IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 06th of July, 2026

PRESENT: Hon'ble Mr. *Justice G.* Chandrasekharan
CHAIRPERSON

M.A: 1/2024

(Appeal No.4/2011 in DRC No.247/IB in O.A. No.99 of 2001 on *the file of DRT-I, Ernakulam)*

BETWEEN

Suresh Kumar P.K.
aged 55 years,
S/o Late Krishna Menon
Palakkot House, Maneedu P.O.,
Piravom, Ernakulam District,
Kerala, PIN-686726.

... Appellant

AND

1. The Manager, Indian Bank
East Nada, Kodungalloore,
Thrissur District, Kerala,
PIN-680664.

2. Dasco Electricals,
Proprietor, Smt. M.B. Jagadamma
W/o Kottarathil Kabeer Das,
Door No.11/78, Pattalam Road
Kochi, Kerala, PIN-682001.

3. Smt. M.B. Jagadamma
W/o Kottarathil Kabeer Das,
Door No.11/78, Pattalam Road
Kochi, Kerala, PIN-682001

4. K.R. Kabeer Das, S/o Raman
Door No.11/78, Pattalam Road
Kochi, Kerala, PIN-682001.

... Respondents

Counsel for Appellants : Mr. C. S. Manu and Mr. D. Durairaj

Counsel for Respondent Bank : Mr. P. V. Murlidhar

ORDER

1. Aggrieved against the order passed by the Learned Presiding Officer, DRT-I, Ernakulam in Appeal No. 4/2011 in DRC No. 247/IB in OA No. 99/2001, this Appeal is filed.

2. Learned Counsel for the Appellant submitted that the 4th Respondent, Certificate Debtor, purchased the property in dispute, on 29.12.2005. He availed the loan facilities from the State Bank of Travancore by mortgaging the property purchased, in the year 2008. Since the loan amount was not repaid, the State Bank of Travancore filed OA 105/2008 for recovery of loan amount. During the pendency of OA 105/2008, the Appellant purchased the property from Respondent No.4 after clearing the dues of the State Bank of Travancore, to a tune of Rs.19.10 Lakhs. This amount was paid in two tranches of Rs.10 Lakhs on 26.03.2010 and Rs.9.10 Lakhs on 30.03.2010. On the basis of these payments, final order was passed in the OA 105/2008 on

21.04.2010 and the State Bank of Travancore issued confirmation letter of settlement on 20.04.2010. Thus, by virtue of this purchase, the Appellant became the absolute owner of this property and the Appellant is in possession and enjoyment of the property.

2.1 The Appellant was surprised to receive an order of attachment in IA 1291/2010 passed by the Recovery Officer in DRC No.247/IB. On enquiry, it was found that the Certificate Debtor had obtained a loan of Rs.2.40 Lakhs from the first Respondent Indian Bank, in respect of which, Original Application in OA 99/2001 was filed for recovery of loan dues, and an order was passed on 14.05.2001 for Rs.12,22,061/- with interest @ 19.75% p.a., on Rs.4,94,177/- from 01.05.2001. On the basis of the final order, the DRC No. 247 was issued, and a Demand Notice was issued on 05.04.2002.

2.2 The Appellant came to know about the attachment while attempting to remit the tax. He filed IA 2253/2010 claiming right over this property, and that was dismissed on 20.01.2011 by the Recovery Officer. An Appeal was filed under Section 30(1) of the RDB Act, 1993, against the dismissal of IA 2253/2010, being Appeal No. 4/2011. The said Appeal was also dismissed on 31.10.2022. Thus, this Appeal is filed to set aside the order passed in Appeal No. 4/2011.

2.3 Continuing his submissions, Leaned Counsel for the Appellant submitted that, the facts narrated above clearly show that the Appellant is a *bonafide* purchaser without any knowledge of the recovery proceedings in OA 99/2001. He is a *bonafide* purchaser for value. Without considering his valuable rights, the Recovery Officer dismissed his Claim Petition, and the Learned Presiding Officer also dismissed the Appeal in Appeal No.4/2011. He prayed for setting aside the aforesaid orders passed and allowing this Appeal.

3. In answer to this submission, Learned Counsel for 1st Respondent submitted that, while disposing of OA 99/2001, the Learned Presiding Officer empowered the first Respondent Indian Bank to proceed against the

Certificate Debtors, personally and also from their other assets, in case the sale proceeds of the Schedule properties were inadequate to satisfy the debt due. By virtue of this order, the first Respondent is empowered to attach the property belonging to the 4th Respondent, Certificate Debtor, for sale in recovery proceedings. Only with a view to defeat the claim of the secured creditor, 4th Respondent sold the property to the Appellant. It amounts to a fraudulent transaction under Section 53 of the Transfer of Property Act.

4. In reply to this submission, Learned Counsel for the Appellant brought to the notice the decision of this Tribunal in **Sri. H. Amarnath vs. Kotak Mahindra Bank and Ors.**, reported in *(2025) ibclaw.in 175 DRAT*, as to the intent and purpose of Section 53 of the Transfer of Property Act, and submitted that the said provision would not apply to the facts of this case.

5. Considered the rival submissions and perused the records.

6. The facts narrated and recorded above indicate that, in OA 99/2001 filed by the first Respondent Indian Bank against Dasco Electricals and two others, a final order was passed on 14.05.2001 directing the Defendants therein to pay Rs.12,22,061/-. The order further reads that, *"in case the sale proceeds of the decree scheduled properties is inadequate to satisfy the debt above, such other amounts be realized from the defendants personally and also from their other assets."*

7. There is no dispute with regard to the fact that the property now in dispute is not a secured asset. It is, therefore, pertinent to refer to Section 19 (3A), (4) and (4A) of the RDB Act, 1993, with regard to the Bank's right to proceed against the unsecured asset, which are extracted below:-

> "(3A) Every applicant in the application filed under sub-section (1) or sub-section (2) for recovery of debt, shall—
>
> > (a) state particulars of the debt secured by security interest over properties or assets belonging to any of

the defendants and the estimated value of such securities;

(b) if the estimated value of securities is not sufficient to satisfy the debt claimed, state particulars of any other properties or assets owned by any of the defendants, if any; and

(c) if the estimated value of such other assets is not sufficient to recover the debt, seek an order directing the defendant to disclose to the Tribunal particulars of other properties or assets owned by the defendants.]

(3B)] ....

(4) On receipt of application under sub-section (1) or sub-section (2), the Tribunal shall issue summons with following directions to the defendant—

(i) to show cause within thirty days of the service of summons as to why relief prayed for should not be granted;

(ii) direct the defendant to disclose particulars of properties or assets other than properties and assets specified by the applicant under clauses (a) and (b) of sub-section (3A); and

(iii) to restrain the defendant from dealing with or disposing of such assets and properties disclosed under clause (c) of sub-section (3A) pending the hearing and disposal of the application for attachment of properties.]

(4A) Notwithstanding anything contained in section 65A of the Transfer of Property Act, 1882 (4 of 1882), the defendant, on service of summons, shall not transfer by way of sale, lease or otherwise except in the ordinary course of his business any of the assets over which security interest is created and other properties and assets specified or disclosed under sub-section (3A), without the prior approval of the Tribunal:

.........”

Section 19 (3A) of the RDB Act, 1993 requires (a) particulars of the security interest or assets belonging

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to any of the Defendants with the estimated value of such securities,

(b) if the estimated value of securities is not sufficient to satisfy the debt claimed, particulars of any other assets owned by any of the Defendants, and

(c) an order directing the Defendants to disclose to the Tribunal particulars of other properties or assets owned by the Defendants.

8. However, in this case, from the facts narrated above, the property in dispute was purchased by the 4th Respondent, Certificate Debtor only after the disposal of OA 99/2001 and issuance of DRC. It was purchased by the 4th Respondent, Certificate Debtor on 29.12.2005. May be that the first Respondent had no occasion to take steps to get a restraining order against the Certificate Debtor from dealing with this property, when the Original Application was pending. The property was purchased by Respondent No.4, on 29.12.2005. Only on 26.03.2010, the Appellant purchased the property from the Respondent No.4, Certificate Debtor. The first

Respondent Bank filed the attachment Application only after purchase, i.e. on 30.04.2010. From 29.12.2005 to 26.03.2010, the first Respondent Bank had not taken any steps to attach the property for sale in recovery proceedings. Only after the Appellant purchased the property, the Application in IA 1291/2010 was filed by the first Respondent Bank seeking attachment.

9. After purchasing the property, it appears, the Respondent No. 4, had availed the loan facilities from the State Bank of Travancore by mortgaging the property. The State of Bank of Travancore had to file OA 105/2008 for recovery of the loan amount from Respondent No.4. That loan amount was settled by the Appellant by paying Rs.19.10 Lakhs. Only on the basis of the settlement, the sale in favour of the Appellant had happened, and the State Bank of Travancore issued a letter confirming the settlement. Therefore, there is nothing on record to suspect the genuineness of the sale transaction or and *bonafides* of the Appellant.

10. As regards Section 53 of the Transfer of Property Act, this Tribunal, in **Sri H. Amarnath Vs. Kotak Mahindra Bank and Ors.**, held as follows:-

> *"12. So far as the contention of the Learned Counsel for the first respondent bank that this transaction is hit by Section 53 of the Transfer of Property Act, this Tribunal finds it necessary to extract Section 53 for proper understanding, which is as follows:*
>
> ***53. Fraudulent transfer.***
>
> *(1)Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.*
>
> *Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.*
>
> *Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.*
>
> *A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.*
>
> *(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.*
>
> *For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.*

13. As per Section 53 (1) of the Transfer of Property Act, it is true that transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. However, section does not stop with this. Next part is important. It reads as follows:

"Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration."

14. Here, in this case, appellant claims himself a transferee in good faith and for consideration. As already stated, there is no evidence placed before this Tribunal by the appellant that the appellant has not purchased the property in good faith and there was no consideration for the property purchased. Appellant has made out the ground that appellant is a bona fide purchaser for a value without notice of previous litigation, including attachment of the property. ..."

11. Even in this case, there is no material produced to show that the Appellant purchased the property after knowing the DRC proceedings in OA 99/2001. On the other hand, the records available shows that the Appellant is a *bonafide* purchaser for value without notice of the DRC proceedings in OA 99/2001.

12. In this view of the matter, this Tribunal finds that the order of Learned Recovery Officer dismissing the Claim Petition and the order passed by the Learned Presiding Officer dismissing the Appeal in Appeal No.4/2011, are against the factual and legal position as explained above, and therefore, the said orders are liable to be set aside.

13. In the result, The order passed by the Recovery Officer in the Claim Petition in IA 2253/2010 in DRC No.247 in OA No.99/2001, on 20.01.2011 and the order passed by the Learned Presiding Officer, DRT-I, Ernakulam in Appeal No.4/2011 are set aside. The Claim Petition in IA 2253/2010 is allowed. Accordingly, the Appeal in MA 1/2024 is allowed (vide separate order). All pending IAs, if any, stand closed. Both parties shall bear their own costs.

[Dictated to Athistamani, PS, transcribed by her, corrected and signed by me this 06th of July, 2026]

[*Justice* G. Chandrasekharan]
CHAIRPERSON