IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 1158/2025

M/s ACME Paper Ltd., Factory-Sehore, Registered Office-Herald House, 2nd Floor, 5-A, S.A. Bahadur Shah Jafar Road, New Delhi, through its Authorized Signatory Shri Naw Ratan Sewak, S/o Shri Bhawar Lal, Sewak, R/o 1/1, Munshi Zellar Rahim Lane, Haora Corporation, Saikia, Haora-711106, West Bengal.

....Appellant

Versus

1. Prabhat Kumar Mohiley, S/o Late Shri B. N. Mohiley, R/o Aadi Apartment, 1832, Wright Town, Jabalpur (M.P.)-482002.
2. Bank of Baroda, Regional Office Stressed Asset Recovery Branch, Wright Town, Jabalpur (M.P.)-482002.

....Respondents

Appeal Dy. No. 1159/2025

M/s ACME Paper Ltd., Factory-Sehore, Registered Office-Herald House, 2nd Floor, 5-A, S.A. Bahadur Shah Jafar Road, New Delhi, through its Authorized Signatory Shri Naw Ratan Sewak, S/o Shri Bhawar Lal, Sewak, R/o 1/1, Munshi Zellar Rahim Lane, Haora Corporation, Saikia, Haora-711106, West Bengal.

....Appellant

Versus

1. Rakesh Rai, S/o Shri G. L. Rai, R/o I.B. Road, near Sehore, Sehore (M.P.)-466001.
2. Pragya Patel, W/o Shri Shailendra Patel, R/o H. No. 21, Gram-Atarliya, Post-Vishankhedi, Tehsil-Icchawar, Sehore (M.P.)-466001.
3. Bank of Baroda, Regional Office Stressed Asset Recovery Branch, Wright Town, Jabalpur (M.P.)-482002.

....Respondents

Appeal Dy. No. 1160/2025

M/s ACME Paper Ltd., Factory-Sehore, Registered Office-Herald House, 2nd Floor, 5-A, S.A. Bahadur Shah Jafar Road, New Delhi, through its Authorized Signatory Shri Naw Ratan Sewak, S/o Shri Bhawar Lal, Sewak, R/o 1/1, Munshi Zellar Rahim Lane, Haora Corporation, Saikia, Haora-711106, West Bengal.

....Appellant

Versus

1. Bank of Baroda, Regional Office Stressed Asset Recovery Branch, Wright Town, Jabalpur (M.P.)-482002.
2. Rakesh Rai, S/o Shri G. L. Rai, R/o I.B. Road, near Sehore, Sehore (M.P.)-466001.

3. Pragya Patel, W/o Shri Shailendra Patel, R/o H. No. 21, Gram-Atarliya, Post-Vishankhedi, Tehsil-Icchawar, Sehore (M.P.)-466001.

....Respondents

Advocates, who appeared in this case:

For the appellant	Shri Akshat Agarwal, Advocate along with Shri V. K. Shukla, Advocate
For the respondents-Bank	Shri P. K. Srivastava, Advocate
For the respondent-auction purchasers	Shri Abhishek Kapariya, Advocate holding brief of Shri Shadab Alam, Advocate

JUDGMENT

Date of Pronouncement: 29.05.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The above mentioned three appeals have been filed by appellant u/s 20 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as "the RDB Act") against the common impugned order dated 04.06.2025 passed by the Tribunal below, whereby three appeals filed by three different parties u/s 30 of the said Act against the order dated 18.10.2024 passed by the Recovery Officer II, DRT, Jabalpur in TAEX No. 08/2005 have been allowed, therefore, these appeals are being decided by this common order.

2. The Recovery Officer vide the order dated 18.10.2024 had set aside and quashed the Sale proceedings pertaining to the auction conducted on 05.04.2023 in respect of the property being "Agricultural Land on Part of Khasara Nos. 70 admeasuring 1.4 acres, Khasara No. 71 admeasuring 3.33 acres, Khasara No. 72 admeasuring 4.78 acres, Khasara No. 74 admeasuring 2.38 acres, Khasara No. 75 admeasuring 0.50 acres, Khasara No. 76 admeasuring 0.30 acres, Khasara No. 77 admeasuring 0.25 acres, Khasara No. 82/2 admeasuring 0.06 acres &

Khasara No. 1159 / 79 admeasuring 1.0 acres, total area 14 acres situated at Gopalpur Road, PH No. 37, Inside to Sehore – Indore Road, Tehsil & District – Sehore (MP)"(for short hereinafter referred to as "subject property"). The Recovery Officer further directed cancellation of the registration in respect thereof in favour of the auction purchaser. Further, the Recovery Officer also directed the CH Bank to refund the amount of Rs. 5.54 Crores at the rate of 5% simple interest, per annum from 19.04.2023. Simultaneously, theRecovery Officer also directed the Appellant - CD to deposit Rs.2,82,53,210.79 on or before 11.12.2024 towards complete satisfaction of the Recovery Certificate in respect of the decree against the Appellant - CD.

3. The relevant facts of the present case are that the then Dena Bank filed a Suit for recovery of Rs. 48,12,586.83 with interests and costs before the Court of District Judge, Sehore against the appellant and one Shri B.K. Nopany, who were arrayed as Defendants No. 1 & 2 respectively. The Suit was subsequently transferred to the DRT, Jabalpur and was registered as T.A. No. 03/03. The said Transfer Application (Suit) filed by the respondent-Bank was decreed/allowed by the Tribunal below vide Judgment and decree dated 19.04.2005 and accordingly, the Recovery Certificate was issued, which was registered as TAEX No. 08/2005 before the Recovery Officer-II of the Tribunal below. However, the relevant portion of the said judgment/decree is as under:-

> *"The Defendant No. 1 and 2 shall jointly and severally pay a sum of Rs.48,12,586.83 and costs of the application to the Applicant Bank. The Defendants shall jointly and severally also pay interest @ 12% p.a. from 11.12.1985 within 30 days failing which the Bank shall have the right to recover by sale of charged/mortgaged/ hypothecated properties, as per process of law.*

Costs include the Advocate fee also as per rules applicable in the State."

4. It appears that during course of the execution, an auction was conducted on 05.04.2023 by the Recovery Officer in respect of the property in question, wherein Rakesh Rai and Pragya Patel were found to be highest bidders and the property in question was sold for a sum of Rs. 5.54 Crores. The auction purchasers thereafter filed an application seeking demarcation and physical possession of the auctioned property on 21.09.2023.

5. It is averred that the appellant filed an application dated 02.01.2024 before the Recovery Officer for setting aside of the entire auction proceedings. The said application was taken up for hearing by the Recovery Officer and an order dated 18.10.2024 was passed by the Recovery Officer and the auction proceedings were set aside and the auction conducted on favour of the aforesaid Auction Purchasers was cancelled. The Recovery Officer also directed for refund of the entire auction sale amount. In addition to it, the Recovery Officer also calculated the outstanding dues to be recovered from the appellant as Rs.2,82,53,210.79 as on 11.12.2024 and directed the appellant to deposit this amount towards full and final satisfaction of the Recovery Certificate. Against the said order, three different appeals were filed before the Tribunal below, which are as under:-

   i. **Appeal No. 15 / 2024** – It was filed by Shri Prabhat Kumar Mohiley before the DRT. Shri Prabhat Kumar Mohiley was erstwhile Law Officer / Nodal Officer in the respondent-Bank and after retirement, Shri Mohiley appeared in the proceedings before DRT and Recovery Officer as an Advocate for the auction purchasers.

ii. **Appeal No. 20 / 2024** - It was filed by Shri Rakesh Rai and Smt. Pragya Patel before the DRT, who were the successful auction purchasers.

iii. **Appeal No. 16 / 2024** – It was filed by the respondent-Bank i.e. Bank of Baroda.

6. The Tribunal below vide its final common order impugned dated 04.06.2025 has allowed the above mentioned three appeals filed by three different parties. Being aggrieved by the said order, the present appeals have been filed by the appellant.

7. Learned counsel for the appellant submitted that since the appellant has deposited the entire outstanding amount as calculated by the RO-II pursuant to the decree passed by the Tribunal below,. therefore, there arises no issue of any waiver or deposit as laid under Section 21 of the RDB Act, which is not disputed, therefore, no amount is required to be deposited by the appellant for entertaining the present appeals and the due amount requires determination and is the main issue being raised by the respondent-Bank, therefore, I am inclined to hear the present three appeals on merits. The three appeals involve different issues and hence are being dealt with under separate heads.

Appeal Dy. No. 1159/2025 (M/s Acme Paper Ltd. vs Rakesh Rai & Ors) and Appeal Dy. No. 1160/2025 (M/s Acme Papler Ltd. vs Bank of Baroda & Ors)

8. As the issues involved in these two Appeals are connected, therefore, both are taken up together.

9. Learned counsel for the appellant firstly submitted that the auction sale of the property was illegal and in this regard, it was stated that the execution proceedings were

initiated against the appellant being the defendant no. 1 and defendant no. 2 – Shri B. K. Nopany, who expired on 20.08.2020. It was further contended that legal heirs of Nopany were never brought on record. It was also contended that much after death of Nopany, a notice for settling sale proclamation dated 24.01.2023 was issued, but the same was not served on Late Nopany for the reason that Nopany had already expired and no attempt was ever made to implead or serve the notices on his legal heirs. In support of his contention, learned counsel has referred to Rule 53 of the second schedule to the Income Tax Act, 1961 and has stated that the respondent-Bank failed to comply with this mandatory provision before conducting the auction sale of the property in question.

10. Learned counsel further submitted that the entire auction as conducted by the Recovery Officer suffers with legal lapses and irregularities and is collusive and fraudulent on account of representation by Shri Mohiley both for Bank and auction purchasers, but the same has not been considered by the Tribunal below while passing the order impugned. In this regard, it was contended that that Shri Mohilay filed an Affidavit before the Recovery Officer seeking change of property description in the Sale Certificate from that advertised during the auction notices. It was further contended that the company against which the Recovery Certificate was issued is named M/s Acme Paper Private Limited, however, the property was reflected in the name of M/s Acme Paper Mill in the revenue records. However, Shri Mohiley stated before the Recovery Officer that both these entities are one and the same.

11. Learned counsel further submitted that the Recovery Officer vide order dated 08.12.2022 directed for issuance of notice for settling the terms of sale proclamation to appellant and further directed that it be served through speed post/publication/humdust and the Recovery Officer then vide order dated 24.01.2023 observed that notice could not be served as per tracking report to their respective addresses in Delhi and Kolkata. It was further contended that thereafter, the respondent-Bank filed newspaper clippings and as per the same, the publications were done in Bhopal and not in Delhi and Kolkata.

12. Learned counsel also submitted that in the order impugned passed by the Tribunal below, it is held that the application for setting aside the auction sale was barred by time under Rules 60 and 61 of the second schedule to the Income Tax Act and in support of his contention, the learned counsel has referred to Rule 11 & 87 of the said Act.

13. It was lastly canvassed on behalf of the appellant that the appellant had also vehemently raised objection with regard to the issue of quantification of the decretal amount under the Certificate by the Tribunal below while adjudicating the appeals filed by the Bank and the Auction Purchasers. It was further contended that the Tribunal below vide Judgment dated 19.04.2005 had allowed the transfer application filed by the respondent-Bank for recovery of Rs. 48,12,586/- along with costs and interest @ 12% p.a. from 11.12.1985 and the Recovery Officer accordingly calculated this amount as Rs.2,82,53,210.79/- as on 11.12.2024, but the Tribunal below has accepted the erroneous calculation made by

the Bank, which was based on compounding contractual rate of interest amounting in excess of Rs. 32.00 Crores.

14. Learned counsel for the Bank in response supported the impugned Judgment and stated that the same does not call for any interference on the facts of this case.

15. Learned counsels for respondents, firstly supported the impugned Judgment by stating that the application for setting aside the sale by the appellant was time barred and thus the same cannot be entertained. Learned counsel has relied upon Rule 61 and has stated that the objection against a sale can only be made within 30 days by a defaulter on grounds of material irregularity. Learned counsel has further relied upon proviso (b) to state that for assailing the sale, the defaulter also has to deposit the entire decretal amount, which is Rs. 32,05,61,552/-, which is not satisfied in the present case.

16. Learned counsels for respondents further submited that the property sold under the auction belongs to the Appellant No. 1 and thus the alleged non-service of auction notice to the original Defendant No. 2 does not vitiate the sale, in case the application for setting aside the sale has not been preferred by the legal heirs of the deceased Defendant No. 2.

17. On this issue of quantification, learned counsel for respondent-Bank submitted that the Tribunal below vide its judgment and decree dated 19.04.2005 had directed for payment of interest @ 12% p.a. between 11.12.1985 and upto 30 days from 19.04.2005. It was further contended that thereafter, the Bank was given liberty to recover the outstanding amount by sale of mortgaged properties, as per process of law, which according to him would also include the right to calculate interest on a

compounding basis. It was thus prayed that the present appeal has no merit and deserves to be rejected.

18. The learned counsel for the auction purchasers has adopted the arguments as advanced by the learned counsel for the Bank and prays that these appeals do not warrant any indulgence by this Appellate Tribunal. In addition to the arguments by the Bank, learned counsel for auction purchasers submitted that the auction purchasers are bonafide purchasers, who have deposited the entire auction amount of Rs. 5.54 Crores. Thereafter, the sale stood confirmed and even the Sale Certificate was issued. It was thus contended that there was no occasion for the Recovery Officer to set aside the auction sale, therefore, it was prayed that the appeals filed by the appellant may be dismissed with heavy costs.

19. Having heard the learned counsels for the parties and considering the material available on record, it appears that there are several disputed issues of facts including serious allegations against each party of irregularities and misconduct. However, I do not propose to enter into these rival contentions for the reasons recorded below.

20. Undisputedly, the original suit was filed by the Bank against the Defendant No. 1 (Appellant herein) and Defendant No. 2 – Shri B.K. Nopany, who later expired on 20.08.2020 during the course of execution proceedings i.e much after the Judgment/decree was passed & the recovery certificate was drawn and as per the said recovery certificate, both the defendants were jointly and severally liable to pay the decretal amount along with interest as awarded by the Tribunal below vide judgment and decree dated 19.04.2005. However, during the course of execution proceedings, the Defendant No. 2- Shri B. K. Nopany expired. It is further an admitted

position that the legal heirs of the Defendant No. 2 were never brought on record. In this regard, the Rules 52 and 53 of the second schedule to the Income Tax Act, 1961 are relevant, which are quoted hereinbelow:

> *"**52. Sale and proclamation of sale** – (1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.*
>
> *(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.*
>
> ***53. Contents of proclamation** – A proclamation of sale of immoveable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible, -*
>
> *(a) the property to be sold;*
>
> *(b) the revenue, if any assessed upon the property or any part thereof;*
>
> *(c) the amount for the recovery of which the sale is ordered;*
>
> *(cc) the reserve price, if any, below which the property may not be sold; and*
>
> *(d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property."*

22. From the above provisions, it is clear that before effecting the auction sale, a notice for settling terms of proclamation of sale has to be issued to the defaulters, i.e., the Certificate Debtors under the Recovery Certificate. The compliance of this provision cannot be dispensed with/ignored in any circumstances, as the same would entitle the certificate debtor/borrower/mortgagor or guarantor to take appropriate steps in accordance with law before the assets are sold. Needless to mention that the provision of a legal remedy is the most inalienable right available to every person including a defaulter when adverse steps

are taken against the said person. Thus, these provisions have to be applied mandatorily always.

23. As per the Recovery Certificate dated 19.04.2005, the address of the defendant No. 2 is described as "Shri B.K. Nopany, C/o M/s Bilaspur Spinning & Weaving Mills Ltd., 12-Government Press (East), Opp. Raj Bhavan, Calcutta", but from perusal of Annexure A-13 at page no 81 of the Appeal Dy. No. 1160/2025, which is copy of publication of notice for setting a sale proclamation, it reveals that the said notice was published in a Hindi Newspaper–Patrika, Bhopal edition on 18.12.2022. It is to be noted that the said newspaper is a daily Hindi newspaper, but the notice for settling a sale proclamation was published in English language. However, no document has been placed on record by the Bank, which may shows that the said notice was ever served on the defendant no. 2 or his legal heirs in Kolkata. The same fate was met by the Sale Proclamation dated 17.02.2023. These facts are in addition to undisputed position that defendant no. 2 had expired way back in the year 2020 and his legal heirs were never brought on record by the Bank. Thus in my view, these facts by themselves render the entire process of the subject auction sale completely illegal.

24. As per Rule 53 of Second Schedule of Income Tax Act, proclamation of sale shall be drawn up after notice to defaulter. In the present case, defendant no. 2-B. K. Nopany had expired on 20.08.2020. The proceedings in question are of the period from December 2022 – April 2023. In such circumstances, the process initiated against a dead cannot be said to be lawful, as the defendant no. 2 was required to be mandatorily served. After his death, his Legal heirs were required to be mandatorily brought on record. Till date no such steps

have been taken by the Bank. There can be no second thought that any proceedings against a dead person is non-est and the moment it comes to the notice of the Authority, the entire proceedings held after the date of death will become nullity in the eyes of law. Another issue to which the attention of the court has been drawn in this case is that the property sold is un-identifiable. This has resulted in another irregularity in the present case. The auction purchaser sometimes claimed to be in possession of the property in question, but sometimes prayed for handing over the possession after demarcation in the same breath. It is not in dispute that part of certain Khasara Numbers have been sold in auction. The boundaries of the subject property constituting several khasara numbers still remain an unidentifiable. The interesting question thus arises, as to whether a sale can be held to be valid in a case where the property sold cannot be identified. Sale of an un-identifiable property is certainly bad in law. Vague or missing boundary details render a sale of the property to be void. This factum of un-identifiable property having been auctioned again goes to the roots of invalidity and untenability in the eyes of law. Once it is found that the foundation itself was bad in law, the superstructure built over such a foundation cannot be sustained. The procedure adopted in the course of conducting the auction was vitiated by material irregularities and thus it is held that the sale was rightly set aside and quashed by the Recovery Officer vide Order dated 18.10.2024. Thus the order impugned to this extent is liable to be set aside.

25. Having held the auction sale to be bad in law, another issue, which arises for consideration is the other findings returned by the Tribunal below in the order impugned.

The Tribunal below vide its order impugned has held as under:-

a. The DRT has relied on Section 128 of the Indian Contract Act, 1872 which declares that the liability of the surety is co-extensive with that of the principal debtor. The DRT relying on this provision has held that a secured creditor can execute the decree against the principal debtor, i.e. the appellant herein. The Tribunal below records that the appellant herein was represented through an Advocate before the auction was conducted and thus the requirement of service of notice was complete.

b. The Tribunal below has further stressed on the fact that even to this date, none of the legal heirs of the deceased Defendant No. 2 have come forthwith an objection against the sale and thus, the appellant herein cannot bank on the shoulders of the deceased Defendant No. 2.

c. Another issue that has been considered by the Tribunal below while setting aside the Order dated 18.10.2024 passed by Recovery Officer is as to whether the Recovery Officer exercised a power of review over its own orders of conducting and confirmation of the auction sale. The impugned order holds that the setting aside of sale amounted to review, which is beyond jurisdiction of the Recovery Officer.

d. The impugned Order further holds that the application seeking setting aside of sale was time barred under Rules 60-61 of the second schedule to the Income Tax Act.

26. In my considered opinion, the first two issues do not arise for consideration once it is declared that the auction sale conducted by the Recovery Officer was nonest as it suffered from material irregularities. This Appellate Tribunal finds that submissions of the learned counsels for the Bank and the auction purchasers effectively seek to legitimize an illegal act by relying on the events which transpired subsequent to the illegal act itself. I do not agree with these submissions and thus the same are rejected.

27. Further, even the legal issues with regard to the jurisdiction of the Recovery Officer as well as the issue of limitation need not detain this Appellate Tribunal for long. Firstly, the impugned Order is incorrect in holding that the Recovery Officer does not have any power to review. This finding is against the Rule 87 of the second schedule to the Income Tax Act, which prescribes that the powers of review bestowed upon the Recovery Officer to correct any apparent mistake on the record. Thus, once the Recovery Officer has found that the notices for sale proclamation and the auction were not served on Defendant No. 2, the Recovery Officer was well within its jurisdiction to address the errors apparent and take such remedial measures as are available in law.

28. I have also given my thoughtful consideration to the fact, as to whether the legal objection of limitation arises in the present case as prescribed under Rules 60-61 of the second schedule of the Income Tax Act. However, considering the peculiar facts presented in this case, where the irregularities are found in conduct of the auction itself, I am inclined to agree with the findings by the order dated 18.10.2024 passed by the Recovery

Officer. Once it is found that the auction proceedings by itself was non-est, the issue of limitation cannot arise.

29. The last issue which needs to be addressed is the issue of quantification of the decretal amount. While the Recovery Officer had calculated the amount as Rs. 2,82,53,210.79/-, the Tribunal below in the order impugned has accepted the calculation offered by the Bank of Rs. 32,05,61,552/-, which is against the Recovery Certificate dated 19.04.2005. A perusal of the Recovery Certificate shows that the amount directed to be recovered from the defendants was a sum of Rs. 48,12,586.83 and interest @ 12% p.a. from 11.12.1985 and costs. This payment was directed to be made within 30 days, failing which the Bank was given liberty to recover the dues in accordance with law and the amount calculated by the Recovery Officer pursuant to the recovery certificate dated 19.04.2005 issued by the Tribunal below is stated to have been deposited by the appellant.

30. In my considered opinion, it is settled principle of law that an executing court cannot go behind the decree in the course of execution proceedings. The fact in this regard is clear that the judgment and Recovery Certificate both dated 19.04.2005 had attained finality, as the same was never challenged by any of the parties. The Recovery Certificate does not contemplate grant of compound interest. In such a situation, there was no occasion for the Bank to seek compound interest. The Tribunal below while sitting in appeal could not have travelled beyond the judgment and Recovery Certificate dated 19.04.2005 and could not amend or alter or disturb the findings. Moreover, in para 19 of the judgment dated 19.04.2005 the Tribunal below had considered the bank's claim of

pendentilite and future interest @ 18% per annum as per agreement and had placed reliance on AIR 2001 SC 3095 Central Bank of India Vs. Ravindra and others and in para 20 of the said judgment, after due consideration had awarded the pendentilite and future interest @ 12% per annum. Any attempt to amend, alter or disturb the findings of the Tribunal below while exercising its original jurisdiction, which has attained finality, by the DRT while sitting in appeal is unsustainable and untenable in the eyes of law. Any other interpretation would effectively mean to rewrite the Judgment and Recovery Certificate which is impermissible in law.

31. In view of the above, the impugned common order dated 04.06.2005 passed by Tribunal below is hereby set aside. Consequently, Appeal Dy. No. 1159/2025 and Appeal Dy. No. 1160/2025 are allowed and the Order dated 18.10.2024 passed by the Recovery Officer is restored. Since the appellant has deposited the quantified amount under the Recovery Certificate on 30.11.2024 in terms of order passed by Recovery Officer dated 18.10.2024 as noted in the Recovery Officer's Order dated 18.12.2024, the subject execution proceedings stands closed as against certificate debtors, as the Recovery Certificate stands satisfied in full. The parties are directed to take appropriate steps accordingly.

Appeal Dy. No. 1158/2025 (M/s Acme Paper Ltd. vs Prabhat K. Mohiley)

32. Learned counsel for the Appellant lastly submitted that Shri Mohiley was an officer of the Bank and appeared in the very same execution proceedings as an authorized representative of the Bank, from which this appeal arises. Learned counsel further submitted that Shri Mohiley was in fact named as the Nodal Officer/law officer of the Bank in the proclamation of sale notice dated 17.02.2023

(Annexure A/16 of the Appeal Dairy No. 1159/2025) and had been appearing as an officer of Bank as reflected in the order sheets of Recovery Officer. It was also submitted that after the auction was concluded, Shri Mohiley filed an affidavit dated 09.05.2023 seeking change in the particulars of the Sale Certificate, which was stated in the auction notice. Learned counsel has thereafter referred to the order sheets passed by the Recovery Officer, wherein Akshita Mohiley, daughter of Shri Mohilay (order dated 29.05.2023 and subsequent orders) and Shri Prabhat Mohiley (order dated 03.10.2023 and subsequent orders) appeared as an advocate for the auction purchasers in the execution proceedings. The appellant further submitted with vehemence that after retirement of Shri Mohilay from the Bank, he filed Vakalatnama along with his daughter representing the same auction purchaser in these proceedings as an advocate. With these facts, learned counsel submitted that the interference with the order dated 18.10.2024 of the Recovery Officer was uncalled for and thus it was prayed that the order impugned passed by the Tribunal below may be set aside.

33. Learned counsel for Shri Mohiley has supported the impugned order and stated that the Tribunal below was completely justified in expunging the remarks against Shri Mohiley as there is no conflict of interest between the Bank and the auction purchasers.

34. From the perusal of the order dated 18.10.2024 passed by the Recovery Officer, it appears that the bone of contention is with regard to paragraph 7 of the said order, which is as under:-

> *"7. It is also seen that the conduct of Sh. P. K. Mohiley, Advocate (who was earlier in the service of Bank of Baroda) in this matter is also strange and probably against the professional ethics. Perusal of record reveal*

> *that he had been continuously appearing on the behalf of CH Bank for last several years and was instrumental in conduct of entire Auction proceedings till the time he was in service. After his retirement from the services from the CH Bank, he suddenly started appearing on the behalf of Auction purchaser. The CH Bank and Auction purchaser have different roles to play and their complicity in commission of any statutory activity, does raise eyebrows, and certainly not a healthy practice and deserves to be deplored. An appropriate order in regard shall be passed later."*

35. From the above, it is clear that no effective order had been passed by the Recovery Officer, therefore, the same was not required to be interfered with by the Tribunal below, but the Tribunal below vide order impugned has held that the interests of the Bank and an auction purchaser have no conflict or the Bar Council of India Rules permit such engagement, which is not sustainable because the Recovery Officer has merely observed that it shall pass an appropriate order later.

36. The above order passed by the Recovery Officer is merely a prima facie observation. The Recovery Officer had not reached at any definite finding and in such case the appeal filed by Shri P K Mohiley before Tribunal below was highly premature. There was no occasion for the Tribunal below while adjudicating the appeal to probe into the question as to whether the Bank and Auction purchasers have adverse interest or not or whether same counsel can appear for both or not in the absence of any such finding by the Recovery Officer. In this view of the matter, without commenting on the merits of this issue, I am inclined to dispose of and allow this Appeal Dy. No. 1158/25 by setting aside the observations, findings and directions passed by the Tribunal below in this regard in Appeal No. 15/2024 before it and direct that the Recovery Officer shall be at liberty to deal with the issue in accordance with law without being influenced by the observations made by the Tribunal below in the order

impugned. The parties shall be at liberty to place reliance on additional material and documents, if any before the Recovery Officer. No order as to costs.

21. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.

CHAIRPERSON

VN GIRI,PS