
(2012) 09 CAL CK 0069
In the Calcutta High Court
Case No : C.O. 4137 of 2011

Sajeda Khatoon

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Customs Act, 1962 — Section 135(1)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 18, 19, 20, 21, 31

Citation : (2013) 2 BC 583 : (2013) 1 CHN 316

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Aniruddha Roy, Mr. Diptangshu Basu Roy, Mr. Jayabrata Basu Roy and Mrs. Chandreni Mukherjee, for the Appellant; A.K. Routh, S. Pal Chowdhury and Mr. I. Bhattacharyya, for the Respondent

Final Decision : Dismissed

Judgement

Soumen Sen, J.—Any person, not being a borrower, if could maintain an appeal without pre-deposit as contemplated u/s 21 of Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter be referred to as DRT Act, 1993) is the issue to be decided in this application. Before the appellate Tribunal, the petitioner contended that having regard to the nature of the impugned order passed by the learned Presiding Officer, Debt Recovery Tribunal and the status of the petitioner, there may not be any liability and hence no requirement to make any pre-deposit u/s 21 of the DRT Act, 1993.

2. The said appeal arose against an order dated 13th October, 2009 passed by the Ld. Debts Recovery Tribunal, Patna by which the Presiding Officer, DRT, Patna directed the Recovery Officer to proceed with the auction sale of the property in question along with other attached properties. The said order was passed in connection with the Recovery Certificate issued in favour of the Bank on 3rd September, 2001. Under the certificate, the opposite party Nos. 2 to 7 were held

to be liable jointly and severally for a sum of Rs. 1,14,098.99/- up to 30th December, 1992 with cost and all other charges with interest, pendente lite and future interest till realization. On the basis of such certificate, the Recovery Officer registered a case being R.P. Case No. 128 of 2001. The Recovery Officer by an order dated 26th December, 2001 attached the immovable properties of the certificate debtors and further steps were taken for public auction of the attached properties. At the stage of sale of one of the properties, the petitioner claiming to be the wife of one of the guarantors, namely, Mr. Ziaul Hoda filed the application for vacating the order of attachment in respect of the said property.

3. Mr. Ziaul Hoda is one of the guarantors and certificate debtors.

4. The petitioner objected to such attachment. She claimed to have purchased one of the attached properties, namely, lot No. 11 on the basis of an alleged deed of sale executed on 2nd March, 2000. The said property belonged to one of the borrowers/certificate debtors, namely, Ariful Hoda who transferred the said property in favour of the petitioner on 2nd March, 2000.

5. The petitioner contended that the said property admittedly belonged to Ariful Hoda who executed the sale deed on 2nd March, 2000 in favour of the petitioner on payment of full consideration amount. The said property was neither mortgaged nor charged in favour of the bank.

6. Ariful Hoda is one of the borrowers and certificate debtors in the said proceeding. The said property was also attached by the Recovery Officer assuming that Ariful Hoda is the owner of the said property on the date of attachment. The petitioner contended that since the said property is neither mortgaged nor charged in favour of the bank and in any event was transferred on 2nd March, 2000 prior to the issuance of the certificate, no attachment order could be passed in respect of the said property.

7. The Presiding Officer while dealing with the deed of sale dated 2nd March, 2000 held that while the objector was relying on the sale deed dated 2nd March, 2000 and claimed that she had purchased the property, in that event, she should have intervened and objected when the attachment process was continuing. Although the said attachment and auction proceeding started in December, 2001, the petitioner raised the objection only in 2004 without any cogent reason. The petitioner being the wife of one of the guarantors was aware of the pending proceeding and this inter borrower transfer was orchestrated in order to frustrate the certificate. The Presiding Officer also observed that there were inherent infirmities in the deed of sale dated 2nd March, 2000 produced by the objector.

8. The Presiding Officer, accordingly, rejected the said application and directed the Recovery Officer to proceed with the sale of the said attached property along with other properties. Against the said judgment and order, an appeal was preferred. Initially a resistance was put in depositing the fees as required under Rule 8 of the DRT Appellate Tribunal Procedure Rules, 1994. The order passed by the DRAT with regard to the deposit of the fees was, however, accepted by the

petitioner and the appeal was filed upon payment of the prescribed fees as indicated in Rule 8 of the said DRT Appellate Rules. The petitioner, thereafter, filed an application u/s 21 of the DRT Act and praying for total exemption of pre-deposit on the ground that the petitioner is neither a borrower nor a guarantor and as such the question of determination of debt will not apply against the petitioner in any manner whatsoever.

9. The Appellate Tribunal in considering the said application held as follows:-

It is perhaps needless to mention that legality and propriety of an order as well as its merits can only be measured and analyzed while adjudicating the appeal. Merit of the order under challenge is of little relevance while dealing with an application u/s 21 of the DRT Act, 1993. In my considered opinion, the words used in Section 21 of the DRT Act, 1993 are plain, clear and unambiguous. As such, there is little scope or rational justification for a wild goose chase in order to analyse or ascertain the intention of the Legislature. Having regard to the factual backdrop of the present case, it cannot be denied that there had been a determination of debt. The Claim of the appellant that she is neither a borrower nor a guarantor is yet to be established. The materials on record so far available do not lend much support to the claim of the appellant. Accordingly, there is hardly any merit in the submission made on behalf of the appellant. After taking into consideration all relevant facts and circumstances, I think interest of justice will be best served if the application u/s 21 of the DRT Act, 1993 is disposed of with a direction upon the appellant to deposit 30% of the amount of debt as determined by the Tribunal and such deposit must be made within a period of three weeks from this date i.e. by 21.11.2011; in default, the legal consequence shall follow. The appeal be listed under the heading "for order" on 23.11.2011.

10. Mr. Aniruddha Roy, the learned Counsel appearing on behalf of the petitioner submits that the petitioner neither being a borrower nor a guarantor could not be asked to make a pre-deposit before preferring an appeal. It is contended that Section 20 provides for preferring an appeal by "any person" aggrieved by an order made or deemed to have been made by a Tribunal. Section 21 which requires pre-deposit is attracted only when the person preferring the appeal is liable to discharge the debt. Moreover, the order of the Presiding Officer is not a final order and the Presiding officer did not adjudicate as to whether any amount is due and payable by the petitioner to the certificate holder bank and, accordingly, the question of any pre-deposit could not and does not arise.

11. The learned Counsel on behalf of the bank, however, submits that the petitioner in connivance with the borrower devised a stratagem to transfer a valuable property during the pendency of the proceeding with a clear object to defraud the certificate holder bank. The transfer was effected at a point of time when the hearing was over and the matter was awaiting judgment. One of the certificate debtor guarantors realized that he had no defence to the claim of the bank and fraudulently transferred the said property in an attempt to make the said certificate inexecutable and infructuous.

12. The bank, however, has admitted that the said property was neither mortgaged nor charged in favour of the bank. There was no restrain order either on the said property during the pendency of the proceeding initiated u/s 19 of the DRT Act.

13. In the context, it has to be seen whether the petitioner would be required to make a pre-deposit as a condition precedent for preferring the said appeal.

14. Section 18 of the DRT Act gives a statutory right of appeal to "any" person aggrieved by an order made or deemed to have been made by the Tribunal under the Act. The said order may be interim or final. The appellant may be a borrower, guarantor or a person aggrieved by any order passed by the DRT. The said appellant may not be the borrower or the guarantor but a person who is aggrieved by any order passed by the Tribunal which affects his right. There may be a situation where the Tribunal may have passed an order of injunction in respect of a property in dealing with an application filed u/s 19 of the DRT Act which may affect or likely to affect a third party. Such a third party after became aware of the order might file an application for recalling of the order or prefer an appeal, since such order could affect his right, title and interest in the property. "A person aggrieved" is entitled to prefer an appeal u/s 20 of DRT Act. Section 21 which deals with pre-deposit the expression "any person" is accompanied with a qualification namely "from whom the amount of debt is due to a bank....". It is on the basis of such phraseology in Section 21 it is argued that since the petitioner is not a person from whom the amount of debt is due, she should not be required to deposit any amount u/s 21 of the DRT Act. It is submitted that the right of an appeal given to a third party would be curtailed in the event such third party is required to make such pre-deposit on the basis of a certificate issued against the borrowers and guarantors. The said interpretation is onerous, burdensome, harsh and make the said appeal illusory. It is contended that it is not the object of Sections 20 and 21 of the said Act that a person neither a borrower nor a guarantor and from whom the amount of debt is not due would still be required to make a pre-deposit to maintain the appeal.

15. On a reading of Sections 20 and 21 of the said Act, it appears that a distinction is made between persons who is a certificate debtor and who is not the certificate debtors but affected by an order. There may be a situation where in the process of execution of a certificate, the property of a third party is attached. The third party may object to such attachment and fail both before the Recovery Officer and the Presiding Officer and then such third party prefers an appeal. Does the order of rejection by the Recovery Officer and the Presiding Officer make such third party, "a person from whom the amount of debt is due to the bank" as contemplated u/s 20 of the DRT Act. Suppose, the Tribunal comes to a finding that it is a fraudulent transfer. The Tribunal may ignore such transfer and proceed with the sale of the property in question in execution of the said certificate. Such an adjudication does not make the third party a person liable to discharge the debt. Then it becomes the property of the certificate debtor liable

to attachment and sale. When a statute does not create any embargo in preferring an appeal by a party who is not required to discharge the debt, the Court cannot impose any such condition since it would amount to rewriting a statute. The legislature in Section 21 has not incorporated same and/or similar conditions as contained in Section 20 and did not impose any such restriction or embargo or a condition precedent in respect of a third party in preferring an appeal against an order.

16. The learned Counsel for the bank submits that on a proper application of the Heydon's Rule and the purposive construction of the Act in the facts and circumstances of the case, the petitioner who happens to be the wife of one of the certificate debtors should not be permitted to prefer an appeal without pre-deposit.

17. The petitioner relied upon the following observations of the DRT which are as follows:-

The rule of construction is found in Heydon's Case (1584) 76 ER 637 which refers to the following four aspects while construing an Act:-

- (a) What was the law prior to the law which is sought to be interpreted;
- (b) What was the mischief or defect for which the new law is made;
- (c) What is the remedy the law now provides; and
- (d) What is the reason of the remedy.

18. It was submitted on behalf of the appellant that a construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected. According to Ld. Counsel for the appellant if the language used is capable of bearing more than one construction, in selecting true meaning, regard must be had to the consequences, resulting from adopting the alternative construction. In this context, reference was made to the following cases:-

- (i) Pawan Kumar and Others Vs. State of Haryana,
- (ii) D. Saibaba Vs. Bar Council of India and Another,
- (iii) Bhatia International Vs. Bulk Trading S.A. and Another,
- (iv) Tirath Singh Narain Singh Vs. Bachitar Singh Mit Singh and Others

19. No doubt, a right to appeal is the creature of the statute. But, there could be no reason as to why such right to appeal cannot be circumscribed by conditions. The Legislature while granting the right can very well impose conditions for the exercise for such right. But, conditions cannot be such which make the right illusory. When the words of a statute are clearly, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts are bound to give

effect to that meaning irrespective of consequences. (Ref.: Nelson Motis Vs. Union of India and another,)

20. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver. (Ref.: Sussex Peerage case, (1844) 11 CI & F 85)

21. In London Brick Co. Ltd. vs. Robinson, (1943) 1 All ER 23, it was held that when a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself. The results of the construction are then not a matter for the Court, even though they may be strange or surprising, unreasonable or unjust or oppressive.

22. In Kanai Lal Sur Vs. Paramnidhi Sadhukhan, Gajendragadkar, J. observed:

If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

23. In Rananjaya Singh Vs. Baijnath Singh and Others, . Das J. observed:

The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the Section of the Act.

24. The principle of purposive construction came up for consideration Harshad Mehta's case. In Mrs. Jyoti Harshad Mehta and Others Vs. The Custodian and Others,), the Hon'ble Supreme Court was considering Section 3 and 4 of the special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. It was contended on behalf of the appellant that the clubbing of the appellants as part of Harshad Mehta group was on a complete misreading of Section 4 of the Special Act and disregarding the fact that such properties were not acquired during the window period. The right to property is a constitutional and human right and furthermore the provision of the Special Act being penal in nature, they deserve a strict construction. The Apex Court in allow the appeal held:-

31. On a plain reading of sub-section (1) of Section 4 of the Special Act it would appear that the same applies to the third parties and not any notified party. It is only when a property has been purchased in the name of a third party by a notified party from the tainted funds acquired by him during the window period, that the provisions of subsection (1) of Section 4 would apply. But in a case where the properties have been purchased by the notified parties themselves as members of a group in the name of one or the other, the rigours of subsection (1) of Section 4 shall not apply.

32. Section 3 of the Special Act, on the other hand, postulates automatic statutory attachment of the properties of the notified party. The acquisition of the properties whether prior to the window period or during the window period or

thereafter can be attached for the discharge of liabilities.

33. Indisputably, a statute which seeks to take away a person's right in property deserves strict construction. However, it is also well settled that the courts are required to give purposive construction to a statute to see that the purpose and object thereof is fully attained.

34. This Act is a special statute. It is a complete code in itself. The purpose and object for which it was created was to punish the persons who were involved in the acts of criminal misconduct in respect of defrauding banks and financial institutions. Its object was to see that the properties of those who were involved shall be appropriated for discharge of liabilities not only of banks and financial institutions but also other governmental agencies including the Income Tax Department. "

35. In construing the statute of this nature the court should not always adhere to a literal meaning but would construe the same, keeping in view the larger public interest. For the said purpose the court may also take recourse to the basic rules of interpretation, namely, *ut res magis valeat quam pereat* to see that a machinery must be so construed as to effectuate the liability imposed by the charging section and to make the machinery workable. *Indian Handicrafts Emporium and Others Vs. Union of India (UOI) and Others,)*

36. In *Balram Kumawat Vs. Union of India (UOI) and Others,)* this Court preferred a dictionary meaning of the word "ivory" in preference to the technical meaning stating: (SCC p.634, para 20)

20. Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-à-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The rule of *ex visceribus actus* should be resorted to in a situation of this nature.

It was furthermore held: (SCC p.635, para 23)

23. Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the law it seeks to achieve the purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so.

37. It was observed: (*Balram Kumawat case, SCC p.637, para 26*)

26. The courts will therefore reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (*Salmon v. Duncombe; 1886 (11) AC 627 (PC)*). Reducing the legislation futility shall be avoided and in a case where the intention of the legislature cannot be given effect to, the courts would accept the bolder

construction for the purpose of bringing about an effective result. The courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve. (BBC Enterprises Ltd. v. Hi-Tech Xtravision; 1990 (2) All ER 118 (CA)).

38. Yet again in relation to application of doctrine of strict construction, it was noticed: (Balram Kumawat case, Scc pp. 639-40, paras 34-35)

34. In State of Maharashtra Vs. Natwarlal Damodardas Soni, , this Court was concerned with search and seizure of gold under the Customs Act and the Defence of India Rules. The Court was dealing with smuggling of gold into India affecting the public economy and financial stability of the country and in that context the Court applied the Mischief Rule. While interpreting the words "acquires possession" or "keeping" in clause (b) of Section 135(1) of the Customs Act, this Court observed that they are not to be restricted to "possession" or "keeping" acquired as an owner or a purchaser of the goods, observing: (SCC p.677, para 22)

22...Such a narrow construction-which has been erroneously adopted by the High Court-in our opinion, would defeat the object of these provisions and undermine their efficacy as instruments for suppression of the mischief which the legislature had in view. Construed in consonance with the scheme of the statute, the purpose of these provisions and the context, the expression "acquired possession" is of very wide amplitude and will certainly include the acquisition of possession by a person in a capacity other than as owner or purchaser.

39. Mr. Syed, therefore, in our opinion is not correct in contending that the advances made by Harshad Mehta to the appellants herein for the purpose of purchase of properties would amount to benami transactions whereof sub-section (1) of Section 4 of the Special Act shall apply.

45. It is contended by the learned counsel for the appellants Mr. Syed that if any of the properties or assets of the notified parties have no nexus with the illegal securities transactions, the same can be released from attachment or at least need not be sold.

46. It has further been argued that no evidence has been adduced that loans given by M/s. Harshad S. Mehta to his family members or monies used by Shri Harshad Mehta for purchase of his flat were acquired from the tainted funds. It is submitted by the appellants that unless it can be shown that the properties in question were acquired from the tainted funds they would be liable to be released from attachment. It is argued that the fact that the properties had been purchased much before the securities scam would go on to show that they had no nexus with the funds diverted therefrom.

47. In our opinion the arguments advanced on behalf of the appellants need to be rejected at the outset because a plain reading of the sections of the Special

Act would clearly point otherwise. In our opinion the attachment of all the properties in terms of sub-section (3) of Section 3 of the Special Act is automatic. The attachment restricts sale of the properties which have been acquired from illegal securities transaction. The sub-section specifically mentions that on and from the date of the notification, "any property, movable or immovable, or both", belonging to any person notified under the Act shall stand attached. The said sub-section does not provide for any qualification that the properties which are liable to be attached should relate to the illegal securities transactions in respect of which the Act was enacted. Had the intention of Parliament been so, it would have clearly mentioned it.

48. It is well settled that when the meaning of the words used in an Act is plain and clear, effect must be given thereto. This is supported by the decision of this Court in *L.S. Synthetics Ltd. Vs. Fairgrowth Financial Services Ltd. and Another*,

53. In our opinion the interpretation advanced by the appellants on the provisions would be a clear misreading of the Act. We must in this regard refer to the relevant provisions of the Act. Provisions of Section 3(2) should not be read into Section 3(3). Though Section 3(3) is dependent on Section 3(2) for its operation, but once Section 3(2) comes into operation, Section 3(3) becomes independent of it and accordingly the qualifications of Section 3(2) cannot be read into Section 3(3).

54. We must place emphasis on a plain reading of the said section. Had it been the intention of the legislature to attach only those properties acquired within the statutory period, it would have clearly said so. The statutory window period is only a relevant criterion for application of Section 3(2) and therefore has no bearing on the application of Section 3(3). A plain reading of Section 3(3) would suggest that all properties of the notified persons on the date of the said notification would automatically stand attached irrespective of the fact as to whether they had been acquired before, during or even after the statutory period.

55. A logical corollary of this would be that all income accruing or arising from the said property even after the date of attachment would also automatically stand attached. However, property acquired by a notified person after the notification under the Special Act cannot be attached. That property does not come within the purview of Section 3(3). (*Tejkumar Balakrishna Ruia Vs. A.K. Menon and another*,

25. Per Contra, Mr. Roy submitted that a literal construction of the said sections would show that no liability is fastened upon the petitioner with regard to any pre-deposit as a condition precedent for preferring an appeal. The learned Counsel relied upon *Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others*, and submitted that when there is a conflict between law and equity, it is the law which has to prevail.

26. In *Raghunath Rai Bareja (supra)* while interpreting sections 18, 31 and 34 of the DRT Act, it was held as follows:-

38. Learned Counsel for the respondent Bank then submitted that a purposive interpretation should be put to Section 31 of the RDB Act so that the Bank can recover its dues. He relied on the decisions of this Court in *Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others*, *Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another*, *Directorate of Enforcement Vs. Deepak Mahajan and another*, etc. We are afraid we cannot accept this contention. In fact, in *Allahabad Bank v. Canara Bank* the argument that a purposive interpretation should be put to the provisions of the RDB Act has been specifically rejected (vide para 34).

39. In *Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.*, this Court observed:

In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that the court has to see at the very outset is what does that provision say. If the provision is unambiguous and if from that provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear.

40. It may be mentioned in this connection that the first and the foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide *Swedish Match AB and Another Vs. Securities and Exchange Board, India and Another*. As held in *Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another*, the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result, vide *Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others*. Where the legislative intent is clear from the language, the Court should give effect to it, vide *Government of A.P. and Another Vs. Road Rollers Owners Welfare Association and Others*, and the court should not seek to amend the law in the garb of interpretation.

43. In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be

followed (see G.P. Singh's Principles of Statutory Interpretations, 9th Edn., pp. 45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.

46. The rules of interpretation other than the literal rule would come into play if there is any doubt with regard to the express language used or if the plain meaning would lead to an absurdity. Where the words are unequivocal, there is no scope for importing any rule of interpretation vide *Pandian Chemicals Ltd. Vs. Commissioner of Income Tax*,

47. It is only where the provisions of a statute are ambiguous that the court can depart from a literal or strict construction vide *Nasiruddin v. Sita Ram Agarwal*. What the words of a statute are plain and unambiguous effect must be given to them vide *Bhaiji Vs. Sub Divisional Officer, Thandla and Others*,

48. No doubt in some exception cases departure can be made from the literal rule of the interpretation e.g. by adopting a purposive construction, Heydon's mischief rule, etc. but that should only be done in very exceptional cases. Ordinarily, it is not proper for the court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible vide *J.P. Bansal Vs. State of Rajasthan and Another*, *State of Jharkhand and Another Vs. Govind Singh*, *In Jinia Keotin and Others Vs. Kumar Sitaram Manjhi and Others*, this Court observed that the court cannot legislate under the garb of interpretation. Hence there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the courts. In fact, judicial legislation is an oxymoron.

49. In *Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others*, this Court observed:

19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.

54. The function of the Court is only to expound the law and not to legislate vide *District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another*, . If we accept the interpretation canvassed by the learned counsel for the respondent we will really be legislating because in the guise of interpretation we will be really amending Section 31.

27. The submission on behalf of the bank appears to be based on equity rather than on the interpretation of sections. In *Nasiruddin and Others Vs. Sita Ram Agarwal*,) the Hon''ble Supreme Court observed:-

35. In a case where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.

28. In *E. Palanisamy Vs. Palanisamy (D) by Lrs. and Others*, the Hon''ble Supreme Court observed:-

Equitable considerations have no place where the statute contained express provisions.

29. In *Commissioner of Customs (Preventive), Mumbai Vs. M. Ambalal and Co.*, it has been held that a construction which permits one to take advantage of one's own wrong or to impair one's own objections under a statute should be disregarded. The interpretation should as far as possible be beneficial in the sense that it should suppress the mischief and advance the remedy without doing violence to the language.

30. In *B. Premanand and Others Vs. Mohan Koikal and Others*, it has been held that the function of the Court is not to legislate. The principles of interpretation are not principles of law but are only a methodology for explaining meaning of words used in a text. The observations of the Hon''ble Supreme Court in Paragraph 13 to 18 are of some relevance and importance in considering this matter and, accordingly, the said relevant paragraphs are reproduced hereinbelow:-

13. In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed. Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.

14. As the Privy Council observed (per Viscount Simon, L.C.):

...again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used.

15. As observed by this Court in *Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal*,

20. ...Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute....

16. Where the words are unequivocal, there is no scope for importing any rule of interpretation. It is only where the provisions of a statute are ambiguous that the court can depart from a literal or strict construction. Where the words of a statute are plain and unambiguous effect must be given to them.

17. No doubt in some exceptional cases departure can be made from the literal rule of the interpretation, e.g. by adopting a purposive construction, *Heydon case*, 76 ER 637 mischief rule, etc. But that should only be done in very

exceptional cases. Ordinarily, it is not proper for the court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible. It is for the legislature to amend the law and not the court.

18. In *Jinia Keotin and Others Vs. Kumar Sitaram Manjhi and Others*,) this Court observed:

48. ...The court cannot legislate under the garb of interpretation." Hence, there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the Courts. In fact, judicial legislation is an oxymoron.

31. The mischief rule was considered in *R. Venkatakrishnan Vs. Central Bureau of Investigation*,) in paragraph 56 which is reproduced hereinbelow:-

56. For the purpose of determining the question as to whether the Special Court had the jurisdiction to try the offences in question or not, in our opinion, the principle of purposive construction must be resorted to. The rule which is also known as the "mischief rule" enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs the courts to adopt that construction which suppresses the mischief and advances the remedy. Simply stated "the courts should identify the mischief which existed before passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified.

(Emphasis supplied)

32. In *Mandal Revenue Officer Vs. Goundla Venkaiah and Another*, the Hon"ble Supreme Court was considering the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 and it was held that the expression "land grabbing" is of very wide import. The Hon"ble Supreme Court considered the purpose of the legislation and the mischief which sought to be remedied in paragraph 19 which is reproduced hereinbelow:-

19. Since the basic objective of the Land Grabbing Act is to free the public as well as private land from the clutches of encroachers and unauthorized occupants, the provisions contained therein are required to be interpreted by applying the rule of purposive construction or mischief rule which was enunciated in Heydon Case and which has been invoked by this Court for construing different legislations. In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, S.R. Das, C.J. explained this rule in the following words:

22. It is a sound rule of construction of a statute firmly established in England as back as 1584 when Heydon case was decided that:

... for the sure and true interpretation of all statutes in general (be they penal or

beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. The true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.

33. The purposive construction cannot be applied in view of clear language in Section 20 and 21 of the DRT Act. Moreover, the right of appeal is a valuable right and it is the duty of the Court to preserve the right to prefer appeal. Each word in an enactment must play its own role. The right to prefer an appeal by a third party should be construed with respect to the context and other provisions of the Act. The right of appeal has been recognized by judicial decisions as right which vests in a suitor at the time of institution of the original proceeding. The right to prefer an appeal by a third party is also recognized under the Act. Such right to prefer an appeal by a third party is not conditional upon a predeposit as distinguished and opposed to an obligation created against the certificate debtor and imposing any such condition would result in curtailment of such right of a third party without an express provision contained in the statute. Such a provision in the statute must be express.

34. Although the submission of the opposite party is quite attractive and the anxiety expressed about the delay it would cause in execution proceeding in respect of the said property in view of the pendency of appeal is appreciated but having regard to the clear provision in the statute, a third party who is neither a borrower nor a guarantor and under no contractual obligation to discharge the debt could be required to make a pre-deposit u/s 21 of the DRT Act. The order rejecting the application for releasing the property from attachment, per se, do not and cannot make the petitioner "person liable to discharge the debt".

35. In view thereof, the revisional application succeeds and the order dated 31st October, 2011 is set aside.

36. The appeal filed by the petitioner being appeal No. 87 of 2010 is restored to file and to be heard and considered on merits. However, the order of attachment in respect of the property shall continue until the disposal of the appeal. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.