of the above decisions, it is to be considered as to whether the ratio laid down by the Apex Court would be applicable to the sale

proceedings initiated by the Recovery Officer under the provisions of Second Schedule to the Income Tax Act in the wake of the provisions of

Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act?

12. For better appreciation of the issue in question, a reference to the objects and reasons for the enactment of Recovery of Debts Due to Banks

and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

is necessary. The Apex Court in the judgment in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., considered the scope of

the Act and upheld its validity and held in paragraphs 35 and 36 as follows:

35. The Narasimhan Committee was constituted in the year 1991 relating to the Financial System prevailing in the country. It considered wide

ranging issues relevant to the economy, banking and financing etc. Under Chapter V. of the Report under the heading "Capital Adequacy,

Accounting Policies and other Related Matters", it was opined that a proper system of income recognition and provisioning is fundamental to the

preservation of the strength and stability of banking system. The Committee also suggested for reconstruction of assets saying:

The Committee has looked at the mechanism employed under similar circumstances in certain other countries and recommends the setting up of, if

necessary by special legislation, a separate institution by the Government of India to be known as "Assets Reconstruction Fund (ARF) with the

express purpose of taking over such assets from banks and financial institutions

and subsequently following up on the recovery of dues owed to them from the primary borrowers.

While recommending for setting up of special Tribunals, the Committee observed: Banks and financial institutions at present face considerable difficulties in recovery of dues from the clients and enforcement of security charged to the mdue to the delay in the legal processes. A significant portion of the funds of banks and financial institutions is thus blocked in unproductive assets, the values of which keep deteriorating with the passage of time. Banks also incur substantial amounts of expenditure by way of legal charges which add to their overheads. The question of speeding up the process of recovery was examined in great detail by a committee set up by the Government under the Chairmanship of the late Shri Tiwari. The Tiwari Committee recommended, inter alia, the settingup of Special Tribunals which could expedite the recovery of process...

The Committee also suggested some legislative measures to meet the situation.

36. In its Second Report, the Narasimhan Committee observed that NP As in 1992 were uncomfortably high for most of the public sector banks....

One of the measures recommended in the circumstances was to vest the financial institutions through special statutes, the power of sale of the asset without intervention of the court and for reconstruction of the assets. It is thus to be seen that the question of non-recoverable or delayed recovery of debts advanced by the banks or financial institutions had been attracting the attention and the matter was considered in depth by the committees specially constituted consisting of the experts in the field. The Committee also opined that in the prevalent situation where the amount of dues were huge and hope of early recovery was less, it could be said that a more effective legislation for the purpose was uncalled for or that it could not be resorted to.

13. After the above report of the Narasimham Committee, yet another committee was constituted headed by Mr. Andhyarujina for bringing about the needed steps within the legal framework. By referring to the above recommendations, the Apex Court in Mardia Chemicals case observed as follows: ""Considering the totality of circumstances the financial climate world over, if it was thought as a matter of policy, to have yet speedier legal

method to recover the dues, such a policy decision cannot be faulted with nor it is a matter to be gone into by the courts to test the legitimacy of

such a measure relating to financial policy.

14. The Court further observed that some facts which need be taken note of are that the banks and the financial institutions have heavily financed

the Petitioners and other industries. It is also a fact that a large sum of amount remains unrecovered. Normal process of recovery of debts through

courts is lengthy and time taken is not suited for recovery of such dues. For financial assistance rendered to the industries by the financial

institutions, financial liquidity is essential failing which there is a blockade of large sums of amounts creating circumstances which retard the

economic progress followed by a large number of other consequential ill-effects. Considering all these circumstances, the Recovery of Debts Due

to Banks and Financial Institutions Act was enacted in 1993 but as the figures show it also did not bring the desired results. Though it is submitted

on behalf of the Petitioners that it so happened due to inaction on the part of the governments in creating Debt Recovery Tribunals and appointing

Presiding Officers, for a long time. Even after leaving that margin, it is to be noted that things in the concerned spheres are desired to move faster.

In the present day global economy it may be difficult to stick to old and conventional methods of financing and recovery of dues. The Court further

observed that it cannot be said that a step taken towards securitisation of the debts and to evolve means for faster recovery of the NP As was not

called for or that it was superimposition of undesired law since one legislation was already operating in the field namely the Recovery of Debts due

to Banks and Financial Institutions Act. It is also to be noted that the idea has not erupted abruptly to resort to such a legislation. It appears that a

thought was given to the problems and Narasimham Committee was constituted which recommended for such a legislation keeping in view the

changing times and economic situation where after yet another expert committee was constituted then alone the impugned law was enacted.

Liquidity of finances and flow of money is essential for any healthy and growth oriented economy. But certainly, what must be kept in mind is that

the law should not be in derogation of the rights which are guaranteed to the people under the Constitution. The procedure should also be fair,

reasonable and valid, though it may vary looking to the different situations needed to be tackled and object sought to be achieved.

15. From the above, it is clear that even after the recommendations of the Narasimhan Committee and the Andhyarujina Committee, the measures

taken for recovery of the money due to the banks/financial institutions did not yield the best results as expected. It is to be noted that a procedure

was contemplated for recovery of money under the Recovery of Debts Due to Banks and Financial Institutions Act. Though the Central

Government was empowered to make rules interms of Section 36, that section does not specifically empower the Central Government to make

rules for the procedure to be followed by the Recovery Officer while bringing the secured asset for sale. It appears that only in that context the

legislature thought it fit to confer such powers relating to the procedure for sale on the Recovery Officer in terms of Section 29 of the Recovery of

Debts Due to Banks and Financial Institutions Act. The said section reads as under:

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.

16. In the above background, the question as to whether the Recovery Officer would be entitled to extend the time prescribed under Rule 57(1)

and (2) must be considered.

17. Part III of the Second Schedule to the Income Tax Act relates to the attachment and sale of immovable property. Rule 48 contemplates the

attachment of immovable property of the defaulter followed by a proclamation of attachment under Rule 50. Rule 52(1) contemplates the sale and

proclamation of sale where in the Tax Recovery Officer is empowered to sell any immovable property which has been attached or such portion

thereof as may seem necessary to satisfy the certificate. Sub-rule (2) of Rule 52 empowers the Tax Recovery Officer to cause a proclamation of

the intended sale to be made where any immovable property is directed to be sold under Rule 52(1). Rule 54 relates to the mode of making

proclamation and Rule 55 relates to time of sale. The sale shall be by public auction to the highest bidder and shall be subject to confirmation by

the Tax Recovery Officer as provided under Rule 56. The relevant rules for consideration of the question in this writ petition are Rules 57 and 58

and they read as under:

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 percent 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.

18. As per Sub-rule (1) of Rule 57, a person declared to be the purchaser of immovable property in auction shall pay immediately after such

declaration a deposit of twenty five percent on the amount of the purchase money. The said sub-rule mandates the person declared to be the

purchaser to pay immediately after such declaration the deposit of 25 percent of the amount of his purchase money. It further mandates that in case

of default on the part of the person declared to be the purchaser to deposit the 25 percent of the bid amount, the Tax Recovery Officer shall bring

the property for sale forthwith. This rule is intended to ensure that the property is brought for resale immediately on the failure of the bidder to

deposit the 25 percent amount and is a measure to recover the amount due without any further delay.

19. Sub-rule (2) of Rule 57 provides that the purchaser shall pay the full amount of purchase money to the Tax Recovery Officer on or before the

fifteenth day from the date of the sale of the property. That sub-rule specifies an

outer limit of 15 days for the purchaser to pay the full amount of purchase money to the Recovery Officer. The word "shall" used in that rule should be considered as to whether in the event of failure by the purchaser to pay the full amount within the fifteenth day from the date of sale of the property, the Recovery Officer should again bring the property for sale and further, whether that rule empowers the Recovery Officer to extend the time beyond the fifteenth day from the date of sale of the property to enable the purchaser to pay the full amount of purchase money.

20. Rule 58 relates to the procedure in default of payment which states that 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 .

The rule relates to the power of the Recovery Officer to forfeit the amount deposited under Sub-rule (1) of Rule 57, in the event the person declared to be the purchaser fails to deposit the full amount of purchase money on or before the fifteenth day from the date of sale of the property.

A discretion is conferred on the Recovery Officer to order for forfeiture of the amount deposited in a given case. Such a discretion is obvious in

view of the provision stating the words "if the Tax Recovery Officer thinks fit" and even when the Recovery Officer decides to forfeit the deposit or

not, he should bring the property for resale immediately in terms of Sub-rule (1) of Rule 57. A reading of Rule 58 would show that it is with

reference to the condition stipulated under Sub-rule (1) of Rule 57 and cannot arise under Sub-rule (2) of Rule 57.

21. Though Section 29 postulates that the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate

Proceedings) Rules, 1962 should be followed while the immovable property is brought for sale, it also makes it clear that the rules are applicable

as far as possible with necessary modification. A reading of the above provision shows that in the absence of any specific rules framed under the

Recovery of Debts Due to Banks and Financial Institutions Act to be followed by the Recovery Officer for the conduct and completion of auction,

he shall follow the Second and Third Schedule to the Income Tax Act and the

Income Tax (Certificate Proceedings) Rules as far as possible and with necessary modification. The qualifying words "as far as possible" should mean that the Recovery Officer should follow the rules under the Schedule to the Income Tax Act as far as possible keeping in mind the object of the Act for speedy recovery of the debt. By those words, the Recovery Officer, though is expected to follow the rules as far as possible, he can do so with necessary modification. Such should be the interpretation of the provisions of Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act and any other interpretation will render both the words "as far as possible" and "with necessary modification" without any meaning.

22. In this context, we may refer to the judgments of the Apex Court in Manilal Mohanlal Shah and Balram son of Bhasa Ram cases, where the

Apex Court has held that Order XXI, Rule 84 of CPC mandates the auction purchaser to deposit 25 percent into Court immediately on the date

of auction as the rule is mandatory. It must be noticed that in the said rule, no option is given to the Sale Officer who conducts the auction pursuant

to the Court order to deviate from the provisions of Order XXI, Rule 84 or under Rule 85. Equally, Sub-rule (1) of Rule 57 mandates the

Recovery Officer to bring the property for resale in the event the auction purchaser fails to deposit the 25 percent amount immediately after

declaration and the said rule is mandatory for the reason that failure to pay the said deposit will not give any right to the auction purchaser to seek

for extension of time. Accordingly, we hold that Sub-rule (1) of Rule 57 is mandatory and there is no power conferred on the Recovery Officer to

extend the time prescribed under the rule, as he has to necessarily resell the property in the event of failure of the auction purchaser to deposit 25

percent of the purchase money immediately on declaration. The ratio laid down by the Apex Court as to Order XXI, Rule 84 of CPC will apply to

Rule 57(1) of the Second Schedule to the Income Tax Act.

23. The judgments of the Apex Court in Rao Mahmood Ahmed Khan's case arising out of U.P. Zamindari Abolition and Land Reforms Act and

in Sardara Singh (dead) by L. Rs case arising out of Punjab Land Revenue Act relating to the deposit of 25 percent on the date of sale is

mandatory may be also referred to in this context.

24. However, Rule 57(2) of the Second Schedule to the Income Tax Act shall be considered with reference to Section 29 of the Recovery of

Debts Due to Banks and Financial Institutions Act , which gives the power to the Recovery Officer to modify the sale conditions. Sub-rule (2) of

Rule 57, though provides that the purchaser shall pay the full amount of purchase money on or before the fifteenth day from the sale of the

property, in the event the Recovery Officer is of the view that the said time could be also extended, he may do so in the sale notice for payment of

the balance of 75 percent of the purchase money. It must be noticed that keeping in mind the necessity for speedy recovery of money due to the

bank from borrowers, when rules were framed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, such power for the Recovery Officer to grant extension is also provided. In this context, we may refer to sub-rules (3) and (4) of.

Sub-rule (3) of Rule 9 states that the purchaser shall immediately pay the deposit of 25 percent of the amount of sale price to the Authorized

Officer conducting the sale and in default of such deposit, the property shall forthwith be sold again. This rule is similar to sub-rule (1) of Rule 57 of

the Second Schedule to the Income Tax Act and is mandatory. Sub-rule (4) of Rule 9 states that the balance amount of purchase price shall be

paid by the purchaser to the Authorised Officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended

period as may be agreed upon in writing between the parties. This provision for extension was intended only keeping in mind the speedy recovery

of debt. In our opinion, while considering the provisions of Sub-rule (2) of Rule 57 read with Section 29 of the Recovery of Debts Due to Banks

and Financial Institutions Act, sub-rule (4) of Rule 9 must also be taken into consideration. That apart, undersub-rule (2) of Rule 57, no stipulation

is prescribed for resale immediately after the expiry of the fifteenth day from the date of sale in the event of failure of the purchaser to deposit 75

percent of the purchase money as per the said rule. Here again, the judgments of the Apex Court relied upon by Mr. AR.L. Sundaresan, learned

senior counsel in Rao Mahmood Ahmed Khan's case and in Lakshmanasami Gounder's case holding mandatory the provisions of Order XXI

Rule 85 while considering Rule 285D of the U.P. Zamindari Abolition and Land Reforms Act and Section 36 of the Tamil Nadu Revenue Revenue

Act relating to the deposit of balance purchase money within 15 days of sale are distinguishable, as those judgments were rendered with regard to

those provisions where nodiscretion was available to the Sale Officer to modify the conditions provided in the relevant provisions. Hence, we hold

that Sub-rule (2) of Rule 57 cannot be said to be mandatory as the rules can be applied with necessary modification.

25. In this regard, the judgment of the Division Bench of Andhra Pradesh High Court in P. Mohanreddy and Others Vs. Debts Recovery

Appellate Tribunal and Others, was cited. In that case the Division Bench was considering the issue where the auction purchaser failed to deposit

25 percent of the amount immediately on declaration of the successful bid as provided under Rule 57(1). By referring to the provisions of Section

29 of the Recovery of Debts Due to Banks and Financial Institutions Act, the Bench has held that for non-compliance of the said rule and the

extension given by the Recovery Officer will not vitiate the auction proceedings. However, with great respect, we are not inclined to subscribe the

said view as, for our own reasons, we have held that Rule 57(1) is mandatory, as there is no option for the Recovery Officer to bring the property

for resale in the event of failure of the auction purchaser to deposit 25 percent amount. Nevertheless, the following observations of the Division

Bench with reference to Rule 57 and Section 29 are useful for consideration of Rule 57(2):

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 to

Income Tax Act, 1961 in letter and spirit but gives him discretion to follow the same as far as possible. Having notified to the public that 25% of

the bid amount had to be deposited in seven days and the auction purchaser having deposited Rs. 1,39,00,000.00 (25% of the bid amount) within

the stipulated period, there is no force in the submission made by the learned Counsel for the Petitioners.

32. Since the Legislature has made it explicitly clear in Section 29 that the Rules regarding recovery of tax would be applicable as far as possible

with necessary modifications and discretion vests in the recovery officer, the fact that 25% of the bid amount was not paid by the auction purchaser

immediately but was paid subsequently as per the auction notice, will not affect the legality and validity of the sale and acceptance of the amount

thereafter also would not vitiate the auction proceedings....

26. In fine and for the above discussions, we hold:

(i) Sub-rule (1) of Rule 57 is mandatory;

(ii) Sub-rule (2) of Rule 57 is not mandatory, as it could be applied as far as possible with necessary modifications;

(iii) such modifications can be made by incorporating the same in the terms and conditions in the sale notice itself and in the absence of such

modification in the sale notice, the Recovery Officer cannot extend the time for payment of the balance amount of 75 percent beyond the period of

15 days;

(iv) in the event the conditions of the sale notice provide for such extension and on the strength of the same if any extension is granted, the same

can be tested before the competent authority on the ground of arbitrary exercise of power, unjustifiable for extraneous consideration or on the

ground of mala fide in the given facts and circumstances of the case.

27. Coming to the facts of this case, as has been already noted, the auction purchaser had admittedly failed to deposit 75 percent of the amount

with in the period of 15 days. After a period of 18 days, he made an application to the Recovery Officer to permit him to deposit the money which

was granted. Accordingly, he paid the amount and the sale certificate was also issued. Later the forfeiture was ordered on the ground that the

Recovery Officer has no power to extend the time. That order was questioned, which has resulted in the filing of the present writ petition. On the

above factual background, it is to be now considered as to whether the extension granted by the Recovery Officer to the Petitioner could be

sustained. In the auction sale notice, condition No. 3 reads as follows:

The successful bidder to pay 25 percent of the bid amount (less the EMD) immediately on the sale being knocked down in his favour and the balance money within 15 days.

A reading of the above condition would show that the Recovery Officer has not prescribed any clause in the terms and conditions of sale allowing

him to extend the time beyond the period specified under the rules for the purchaser to deposit the balance price within a period of 15 days. In the

absence of the same, the extension granted in favour of the Petitioner-auction purchaser cannot be sustained. In this context, we may refer to the

judgment of the Apex Court in *Himadri Coke and Petro Limited v. Soneko Developers Pvt. Ltd., and Ors.* (2006) 132 Comp. Cas 696 (SC). The

Apex Court while considering a similar situation has observed as follows:

As far as Respondent No. 1 is concerned, we are of the view that it was bound by the terms and conditions of sale as was the authority

concerned. It was not up to them to extend the dates for submission of the balance price when there was no clause in the terms and conditions of

the sale allowing the authority to extend the time beyond the period specified in the advertisement for making the initial deposit or the balance price.

28. In this case, the third Respondent has applied to the Recovery Officer for setting aside the sale on the ground of irregularity by invoking Rule

90 of Order XXI of Code of Civil Procedure. As there is no provision under the Income Tax Act seeking for setting aside the sale on the ground

of irregularity, invoking the provisions of Rule 90 of Order XXI is justifiable. Accordingly, the application was considered by the Debts Recovery

Appellate Tribunal, which ultimately allowed the same by setting aside the sale. In the given facts and circumstances of the case and for our

conclusions in this judgment, we do not find any infirmity in the order of the Debts Recovery Appellate Tribunal warranting interference, as the

Recovery Officer had no jurisdiction to extend the time for payment of the balance 75 percent of amount in the absence of any clause in the

conditions of sale notice. Accordingly, the writ petition fails and the same is dismissed. Consequently, M.P. No. 1 of 2009 is also dismissed. No

costs.