

IN THE DEBT RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 19th day of June, 2026

**PRESENT: HON'BLE MR. JUSTICE G. CHANDRASEKHARAN
CHAIRPERSON**

MA No.78/2018

**(arising out of Appeal No.13/2016 in DRC No.5/2013 in OA No.84/2011
on the file of DRT-II, Chennai)**

Between

M/s Kotak Mahindra Bank Ltd.,
Rep. by its Vice President,
Mr. G. Ramachandra Srikanth,
Dass India Tower, II Floor,
No.3, II Line Beach, Parrys,
Chennai 600 001.

Now Place at

Regional Office, No.39, 2nd Floor,
Ceebros Centre, Montieth Road,
Egmore, Chennai 600 008.

.....Appellant Bank

And

1. M/s Ravishankar Industries Pvt. Ltd.,
Rep. by its Managing Director,
Mr. A. Manohar Prasad,
No.3, Sarangapani Street,
T. Nagar, Chennai 600 017.

2. A. Manohar Prasad,
S/o A.Anand Rao,
No.3, Sarangapani Street,
T. Nagar, Chennai 600 017.

....Respondents

Counsel for Appellant Bank : M/s Ramalingam & Associates
Counsel for 1st Respondent : None
Counsel for 2nd Respondent : M/s S. Prince Pari

ORDER

1. This appeal is filed under Section 20 of the RDB Act, against the order of the Learned Presiding Officer, DRT-II, Chennai dated 6.9.2017 passed in Appeal No.13/2016 in DRC No.5/2013 in OA No.84/2011.
2. The facts leading to filing of this appeal, in brief, are that appellant bank filed OA No.84/2011 against M/s Ravishankar Industries Pvt. Ltd. and two others for recovery of a sum of Rs.15,14,19,212/- and for other reliefs. This OA was allowed and Debt Recovery Certificate in DRC No.5/2013 was issued. During the recovery proceedings, learned Recovery Officer passed an order on 25.6.2016, ordering civil arrest against the certificate debtor No.3/defendant No.3 viz., Mr. A. Manohar Prasad, second respondent in this appeal. Against the order of the learned Recovery Officer, respondents filed Appeal No.13/2016. Learned Presiding Officer, DRT-II, Chennai allowed this appeal on the ground that bank had to take steps to recover the debt due by way of sale of secured and non secured assets and thereafter only it can proceed for civil arrest. That led to filing of this appeal.

3. Learned Counsel for the appellant bank submitted that appellant had taken several efforts to sell the attached property and not successful for the reason that documents connected with those properties could not be secured. Therefore, properties could not be brought for sale. The respondents, especially the second respondent is engaged in business and is earning money and possesses various movable and immovable properties, but he did not come forward to settle the loan account. Learned Recovery Officer directed the respondents to disclose the particulars of the assets on oath by way of an affidavit, but, that was not done by the respondents. Respondents deliberately avoiding disclosure of properties for taking steps for sale and realization of the debt amount. Still appellant bank is not able to realize the debt due from the respondents. Thus, he submitted that the order of the learned Presiding Officer be set aside and the order of the learned recovery officer be restored, consequently, second respondent be lodged in civil prison for enforcing the debt due. In support of his submission, he pressed into service the decision of Hon'ble Supreme Court of India, **in re, Bhudev Mallick Alias Bhudeb Mallic and another in Civil Appeal No.2248/2025** for the proposition that, "Imprisonment of a judgment-debtor is no doubt a drastic step and would prevent him from moving anywhere he

likes, but once it is proved that he had willfully and with impunity disobeyed an order of injunction, the court owes it to itself to make the judgment-debtor realise that it does not pay to defy a decree of a court. Failure to exercise this power in appropriate cases might verily undermine the respect for judicial institutions in the eyes of litigants”.

4. In reply, learned counsel for the second respondent submitted that second respondent was adjudicated as insolvent in IP No.5/2013. Thereafter, second respondent filed Application Nos.298 and 299/2018 before the Hon’ble High Court of Madras for annulling the adjudication of the second respondent as insolvent on 28.9.2015 in IP No.5/2013 and to stay further proceedings in IP No.5/2013. Hon’ble High Court of Madras by its order dated 14.6.2021, set aside the order adjudicating the second respondent as insolvent and allowed the applications 298 and 299/2018. Thus, the order adjudicating the second respondent as insolvent was annulled. Thereafter, appellant bank filed OSA No.268/2021 against the order passed in Application Nos.298 and 299/2018 wherein Hon’ble Division Bench of High Court of Madras passed an order on 16.8.2021, staying the order passed in annulling the second respondent, as insolvent.

5. It is further submitted that during the final disposal of the OSA No.268 and 269/2021, Hon'ble Division Bench of High Court of Madras had given a split verdict o 29.4.2025 i.e., one Hon'ble Judge set aside the order of the Hon'ble Single Judge in Application Nos.298 & 299/2018 in I.P.N.5/2013 and allowed the appeals and the other Hon'ble Judge dismissed the appeals, confirming the annulment of adjudication of the second respondent as insolvent. Therefore, the matter was referred to the third Judge. Hon'ble third Judge, confirmed the order of the learned Judge, who allowed the appeal. In effect, appeal filed against the order annulling the adjudication of the 2nd respondent as insolvent was allowed and the order passed in Applications 298 and 299/20213 in IP No.5/2013 was set aside.

6. Learned counsel for the second respondent pressed into service the decision of the Hon'ble Supreme Court of India, in re, **Jolly George Varghese and another Vs. The Bank of Cochin reported in (1980) 2 SCC 360** for the proposition that, "to be poor, in this land of daridra Narayana, is no crime and to 'recover' debts by the procedure of putting one in prison is too flagrantly violative of [Art. 21](#) unless there is proof of the minimal fairness of his willful failure to pay in spite of his sufficient means. There must be some element of bad faith beyond mere

indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it”.

7. Technically, the second respondent is declared as insolvent, as per the order passed in IP No.5/2013 and confirmed in OSA Nos.268 and 269/2021. He cannot be arrested and lodged in civil prison for recovery of dues. Appellant has to proceed only against the properties – movables or immovables.
8. I have considered the rival submissions and perused the records.
9. Issue now to be decided is whether the order of Civil arrest can be passed against a person, who is declared as insolvent. Though the provisions of CPC are not applicable to the proceedings before DRT/DRAT, principles of CPC is always applicable. Section 55(3) of CPC mandates that “when a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he may be discharged, if he has not committed any act of bad faith regarding the subject of the application and if he complies with the

provisions of the law of insolvency for the time being in force.” Here, in this case, the 2nd respondent is a declared insolvent.

10. Learned Counsel for the appellant bank brought to my notice that even if second respondent was declared as insolvent, he has to get protection order under Section 25 of ‘The Presidency-Towns Insolvency Act, 1909’ to avoid arrest. Without obtaining the said protection, he cannot seek exemption from arrest. This section reads as follows:

25. Protection order.-

- (1) Any insolvent who shall have submitted his schedule as aforesaid may apply to the Court for protection, and the Court may, on such application, make an order for the protection of the insolvent from arrest or detention.
- (2) A protection order may apply either to all the debts mentioned in the schedule or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.
- (3) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release:

Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled.

- (4) Any creditor shall be entitled to appear and oppose the grant of a protection order, but the insolvent shall be prima facie entitled to such order on production of a certificate signed by the official assignee that he has so far conformed to the provisions of this Act.
- (5) The Court may make a protection order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interests of the creditors.

11. Arrest or detention of defaulter is dealt under Part V of Second Schedule of Income Tax Act, 1961. It is necessary to extract the relevant sections for better understanding.

73. (1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer, has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison and unless the Tax Recovery Officer, for reasons recorded in writing, is satisfied —

- (a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after the receipt of the certificate in the office of the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of this property, or
- (b) that the defaulter has, or has had since the receipt of the certificate in the office of the Tax Recovery Officer, the means to pay the arrest or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

- (2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.
- (3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.
- (4) Every person arrested in pursuance of a warrant of arrest under sub-rule (2) or sub-rule (3) shall be brought before the Tax Recovery Officer as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

12. Procedure to be followed by the Tax Recovery Officer under Rule 73, in

brief are, as follows:

- a) Notice has to be served on the defaulter, calling upon him to appear before him and show cause why he should not be committed to the civil prison.
- b) Before issuing this notice, Tax Recovery Officer should satisfy himself that,
 - i) The defaulter with the object or effect of obstructing the execution of the certificate, dishonestly transferred, concealed or removed any part of the property.

- ii) Defaulter has had means to pay the amount or some substantial part thereof and refuses or neglects to pay the amount.
 - iii) Defaulter with a view to delay the execution of the certificate is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.
13. From the affidavit filed by the Manager of the appellant bank, it is clear that despite the attachment of the property, bank is not able to obtain copies of title documents for the reason that debtors inherited the property by virtue of a 'WILL' dated 27.9.1990. Despite the order passed by the Tribunal to disclose the assets on oath by way of an affidavit, respondents had not filed any affidavit disclosing the assets. Respondents especially the second respondent owes various businesses which have movable and immovable properties. In spite of that, respondents neither paid the amount due nor disclosed the assets. In the absence of specific details about the assets, bank is not able to proceed further. Therefore, it is prayed that unless civil arrest is ordered, respondents will not pay the amount. It is also referred that respondents were directed to deposit certain amount and accordingly a sum of Rs.25.00 crores was deposited as per the order of the Hon'ble Supreme Court of India. It shows that despite having capacity to pay the

amount, respondents are not paying the amount. On this ground, appellant bank prayed for civil arrest of the second respondent.

14. We have also found that as on date, the second respondent is declared as insolvent. The Presidency Towns Insolvency Act, 1909 states that an insolvent has to apply for protection order from the Court to avoid arrest or detention. Section 24 requires that an adjudged insolvent has to submit to the Court a schedule, verified by an affidavit, in such form and containing such particulars of and in relation to his affairs as may be prescribed within a stipulated time. If he fails to comply with the requirement, Court may, on the application of the Official Assignee or any creditor, make an order for his committal to civil prison. The insolvent, who submitted his schedule as required under Section 24, shall have to apply to the Court for protection for avoiding arrest. However, in this case, second respondent has not obtained any order of protection as required under Section 25 of the Presidency – Towns Insolvency Act, 1909.
15. While dealing with Section 31 of Provincial Insolvency Act, 1920, which is *pari materia* with Section 25 of the Presidency – Towns Insolvency Act, 1909, Hon'ble High Court of Madras, in re, R. **Saravanan Vs. E. Raju**

in **CRP (NPD) MD 1964 of 2008** held that, “adjudication order without protection order does not prevent the judgment debtor’s arrest. Only if the judgment debtor obtains a protection order under Section 31 of the Provincial Insolvency Act, release from arrest will be considered by the Execution Court.”

16. Reiterating this position, Hon’ble High Court of Madras in re, **N. Murugan Vs Ponnammal in CRP (NPD) (MD) No.388/2013** held that, “Section 31 of the Provincial Insolvency Act, 1920 enables the insolvent to get the benefit, only by way of a protection Order. Petitioner cannot be prevented from being arrested until he applies to the Court for a protection order”. Undoubtedly, in this case, second respondent has not obtained any protection order under Section 25 of the Presidency – Towns Insolvency Act, 1909, from the Court. The appellant bank made out a ground that despite having means to pay the amount due, second respondent did not pay the amount nor disclosed the assets in spite of directions from the Tribunal.
17. Therefore, this Tribunal is of the view that only an order of arrest for lodging the second respondent in civil prison would advance the cause

of the appellant bank in recovering its legitimate due from the respondents.

18. In this view of the matter, order of the Learned Presiding Officer, DRT-II, Chennai dated 6.9.2017 passed in Appeal No.13/2016 in DRC No.5/2013 in OA No.84/2011 is set aside. Consequently, order of the learned Recovery Officer dated 25.6.2016 in DRC No.5/2013 in OA No.84/2011 is restored. Learned Recovery Officer is directed to proceed further as per his order dated 25.6.2016 made in DRC No.5/2013 in OA No.84/2011 and in the manner, as known to law.
19. **In the result**, Appeal MA 78/2018 is allowed, with the costs of the appellant bank.
20. Pending IAs, if any, stand closed.

[Dictated to PS (SN) transcribed by him, corrected, signed and pronounced by me in open court, this 19th June, 2026)

Sd/-

**(JUSTICE G. CHANDRASEKHARAN)
CHAIRPERSON**