(2020) 06 DRT CK 0003

In the Debts Recovery Tribunal

Case No : Appeal No. 18 Of 2019

Radhakrishnan Sankaran APPELLANT

Vs

M/s. Kotak Mahindra Bank Ltd RESPONDENT

Date of Decision : 15-06-2020

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19(7), 25, 25(a), 25(aa), 29Income Tax Act, 1961 — Section 29
Income Tax (Certificate Proceedings) Rules, 1962 — Rule 2, 13, 16, 16(1), 51, 57, 58, 82, 83, 86, 87
Code Of Civil Procedure, 1976 — Section 51, Order 21

Citation : (2020) 06 DRT CK 0003

Hon'ble Judges : Dr. N.V Badarinath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Aggrieved by the order passed in MA 169/2019 in DRC 149/2015 dated 13.9.2019 by the Ld. Recovery Officer, DRT 2, Chennai, the petitioner, has preferred this Appeal.

2. The facts that lead to the filing of this appeal in brief are:-

2.1: The appellants sated that they are third party to both the D.R.C. and O.A. and have approached the learned Recovery Officer only after their respective properties which were not secured to the loan availed by the borrower was attached in the said D.R.C proceedings

2.2: It is stated that the first appellant is the owner of the property situated in Ward No. 11, New Ward No. J, Block No.7, presently Block No.23, comprised in Natham Sy. No.589/1A3 part, T.S. No. 589/1A3A of Sindupoondurai Village, Tirunelveli, having an extent of 1.0 cent more particularly described in Schedule 'A' hereunder vide Sale Deed dated 04.06.2013 registered as Document No. 692 of 2013 on the file of SRO, Tirunelveli. The 2nd to 4th appellants along with one Mr. Radhakrishnan Sankaran were joint owners of the property situated in Ward

No.11, New Ward No. J, Block No.7, presently Block No.23, comprised in Natham Sy. No. 589/1A3 part, T.S. No. 589/1A3A of Sindupoondurai Village, Tirunelveli, having an extent of 2.0 cent, more particularly described in Schedule 'B' hereunder vide Sale Deed dated 10.12.2014 registered as Document No. 1571 of 2014 on the file of SRO, Tirunelveli.

2.3: It is stated by the appellant that in the year 2017 they had received notice from the learned Recovery Officer in M.A. No.57 of 2017 in D.R.C. No.149 of 2015 filed by the respondent herein seeking attachment and subsequent sale of schedule property to recover the loan amount on the ground that Mr. E. Ramkumar Raja stood as a alleged guarantor to the loans availed by M/s. Getwell Hospital Pvt. Ltd., the borrower in O.A. and that during pendency of the aforesaid D.R.C., the said Mr. E. Ramkumar Raja have sold the schedule properties to the appellants in violation of Income Tax Act Second Schedule rules whereas the schedule properties were not secured to any of the loan borrowed by either M/s. Getwell Hospital Pvt. Ltd. or Mr. E. Ramkumar Raja.

2.4: Immediately the appellants had entered appearance and filed their counter denying the allegations therein and prayed to dismiss the M.A, however, the said MA was allowed by the learned Recovery Officer, DRT- II, Chennai, vide Order dated 23.08.2019 and the schedule property was attached. Later when the appellants had approached their vendor Mr. E. Ramkumar Raja, he had assured them to file an appeal to get the attachment raised. The appellants received a Notice dated 02.08.2018 from the counsel of the respondent along with an affidavit seeking to take physical possession of schedule property and later the appellants came to understand that a warrant was issued and this Tribunal had appointed an advocate commissioner to take physical possession of schedule property, based on that the advocate commissioner issued Notice dated 19.07.2019 to the appellants to take physical possession of the property on 03.08.2019. Since there was urgency the appellants had filed M.A. No.169 of 2019 before the learned Recovery Officer seeking to stay the warrant reserving appellants right to file petition to raise attachment order at a later point of time. However, the Ld. Recovery Officer dismissed the said MA vide order dated 13.9.2019.

2.5: It is further stated that the learned Recovery Officer ought to have considered that the appellant and 3 other property owner as they are neither borrower nor guarantor to the loan to be recovered under the D.R.C. and that the schedule mentioned properties are also not secured to the said loans, as such attachment and subsequent attempt to disposes the appellant is against the law. Further, the schedule mentioned properties were purchased by the appellant and 3 others for valuable consideration and the same were not secured to the loan to be recovered in D.R.C. It is stated the property belongs to the vendor Mr. E. Ramkumar Raja in his personal capacity and which were also not purchased with the loan proceeds. It is stated that Recovery of Debts and Bankruptcy Act, I.T. Act or the rules under the Second Schedule does not provide power to the learned Recovery Officer to appoint an advocate commissioner as such the appointment of advocate commissioner is arbitrary and thus the warrant is against the law. Further neither prior to sale nor after the sale the respondent or the learned Recovery Officer had issued Demand Notice to us under the Rule 2 of the Income Tax Act Second Schedule Rules. Hence the burden to prove the knowledge of pending recovery proceedings is cast upon the respondent. Thus stating, Ld. Counsel for the appellants prayed to set aside the Order dated 13.09.2019 in M.A. No. 169 of 2019 in D.R.C. No. 149 of 2015 passed by the learned Recovery Officer, DRT- II, Chennai.

2.6: In addition to the above averments, Ld. Counsel for the appellants filed written arguments and relied on the following documents and the rulings

1. Sale Deed dated 4.6.2013 executed by Mr. E.Ramkumar Raja in favour of Mr. V. Srinivasan Pattachiyar.

2. Common Dates and Events

Citations:

1. J.N.Krishan Vs The Branch Manager, Canara Bank reported in 2011 (4) CTC 698

2. Meena Aggarwal Vs Punjab National Bank &Ors reported in 2016 SCC online Del 380

3. HDFC Bank Ltd., Vs The Recovery Officer, DRT-I, Chennai reported in 2012 (5) CTC 473

3. The contest of the Respondent in brief:

3.1: The respondent filed OA 1134 of 2000 before DRT-I, Chennai for recovery of a sum of Rs.12,37,06,433/- against M/s. Getwell Hospitals (P) ltd and others. It is stated that the Vendor of the property purchased by the appellant herein is the 5th defendant in the said OA and one of the guarantors to the said loan transactions. The said OA was allowed on 30.1.2004 and Recovery Certificate was issued on 16.3.2004 for recovery of a sum of Rs.19,08,24,289/-. In execution of said Recover Certificate, Demand Notice under Rule 2 of Second Schedule to Income-Tax Act 1961 was issued on 13.8.2004 to the said borrower and guarantors by Ld. Recovery Officer, DRT-I. As there was no response from the Certificate debtors, including the vendor of the appellant herein, the Ld. Recovery Officer by an order dated 16.9.2004 attached 68 cents of land and superstructure thereon along with entire plant and machinery available therein, which was mortgaged with ICICI bank.

3.2: Subsequently, the said ICICI Bank had assigned the entire dues of the said borrowers and others, along with underlying securities with respondent bank and as such the respondent bank had stepped into the shoes of ICICI bank and proceeded against the certificate debtors. Initially ICICI bank, as DRC holder, auctioned both the EM property of hospital and the 5th Certificate Debtor's property of 8.5 cent together, but the said auction failed. The 5th Certificate Debtor/ Guarantor never challenged the above said auction. After assignment of dues, the respondent bank has initiated various auction including attachment of property belongs to 5th Certificate Debtor/Guarantor. Pending above DRC proceedings, 5th Certificate Debtor/guarantor sold three cents of the property out of 8.5 cents.

3.3: In MA No.57 of 2017 the learned Recovery Officer passed detailed order that the sale by 5th Certificate Debtor is void and also attached the property vide order dated 23.8.2017 and also effected attachment on the property on 28.8.2017. At the time of attachment, the report of the Recovery Officer is very clear that the two properties were rented out and the act of appellant is against the order of this Tribunal. As the property of the 5th Certificate Debtor in the above DRC is an integral part of the Hospital as parking space, the Ld. Recovery Officer attached the same. The other 5.5 cent of land abutting the mortgage property standing in the name of 5th certificate debtor, the vendor of the appellant herein was attached by Recovery Officer by an order dated 21.3.2017. As the mortgage property value is much lower than the DRC amount, the personal property of the Guarantor and 5th Certificate Debtor was attached.

3.4: The respondent bank stated that In MA No.57 of 2017 in DRC 149 of 2015 sought for attachment and sale of 2 cents of land standing in the name of 5th certificate debtor. However, after service of demand notice, the 5th certificate debtor had sold away the said property to and in the name of appellant herein and three others which is void as per law. When the notice was issued in M.A. No. 57 of 2017, the appellant had filed vakalath through his counsel and also filed his counter and contested the said application. The Ld. Recovery Officer had allowed MA 57 of 2017 vide order dated 23.8.2017 and an order of attachment of the property was issued wherein the appellant was also party to the proceedings.

3.5: At the time of attachment, the respondent bank noticed that few shops had been constructed and flower vendors were occupying the said premises. Even after affixture of the order of attachment in the subject property, there was no murmur from the appellant. The respondent bank stated that after a period of 11 months, on 12.07.2018, they had filed an affidavit, seeking to take possession of the subject property and till then the appellant herein did not oppose the attachment order. The respondent bank was directed to serve a copy of the affidavit along with the private notice on all the certificate debtors and third party purchasers, including the appellant herein, to appear on 30/08/2018. The fifth certificate debtor appeared and contested the said application. However the learned Recovery Officer passed an order dated 22/11/2018, allowing the prayer of the Bank and in terms of the said order a warrant dated 06/06/2019 was issued to an advocate, appointing him as the advocate commissioner to take possession of the property.

3.6: Pursuant to the issuance of commission of warrant, the advocate commissioner sent a notice dated 19/07/2019, to the appellant as well as to the other occupants, fixing the date of taking possession as 03/08/2019. The Appellant had filed MA No.169/2019 on 02.08.2019, a single day prior to the date fixed by the Advocate Commissioner to take possession of the property. After a return by the Registry the Application was represented by the Appellant on 08.08.2019 with a common typed set of papers, along with M.A. No. 169/2019. After a direction to file separate typed set of papers, the above application was again represented by the Appellant on 27.08.2019 and posted for admission of 31.08.2019. Finally order was pronounced on 13.09.2019, dismissing the said application. Aggrieved by the above said order, the Appellants filed the present appeal and before this Hon'ble Tribunal.

3.7: The respondent further stated that the Appellants have purchased the property in the year 2014. But the joint owners of the property have neither joined nor arrayed nor authorized the Appellant to file the Appeal and hence this Appeal shall be rejected, as this point was also rightly observed by the Recovery Officer. Admittedly in the above DRC the demand notice was issued by the Tribunal in the year 2004 to all the Certificate Debtors and having received the notice and aware of the DRC proceedings the Guarantor and the 5th Certificate Debtor sold the 3 cents of his property to this appellant much after the DRC proceedings that is in the in the year 2014 is against the law and it is null and void as per the Income Tax Act.

3.8: This Respondent submits the sale of the property by the 5th Certificate Debtor to the Appellant and others is invalid in the eye of law. Moreover the order of the Ld Recovery Officer has substantiated that this is an unnecessary and designed delay on the part of the Appellant herein, while dismissing the Application. The 5th Certificate Debtor had transacted the subject property without any manner of the right and any such sale is void as per Income Tax Act. The attachment by the DRT would always prevail over any sale. It is to be noted that after attachment of the subject property the Appellants herein never filed any appeal against the order in M.A. No. 57 of 2017. The Appellants herein creating a right by filing similar application before the Learned Recovery Officer and said application was rejected on the ground of res-judicata and filing the above appeal by the Appellant as per the impugned order is not sustainable and liable to the dismissed. This appeal is filed only with the intention to delay and defeat rights of Respondent Bank, in realizing its dues from the defaulted borrowers.

3.9: The Respondent Bank stated that as on date the borrower M/s. Getwell Hospitals Private Ltd and the guarantors are jointly and severally liable to pay a total sum of around Rs. 45 Crores to the Respondent Bank. Even if all the mortgaged properties are sold away and the sale values are adjusted towards the outstanding dues, that would not satisfy the entire outstanding dues. In this circumstance the above Appeal filed by the Appellant absolutely has no merits. Thus, contending Ld. Counsel for the respondent prayed the Tribunal to dismiss the appeal.

4. Ld. Counsel for the respondent relied on the following judgements

(i) C.N. Paramasivam & ors -vs- Sunrise Plaza Tr. Partner &Ors reported in MANU/SC/0084/2013 = AIR 2013 SC 2941.

(ii) Nitin Gunwant Shah -Vs- Indian Bank &ors reported in MANU/SC/0538/2012= AIR 2012 SC 2610.

5. In the light of the contest as above, the point that emerge for consideration by this Tribunal is:

"Whether the order dated 13.9.2019 passed in MA 169/2019 in DRC 149/2015 by the Ld. Recovery Officer, is liable to be interfered with by this Tribunal?"

Point:

"Whether the order dated 13.9.2019 passed in MA 169/2019 in DRC 149/2015 by the Ld. Recovery Officer, is liable to be interfered with by this Tribunal?"

5.1: I have heard the Ld. Counsel for the Appellant, and the Ld. Senior Counsel for the Respondent. Perused the record, the order passed by the Ld. Recovery Officer and the case law.

According to the Ld. Counsel for the appellant, the order passed by the Ld. Recovery Officer in DRC 149/2015 appointing an Advocate Commissioner to take physical possession of the property belonging to the appellant/ third party described in the schedule appended to the appeal, is contrary to law, without jurisdiction and ultra vires the scope of the recovery certificate issued by this Tribunal, hence the Appellant filed MA 169 of 2019 to recall the same, however the Ld. Recovery Officer has dismissed the MA 169 of 2019 on 13.9.2019, hence the appellant preferred the present appeal, inter alia, contending that;

(i). The property described in the schedule appended to the appeal was purchased by the appellant under a registered sale deed dated 10.12.2014 from Ramkumar Raja (the 5th Certificate Debtor in DRC 149/2015) and ever since then the appellant is in possession and enjoyment of the same

(ii) The appellant is not a party to the DRC 149/2015 issued in favor of the respondent, hence the order attaching the property of third party, passed by the Recovery Officer on 21.3.2017 is bad in law.

(iii) The provisions of the second and third schedules of the Income-Tax Act, are not applicable in toto to the recovery proceedings before the Recovery Officer, in as much as, it has been specifically stated in Section 29 of Income Tax Act that the provisions are applicable as far as possible, hence, Rule 16 of Income Tax (certificate proceedings) has only limited application and cannot be applied to third party properties. Therefore, the order of attachment vide DRC 149/2015 is not sustainable under law.

In support of this contention Ld. Counsel for appellant also placed reliance on the ruling of Hon'ble High Court of Madras, in re, J.N.Krishan Vs The Branch Manager, Canara Bank reported in 2011 (4) CTC 698 where under it was held as follows:

"17. There is no doubt that the Recovery proceedings under the Debts Recovery Tribunal Act has to be conducted in accordance with Second and Third Schedules to the Income Tax Act. The legislature while enacting Section 29 used the words "as far as possible", meaning thereby, the entire Rules with its full force were not made applicable to a proceeding under the Debts Recovery Tribunal Act. This is not a case of the Application of the entire provisions of the Second and Third Schedule to the Income Tax Act in respect of proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (hereinafter referred to as the DRT Act). The provisions of the Income Tax Act have to be applied suitably and not absolutely."

"19. It is true that the order of attachment contains a statement that it was made under Rule 48 of the Second Schedule to the Income Tax Act. In fact, DRT Act itself contains provision for attachment. Section 25 clearly provides for the mode of recovery of debt. Section 25(a) deals with attachment and sale of movable and immovable property of the defendant. There is no time limit prescribed under the DRT Act for the purpose of selling the attached property after the order of attachment."

(iv). The Ld. Recovery Officer is not empowered to take physical possession of property from a 3rd party like appellant unless the sale in respect of the said property is held.

6.

(i). Refuting these allegations, the Ld. Senior Counsel for the respondent, at the outset contended that the appellant obtained the sale deed dated 10.12.2014 from E.Ramkumar Raja, who is none other than the 5thJudgement Debtor in DRC 149/2015, old DRC No.34 of 2004, after service of demand notice dated 13.8.2004 on the 5th certificate debtor. It is stated that in terms of Rule 2 of 2nd Schedule of Income Tax Act, 1961, read with rule 16(1) of Rule 16 of Income Tax (certificate proceedings), the 5th certificate debtor is debarred from alienating the property covered by the demand notice by way of sale, lease, etc., as such applicant is not entitled to claim any right or title under the said sale deed dated 10.12.2014.

(ii). Ld. Sr. Counsel, submitted that the Contention of the Appellants that only the secured property can be attached by the Recovery officer and the non mortgaged property cannot be attached. As such the attachment made by the Recovery against the property owned by the Appellants is not valid and the same is erroneous. Whereas under the scheme of the Act Sec-25 of the Recovery of Debts and Bankruptcy Act, deals with the modes of Recovery. It says attachment and sale of movable or immovable property of the defendant alone. As such the contention raised by the Appellants is unsustainable.

(ii) According to the Ld. Sr. Counsel, the contention of the Appellants that the

Provisions of the Second and Third schedule to the Income Tax Act shall be applicable as far as possible only and not absolutely is not correct. Like wise the contention that the Learned Recovery officer is not empowered/entitled to take Physical Vacant Possession before the property is put to sale is not correct. The Recovery officer in order to fetch more Price is entitled to take physical vacant possession before sale. It is further submitted that the other contention that the Learned Recovery officer has gone beyond the final order in the Original Application is not correct. On the other hand, the Learned Recovery officer has proceeded only in terms of the Recovery Certificate issued by the Recovery officer which has been issued in pursuant to the final order. As such all the contentions raised by the Appellants are not tenable in law and on facts.

(iv). Ld. Sr. Counsel relied on the following rulings.

1. C.N.Paramasivam&ors -vs- Sunrise Plaza Tr. Partner &Ors AIR 2013 SC 2941,

2. Nitin Gunwant Shah vs Indian Bank and Ors.AIR2012SC2610.

6.1: Before I proceed with my discussion on this point, I wish to refer to the following provisions in the Second Schedule of Income-Tax Act read with Income Tax Certificate Procedure Rules, 1962.

Issue of notice.

2. When a certificate has been drawn up by the Tax Recovery Officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

Attachment

48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge

Attachment to relate back from the date of service of notice

51. Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter

Private alienation to be void in certain cases:

Rule 16.

(1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease

or otherwise deal with any property68 belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment."

Section 25(aa) of Recovery of Debts and Bankruptcy Act was inserted by amendment Act 44 of 2016 with effect from 01.09.2016, which reads:

"(aa) taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same;"

Section 29 of the Recovery of Debts and Bankruptcy Act, the Income-Tax (Certificate Proceedings) Rules, 1962 is applicable and Rule 39 whereof reads as under:-

Delivery of immovable property in occupancy of defaulter:

39 (1) Where the immovable property sold is in the occupancy of the defaulter or of some person on this behalf or of some person claiming under a title created by the defaulter subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 65 of the principal rules, the Tax Recovery Officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom the purchaser or any person whom the purchaser may appoint to receive delivery on his behalf in possession of the property, and if need be, by removing any person who refuses to vacate the same.

(2) For the purposes of sub-rule (1), if the person in possession does not afford free access, the Tax Recovery Officer may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the purchaser, or any person whom the purchaser may appoint to receive delivery on his behalf, in possession."

6.3: At the outset, it is to be stated that there is no dispute that the 5th Certificate Debtor was served with a demand notice much prior to the appellant purchasing the schedule mentioned property from the 5th Certificate Debtor. A perusal of Rule 51 of the 2nd Schedule of Procedure for Recovery of Tax, supra, discloses that the order of attachment effected relate back to, and take effect from the date on which the notice to pay the arrears issued under the schedule was served upon the defaulter. The demand notice in the case on hand was issued on 13.8.2004, and the 5th Certificate Debtor sold the property to the appellant on 10.12.2014. Therefore, it is as clear as crystal that only after service of demand notice, the 5th certificated debtor sold and the appellant purchased the subject property. As such the appellant is not entitled to claim any valid right, title or interest in the appeal schedule property. In fact the very locus standi, of the appellant to challenge the recovery proceedings itself is at stake.

6.4: Now coming to the plea of the Ld. Counsel for the appellant that the provisions of the second and third schedules of the Income Tax Act, have to be applied suitably but not absolutely, in so far the same relates to the recovery proceedings under the RDB Act, is concerned, it is to be stated that the said view is unacceptable in view of the ruling of the Hon'ble Supreme Court of India, in re, C.N. Paramasivam & ors -vs- Sunrise Plaza Tr. Partner &Ors reported in AIR 2013 SC 2941, where in it was held,

"We may also refer to the decisions of this Court in OnkarlalNandlal v. Rajasthan and Anr. MANU/SC/0321/1985: (1985) 4 SCC 404, Mary Roy and Ors. v. State of Kerala and Ors. MANU/SC/0716/1986: (1986) 2 SCC 209,Nagpur Improvement Trust v. Vasantrao and Ors. and Jaswantibai and Ors. MANU/SC/0839/2002 : (2002) 7 SCC 657, and Surana Steels Pvt. Ltd. v. The Deputy Commissioner of Income Tax and Ors. MANU/SC/0262/1999 : (1999) 4 SCC 306, which have reiterated the above proposition of law".

"Applying the above principles to the case at hand Section 29 of the RDDB Act incorporates the provisions of the Rules found in the Second Schedule to the Income Tax Act for purposes of realisation of the dues by the Recovery Officer under the RDDB Act. The expressions "as far as possible" and "with necessary modifications" appearing in Section 29 have been used to take care of situations where certain provisions under the Income Tax Rules may have no application on account of the scheme under the RDDB Act being different from that of the Income Tax Act or the Rules framed thereunder. The provisions of the Rules, it is manifest, from a careful reading of Section 29 are attracted only in so far as the same deal with recovery of debts under the Act with the modification that the 'amount of debt' referred to in the Rules is deemed to be one under the RDDB Act. That modification was intended to make the position explicit and to avoid any confusion in the application of the Income Tax Rules to the recovery of debts under the RDDB Act, which confusion could arise from a literal application of the Rules to recoveries under the said Act. Proviso to Section 29 further makes it clear that any reference "to the Assessee" under the provisions of the Income Tax Act and the Rules shall be construed as a reference to the Defendant under the RDDB Act. It is noteworthy that the Income Tax Rules make provisions that do not strictly deal with recovery of debts under the Act, Such of the rules cannot possibly apply to recovery of debts under the RDDB Act. For instance Rules 86 and 87 under the Income Tax Act do not have any application to the provisions of the RDDB Act, while Rules 57 and 58 of the said Rules in the Second Schedule deal with the process of recovery of the amount due and present no difficulty in enforcing them for recoveries under the RDDB Act. Suffice it to say that the use of the words "as far as possible" in Section 29 of RDDB Act simply indicate that the provisions of the Income Tax Rules are applicable except such of them as do not have any role to play in the matter of recovery of debts recoverable under the RDDB Act. The argument that the use of the words "as far as possible" in Section 29 is meant to give discretion to the Recovery Officer to apply the said Rules or not to apply the same in specific fact situations has not impressed us and is accordingly rejected".

6.5: In so far as the plea that Section 25 of Recovery of Debts and Bankruptcy Act, as is stood, at the time of attachment of the property of the appellant, did not empower the recovery officer to order the attachment of the appellant's/third party property, as such, the attachment itself is void, it is to be stated that the said contention is unacceptable, firstly for the reason that the said plea relates to the validity of the order of attachment made by Ld. Recovery Officer, as such the same is beyond the scope of this appeal. Nextly, the said plea was in fact raised by the appellant unsuccessfully before the Ld. Recovery Officer in MA 57/2017 and was rejected. As the applicant has not questioned the same, the order became final. Thus, the appellant is precluded under law from raising the plea once again in this proceeding.

6.6: Be that as it may, Section 25 of the Recovery of Debts and Bankruptcy Act reads as follows:

Section 25: Modes of recovery of debts.-The Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely:-

(a) attachment and sale of the movable or immovable property of the defendant;

(b) arrest of the defendant and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the defendant.

empowers the Recovery Officer to attach the property of the Certificate Debtors secured and also unsecured. In this regard I have carefully examined the following finding in the order of Ld. Recovery Officer in MA 169 of 2019 in DRC 149/2015

"A bare reading of the aforesaid Section would indicate that this Section empowers the Recovery Officer (1) to take possession of any property in execution of the Recovery Certificates, (2) to appoint Receivers after taking possession of the same in case of commercial property and depending upon the situation and requirement and (3) to sell such properties after taking its possession. Section 22 ibid, Rules 13, 82 and 83 of the Second Schedule to the Income Tax Act, 1961 would also indicate that this Forum has got powers to appoint Advocate Commissioners in execution of the Recovery Certificate (decree)" and found that the same is inconformity with the relevant sections of law.

6.7: In so far the contention of the appellant that unless the property is sold, the Ld. Recovery Officer is not entitled to take vacant possession before effecting the sale is concerned, in view of the ruling of the Hon'ble Supreme Court, in re, Nitin Gun want Shah -Vs- Indian Bank &ors reported in AIR 2012 SC 2610, relied upon by the Ld. Counsel for the 1st respondent, wherein it was held that:

"26. Attachment and sale of immovable properties of a person, who is adjudged to be owing some amount to another person is one of the modes of securing the repayment of such judgment debt. (see Section 51 Order 21 of Code of Civil Procedure). When an immovable property of the judgment debtor is brought to sale in order to recover the amounts adjudicated to be due, the possibility of such a property being in the possession of a third party either pursuant to some legal right or otherwise is recognised by law. Law also recognises the possibility of such a third party objecting to or resisting his dispossession in the process of delivering the possession of the property to the purchaser in the execution proceedings. When such resistance is offered, law also contemplates an examination whether the resistance is justified or not. Depending upon the conclusion arrived at such an examination, the third party's possession is either protected or he is evicted. Elaborate provisions have been made in this regard under Order 21 of Code of Civil Procedure. However, the legislature can create special/alternative procedure for the eviction of either a judgment debtor or a third party such as the one discussed above from immovable property."

"36. The scheme of the above provisions clearly establishes an alternative procedure for the eviction of a person (3rd party to the proceedings) in occupation of a property which is brought to sale pursuant to a Recovery certificate issued under the 1993 Act. We have already taken note that there is a possibility of a person other than the judgment debtor being in possession of the property of the judgment debtor is recognised even under Order 21 of the Code of Civil Procedure and under Rule 98. It provides for the eviction of such persons in an appropriate case where it is found that the person in possession is not legally entitled for the same. The Rules under the Income Tax Act which are adopted for the purpose of the Recovery of debts due to the financial institution and Banks under the 1993 Act also provide a similar authority of law. The law further provides under Rule 47 that any person so evicted is entitled to file a separate suit to establish his legal claim. Obviously, such a right is acknowledged in recognition of the fact that an enquiry of the claim of the third party under the Rules is summary in nature by a Quasi Judicial Forum and therefore, an examination of the issue by a Judicial Forum would adequately protect the interests of such third party or the purchaser, as the case may be".

Therefore, in the light of my discussion as above, order dated 13.9.2019 passed in MA 169/2019 in DRC 149/2015 by the Ld. Recovery Officer, is in accordance with law and on proper appreciation of the factual and legal matrix of this case, hence the same does not called for any interference by this Tribunal. The appeal is devoid of any merit or substance, hence the same is liable to be dismissed. Accordingly, the appeal is dismissed. However, under the circumstances without costs.

7. In the result, Appeal is dismissed. No costs.

(Dictated to PS, transcript revised, corrected, signed and pronounced by me through virtual court on this 15th day of June, 2020)