Debts Recovery Tribunal-I, Delhi
4th floor, Jeevan Tara Building,
Parliament Street, New Delhi

Presiding Officer: Shri Govind Ballabh Sharma

Transfer Appeal No.09 of 2023

1. Shri Ram Kishan Kapoor

2. Shri Prafful Kapoor,

Both R/o 95, ground and first floors,
Old Gupta Colony, Delhi-110009.

3. Shri Deepak Gupta,

4. Smt. Prem Lata Gupta

Both R/o 95, third floor,
Old Gupta Colony, Delhi-110009.

Appellants

Versus

Canara Bank,
Through its Branch Manager,
Asset Recovery Management Branch,
Arya Samaj Road, Karol Bagh,
New Delhi-110005.

Respondents

Present: Mr. Ravindra Gupta, Ld. counsel for the appellant.

Mr. A.K. Sharma, Ld. counsel for the respondent bank.

Date of Reserve: 04.06.2026

Date of Pronouncement: 23.07.2026

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FINAL ORDER

The present appeal has been moved on behalf of the appellant praying therein for restraining the defendants from taking any further action against the property bearing no.95, Old Gupta Colony, Delhi-110009 (hereinafter referred as the property in question) and also prayed to setting aside the order dated 03.06.2017 and quash the warrant of attachment against the property in question.

2. It has been submitted on behalf of the appellant that the appellants are the lawful and bonafide owners of the property bearing no.95, Old Gupta Colony, Delhi-110009 in the manner that Mr. Ram Kishan Kapoor is the owner of the Ground Floor, Mr. Praful Kapoor is the owner of the First Floor and Mr. Deepak Gupta & Mrs. Prem Lata Gupta are the owners of the Third Floor of the property bearing no. 95, Old Gupta Colony, Delhi-110009 and the Appellants are neither the mortgagor/guarantors/borrowers of the CH Bank nor the CD/party in the present matter. It has further been submitted that the appellants purchased the floor-wise property vide registered sale deeds and the appellants are in the possession and occupation of the property floor-wise since the purchase of the property. It has further been submitted that at the time of purchasing the aforesaid property the appellants were not

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aware about any claim of CH Bank against the said property as at the time of executions of sale deeds in their favour the previous documents indicates that the said property was mortgaged with Punjab & Sind Bank and after getting the No Dues Certificate from Punjab & Sind Bank in the year 2011 the subsequent purchaser Mr. Jitender Singh and Mr. Harpreet Singh Oberoi and Mr. Anil Kumar Bahmbri prop. Sanat Properties reconstructed the property in question and after construction of property in four floor the property was sold floor-wise to different persons/appellants. It has further been submitted that after the purchase of the property, the appellant no.1 & 2 received one notice dated 25/09/2013 issued by the Ld. Recovery Officer addressed to the occupants of the property bearing no.95, Old Gupta Colony, Delhi-110009 to show cause of warrant of arrest and thereafter the appellant no.1 on behalf of appellant no.1 & 2 appeared before the Tribunal on 21/10/2013 and subsequently the objections were filed by the counsel of the appellants no.1 & 2 and the objections were decided ex-parte in favour of the bank on 06/10/2015 as the counsel of the appellant didn't appeared for adducing the arguments. It has further been submitted that the appellants were shocked on receiving the warrant of attachment dated 08/09/2016 and immediately rushed to the counsel who appeared on behalf of the appellant before the

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Tribunal and the earlier counsel didn't reply properly to the appellant so the appellants approached to the present counsel and the present counsel applied for the certified copies of the complete file. It has further been submitted that in the meantime the appellants received another notice of proclamation of sale dated 09/12/2016 for the property in question as the property was put on auction on 14/02/2017 and after getting the certified copies of the file the appellant's present counsel filed the objections under Rule 11, 31, 49, 51, 61 & 68 B of the Second Schedule of Income Tax Act, 1961 before the Recovery Officer-II, DRT-III, New Delhi on 24/01/2017. It has further been submitted that the CH Bank replied the objections of the appellants and came forward with only one objection i.e. Rule 16 of the second schedule of Income Tax Act, 1961 which was duly replied by the appellants and submitted their submission that Rule 16 of the second schedule of Income Tax Act is not applicable in this matter as the property in question was already mortgaged with Punjab & Sind Bank prior to initiation of the recovery proceedings against the Half Portion of the property bearing no.95, Old Gupta Colony, Delhi-110009 and the said submission was completely ignored by the Ld. Recovery Officer while passing the order dated 03/06/2017. It has further been submitted that the warrant of attachment dated 07/02/2011 issued by the Ld.

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Recovery Officer-II, DRT-III, New Delhi for the Half portion of the property bearing no.95, Old Gupta Colony, Delhi-110009 was illegal and bad in law as the same was issued without any verification and appropriate information of whether it belongs to the CD's or not and secondly the whole property was mortgaged to Punjab and Sind Bank and the OA No.108/2002 was pending before the Ld. Debt Recovery Tribunal -II, New Delhi titled P&SB vs M/s Sudama Marketing Pvt. Ltd. & another at the time of issuance of warrant of attachment dated 07.02.2011. It has further been submitted that as per Rule 31 of the Second Schedule of Income Tax Act:-"Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued", but as per record of the Ld. DRT-III, New Delhi no notice was issued to Punjab & Sind Bank and the Ld. Debt Recovery Tribunal-II, New Delhi dealing with the OA no. 108/2002 and this preliminary submission was made by the appellants in their objections but the CH Bank has not replied to this objection as well as the Ld. Recovery Officer ignored this preliminary submission in his final order dated 03/06/2017 and dismiss the objections of the appellant without giving any

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appropriate reasons and the act of the CH Bank and the Recovery Officer to dealt with this matter is suspicious enough as they ignored the mandatory requirement of the recovery proceedings adopted by the Hon'ble Tribunal to recover the dues of the CH Bank. It has further been submitted that as per record on 09/02/2012 the CH Bank submitted before the Ld. Recovery Officer that the property in question was sold by the CD's and requested the Ld. Recovery Officer to call the occupants under Rule 83 of Second Schedule of Income Tax Act and the Ld. Recovery Officer issued notice to the occupants of 95, Old Gupta Colony, Delhi-110009 to appear before the Recovery Officer on the next date.

3. It has also been submitted on behalf of the appellant that as per record the CD's filed review application on 16/02/2012 in which they submitted complete story of the mortgage as well as the selling of the property for clearance of the dues to Punjab & Sind Bank and the review application was dismissed by the Ld. Recovery Officer on 06/10/2015 for non-prosecution and in between on the request of the CH Bank the notice to the occupants were issued regularly till 25/09/2013. It has further been submitted that as per record on 17/10/2012 the CH Bank submitted before the Recovery Officer that the property is under construction and Shri Jitender Singh refused to take notice on his behalf, but neither any action was taken

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by the CH Bank to stop the construction nor any civil suit was filed against the occupants to stay the proceedings for not creating any third party interest and restructure of the building without the permission of the Ld. Recovery Officer as the property in question was attached by the Ld. Recovery Officer as per CH Bank. It has further been submitted that no intimation was given to the concerned Sub Registrar from the Ld. Recovery Officer, DRT for non-registration of any deed/documents in concern with the property in question bearing 95, Old Gupta Colony, Delhi-110009 without the permission of the Ld. Recovery Officer, DRT as the property in question was attached by the Recovery Officer, DRT in the abovementioned matter and inspite of the previous conduct of the CD's, the Ld. Recovery Officer had not initiated any proceedings to stop the further sale of the property and to save the interest of innocent general public. It has further been submitted that after dismissal of the objections filed by the appellant no.1 & 2 on 06/10/2015 by the Ld. Recovery Officer, DRT, as per record fresh warrant of attachment were issued on 22/12/2015, 15/01/2016, 09/02/2016 for the Half Portion of the property bearing no. 95, Old Gupta Colony, Delhi-110009 which are illegal in nature as and when one property was attached by any Court or Tribunal then there is no need to attach the same property again and again. It has further been

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submitted that as per record on 21/03/2016 the CH Bank requested the Ld. Recovery Officer to issue direction to registry, DRT-II, New Delhi to provide the title documents of the property in question for the valuation of the property and after getting direction the CH Bank got the knowledge that the whole property in question was owned by the CD's and other details about the property. It has further been submitted that as per record on 12/08/2016 the Ld. Recovery Officer issued first time show cause of warrant of attachment for the whole/entire property bearing 95, Old Gupta Colony, Delhi-110009 and subsequently the warrant of attachment dated 08/09/2016 was issued and notice for proclamation of sale dated 19/12/2016 was issued and the property in question was put on auction on 14/02/2017 by the Ld. Recovery Officer. It has further been submitted that as per the Rule 49 of second schedule of Income Tax Act say, "A copy of the order of attachment shall be served on the defaulter" but in this matter no notice was served to the defaulter as the property in question is in the occupation and possession of the appellants only and no defaulters of the above mentioned matters are available in the property in question from 2011 and the appellant filed objections before the Ld. Recovery Officer that the warrant of attachment dated 08/09/2016 and notice for proclamation of sale dated 19/12/2016 was bad in law and

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illegal in nature as the above notices were not served to the defaulters of the CH Bank, but the Ld. Recovery Officer ignored these facts/submission while passing the order dated 03/06/2017 for dismissing the objections filed by the appellant. It has further been submitted that the appellant also submitted before the Hon'ble Recovery Officer that as per the Rule 51 of second schedule of Income Tax Act "Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter" but the warrant of attachment dated 16/12/2016 was not served to the defaulter as the property in question is in the occupation and possession of the appellants only and no defaulters of the above mentioned matter are available in the property in question from 2011 so there is no question of attachment arises but the Ld. Recovery Officer ignored this Rule while passing the order dated 03/06/2017. It has further been submitted that the appellants also submitted before the Ld. Recovery Officer that if the warrant of attachment dated 08/09/2016 was treated as valid warrant of attachment by the DRT then the question of Rule 49 and 51 of Second Schedule of Income Tax Act applies and as per these rules the notices should be served on the defaulters, whereas no notices dated 08/09/2016 (warrant of

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attachment) and dated 19/12/2016(notice for proclamation of sale) was ever served on the defaulters as the property in question is under the possession and occupation of the appellant till 2013 and the CD's of this matter has no concern with this property since 2011. It has further been submitted that the appellants further submitted before the Recovery Officer in writing as well as in the arguments that if this Tribunal consider the demand notice dated 21/05/2010 and warrant of attachment dated 07/02/2011 then Rule 68B of second schedule of Income Tax Act, "No sale of immovable property shall be made under this Part after the expiry of three years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-1 or, as the case may be, final in terms of the provisions of Chapter XX" applies in this matter and the appellants also argued that if this Tribunal covers this rule and issued fresh notice for warrant of attachment then the fresh warrant of attachment dated 08/09/2016 is bad in law and illegal in nature as the notice for warrant of attachment dated 08/09/2016 was not served on the defaulters as the property in question on which the notice was pasted and immediately removed is not belongs to the CD's of the CH Bank

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in any manner since 2011 and the property in question is under the possession and occupation of the appellants since 2013, but the Recovery Officer ignored Rule 68B, 49 and 51 of the second schedule of Income Tax Act, 1961 while passing the order dated 03/06/2017. It has further been submitted that the Recovery Officer not issued any directions to the Sub-Registrar Concerned at any stage between receiving of RC order in 2010 to till date due to which the appellants being the innocent persons purchased the property in question bonafide in 2013 and again and again presents this fact before the Hon'ble Recovery Officer but he ignored this fact. It has further been submitted that as per the record the Recovery Officer mentioned in his order dated 09.12.2011 that the CD no. 2 is not cooperating with the CH Bank in identification of the mortgaged property situated at CC Colony, Delhi which clearly means that the CH Bank is not initiating against the mortgaged property and requested the Recovery Officer to initiate against the property which was already mortgaged with P&SB and the litigation was pending before the DRT-II, New Delhi without intimating the Principal mortgagee and the court where the matter is adjudicated for decision and as well as the CH Bank without taking any action over the mortgaged property and without taking any action against the purchaser of the property in question in 2011 till 2013. Accordingly, it has been prayed

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for setting aside the impugned order dated 03.06.2017 passed by the Ld. Recovery Officer.

4. On the other hand, it has been objected on behalf of the respondent bank that the present appeal filed by the appellants in connivance with CDs in Recovery Certificate with malafide intentions and as such the appeal is liable to be dismissed. It has further been submitted that the appeal filed by the appellants is only a bunch of lies only just to delay the recovery proceedings and as such the same is liable to be dismissed. It has further been submitted that the present appeal filed by the appellants is liable to be dismissed as they should have filed separate appeals in respect of separate floors and as the different persons are claiming to be the owners of the different portions of the properties by virtue of separate sale deeds and one appeal has been filed which is not permissible under law and on this very ground, the present appeal filed by different persons is liable to be dismissed. It has further been submitted that the appeal filed by the appellants is liable to be dismissed as earlier the application filed by CD Smt. Seema Goel and objections filed by Sh. Ram Kishan Kapoor were dismissed by the Ld. Recovery Officer after considering all aspects in accordance with law. It has further been submitted that that once the property has been attached by the Ld. Recovery Officer, any subsequent sale is a nullity in the eyes of law. It

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has further been submitted that interestingly the Sale Deed has been executed much after attachment orders passed by the Ld. Tribunal which were duly served upon the CDs. It has further been submitted that the attachment order dated 07.02.2011 passed by the Ld. Recovery Officer for attachment of property and subsequently application moved by CDs for recalling the order dated 07.02.2011 which was dismissed and as such the appeal is liable to be dismissed. It has further been submitted that as such any subsequent sale deed after attachment notice as well as after issuance of demand Notice Rule 16 of the 2nd Schedule of the Income Tax 1961 comes into play and any action would amount to nullity in the eyes of law and the appellants have not taken any steps against the CD/ their vendor from whom they have purchased the property. It has further been submitted that Sh. Jitender Singh has purchased the property from Smt. Seema Goel and Sh. Neeraj Goel jointly as mentioned in the Sale Deed and this relates to in respect of First Floor (without roof rights) of the property and on 12.07.2013 Shri Jitender Singh sold the First Floor (without roof rights) to Shri Ram Kishan Kapoor and Shri Prafful Kapoor. It has further been submitted that similarly, on 12.07.2013, the Appellants Sh. Ram Kishan Kapoor and Sh. Hari Kishan Kapoor (however Sh. Hari Ram Kapoor has not filed the objections) purchased the Ground floor (without roof rights) of the

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property from one Sh. Harpreet Singh Oberoi who has purchased the same from Smt. Seema Goel and Sh. Neeraj Goel jointly as mentioned in the Sale Deed and this relates to in respect of Ground Floor (without roof rights) of the property. It has further been submitted that on 18.09.2013, one Sh. Anil Kumar Bhambri had sold the third floor with terrace rights of the property to Sh. Deepak Gutpa and Smt. Prem Lata Gupta who has purchased the same from Smt. Seema Goel and Sh. Neeraj Goel jointly as mentioned in the Sale Deed. It has further been submitted that vide order dated 06.10.2015 passed by the Ld. Recovery Officer, the application filed by CD No. 2 Smt. Seema Goel for review of the decision dated 09.02.2012 and de-attachment of the said property which was attached on 07.02.2012 was dismissed and similarly the objections filed by Sh. Ram Kishan Kapoor were dismissed in respect of Ground Floor and First Floor of the property in question, therefore, the contentions raised by them that they are lawful owners of the property in question are denied in toto. It has further been submitted that appellants have no locus to file the present appeal. It has further been submitted that once the property has been attached by the Ld. Recovery Officer, any subsequent sale is a nullity in the eyes of law and interestingly the Sale Deed has been executed much after attachment orders passed by the Ld. Recovery Officer which

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were duly served upon the CDs. It has further been submitted that the attachment order dated 07.02.2011 passed by the Ld. Recovery Officer for attachment of property and subsequently application moved by CDs for recalling the order dated 07.02.2011 which was dismissed and as such the claim of appellants is liable to be dismissed and as such any subsequent sale deed after attachment notice as well as after issuance of Demand Notice Rule 16 of the 2nd Schedule of the Income Tax 1961 comes into play and any action would amount to nullity in the eyes of law and the appellants have not taken any steps against the CD/ their vendor from whom they have purchased the property. It has further been submitted that Sh. Jitender Singh has purchased the property from Smt. Seema Goel and Sh. Neeraj Goel jointly as mentioned in the Sale Deed and this relates to in respect of First Floor (without roof rights) of the property and on 12.07.2013 Shri Jitender Singh sold the First Floor (without roof rights) to Shri Ram Kishan Kapoor and Shri Prafful Kapoor. It has further been submitted that on 12.07.2013, the appellants Sh. Ram Kishan Kapoor and Sh. Hari Kishan Kapoor (however Sh. Hari Ram Kapoor has not filed the objections) purchased the Ground floor (without roof rights) of the property from one Sh. Harpreet Singh Oberoi who has purchased the same from Smt. Seema Goel and Sh. Neeraj Goel jointly as mentioned in the Sale Deed and this relates to

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in respect of Ground Floor (without roof rights) of the property. It has further been denied that the Warrant of Attachment dated 07.02.2011 in respect of 12 portion of the Property i.e. 95 Old Gupta Colony, Delhi was illegal and bad in law and the orders of attachment passed by the Ld. Recovery Officer are correct and the CDs had moved application for recalling and reviewing of the said orders, which were dismissed by the Ld. Recovery Officer and no appeal was preferred against those orders, which has attained finality in all aspects and hence the present claim of the appellant is not maintainable in the eyes of law. It has further been submitted that as far as pendency of the original application before Ld. Debt Recovery Tribunal II, Delhi and the whole property lying mortgaged with the Punjab & Sind Bank is a matter of record. It has further been submitted that the provisions are not applicable to the present proceedings and moresoever the property was attached and also demand notice was served upon the CDs, as such any subsequent sale deed after attachment notice as well as after issuance of Demand Notice Rule 16 of the 2nd Schedule of the Income Tax 1961 comes into play and any action would amount to nullity in the eyes of law and the Appellants have not taken any steps against the CD/ their vendor from whom they have purchased the property. It has further been submitted that reliance is being made upon the contents of the

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Sale Deed which have been relied upon by the appellants herein. It has further been denied that that the CH Bank did not reply to this objection or the Ld. Recovery Officer ignored the same and Each and every allegation is specifically denied. It has further been submitted that the Ld. Recovery Officer has rightly passed the orders after considering all aspects, hence the present appeal is liable to be dismissed. It has further been submitted that what steps were taken by the CDs / their Vendors when they were in full knowledge of warrant of attachment issued by the Ld. Recovery Officer and even the Vendors failed to receive the Notices and refused to accept the Notice which were issued by the Ld. Recovery Officer in Recovery Certificate proceedings vide order dated 17.10.2012 and the same Vendor sold the property vide Sale Deed dated 12.07.2013 to one of the appellant and all the Vendors had full knowledge about the Warrant of Attachment issued by the Ld. Recovery Officer and they deliberately did not disclosed in the Sale Deeds and the contents of Sale Deed shows that there is no attachment which is factually incorrect and what steps the appellants have taken against those vendors as well as CDs and in fact all are in collusion with each other i.e. appellants as well as the Vendors and the CDs and they have making false and frivolous allegations / assertions. It has further been submitted that each and every allegation qua the respondent

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bank and the Ld. Recovery Officer are specifically denied and infact, the true facts are otherwise as stated above, but in order to mislead this Ld. Tribunal, the appellants are trying to twist facts of the case. It has further been submitted that the legal requirement for attachment were duly complied with and the appellant cannot shift the blame upon the respondent bank/ Ld. Recovery Officer. It has further been submitted that it was duty of the appellants to make adequate verification before purchasing the property and in their various sale deeds relied upon by the appellants, various clauses have been mentioned and in fact the appellants should have approach the competent court of law against the CDs and their respective vendors for making false assertions in the Sale Deeds but they are keeping mum against them which shows active connivance between them. It has further been submitted that it is necessary to state here that the vendors has represented that the property is free from all sort of encumbrances and there is no attachment in respect of the property and it has been further stated that the vendor undertakes he shall be remain liable and responsible for the same in all manners, to indemnify the said Vendees alongwith all costs and damages which will be sustained by the Vendees on account of this transaction. It has further been submitted that in the another Sale Deed it has been mentioned that the Vendors has assured the Vendees that the property is

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free from all sort of encumbrances, court attachments, and if proved otherwise or whole or part of the properties goes out of the ownership /possession of the Vendee, the Vendor shall be liable and responsible for the same and indemnify the Vendees of all cost, expenses, damages etc. sustained by the Vendees. It has further been submitted that despite all these mentioned in the Sale Deeds, what steps have been taken by the appellants and they are blaming the respondent bank as well as Ld. Recovery Officer for the same instead of CDs and their respective Vendors. It has further been denied that the respondent bank did not take any steps and once the property was attached, any improvement or any construction would not effect, upon the attachment orders, which were duly served upon the CDs as well as upon the property, as per the provisions of law, and it is always, the buyer beware before purchasing any property. It has further been submitted that instead of taking any steps against the CDs / Vendors as per the contents of the Sale Deeds, the appellants are blaming the respondent bank and not initiated any steps against their respective Vendors and even otherwise does not implead them as a necessary party in the present appeal which itself proves their connivance with each other i.e. between the Appellants, CDs as well as Vendors. It has further been submitted that the legal requirement for attachment was duly complied with and

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the appellant cannot shift the blame upon the Respondent Bank / Ld. Recovery Officer. It has further been submitted that it was duty of the appellants to make adequate verification before purchasing the property and in their various sale deeds relied upon by the appellants, various clauses have been mentioned and in fact the appellants should have approach the competent court of law against the CDs and their respective Vendors for making false assertions in the Sale Deeds but they are keeping mum against them which shows active connivance between them. It has further been submitted that it is necessary to state here that the Vendors has represented that the property is free from all sort of encumbrances and there is no attachment in respect of the property and it has been further stated that the Vendor undertakes he shall be remain liable and responsible for the same in all manners, to indemnify the said Vendees alongwith all costs and damages which will be sustained by the Vendees on account of this transaction. It has further been submitted that in the another Sale Deed it has been mentioned that the Vendors has assured the Vendees that the property is free from all sort of encumbrances, court attachments, and if proved otherwise or whole or part of the properties goes out of the ownership /possession of the Vendee, the Vendor shall be liable and responsible for the same and indemnify the Vendees of all cost, expenses, damages etc.

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sustained by the Vendees. It has further been submitted that despite all these mentioned in the Sale Deeds, what steps have been taken by the appellants and they are blaming the Respondent Bank as well as Ld. Recovery Officer for the same instead of CDs and their respective Vendors. It has further been submitted that CDs had filed application for recalling and reviewing of orders, which clear the doubts raised in the para under reply. It has further been submitted that the respondent bank took steps for service of notices as per the directions of the Ld. Recovery Officer and were complied with and the record of the Ld. Recovery Officer makes the picture clear and the relevant affidavits were also filed in this regard before the Ld. Recovery Officer. It has further been submitted that respondent bank took steps for service of notices as per the directions of the Ld. Recovery Officer and were complied with and the record of the Ld. Recovery Officer makes the picture clear and the relevant affidavits were also filed in this regard before the Id. Recovery Officer. It has further been submitted that property was attached and also demand notice was served upon the CDs, as such any subsequent sale deed after attachment notice as well as after issuance of Demand Notice Rule 16 of the 2nd Schedule of the Income Tax 1961 comes into play and any action would amount to nullity in the eyes of law and the objector have not taken any steps against the CD/

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their vendor from whom they have purchased the property. It has further been denied that the provisions raised would be applicable to the present case as the property was transferred despite attachment orders and the various notices / attachment orders were served from time to time as per provisions of law and the affidavit to this effect was also filed before the Ld. Recovery Officer. It has further been submitted that the objections of the appellants in respect of ground and first floor of the property in question were dismissed vide order dated 06.10.2015 and no objections were filed by the claimed owner of third floor and no appeal was preferred against the dismissal of their objections vide order dated 06.10.2015 and hence those orders have attained finality in all aspects and they cannot now raise any appeal on any of the grounds. It has further been submitted that all the appellants who are owners of different floors, deliberately and malafidely, filed only one objection in respect of all floors knowing well that objections of Ground Floor and First Floor of the property were dismissed vide order dated 06.10.2015 and the appellants filed the objections jointly which were dismissed and the present appeal have been filed jointly so that the orders dated 06.10.2015 passed on earlier objections by the Ld. Recovery Officer which have attained finality on all aspects may be challenged under the garb of dismissal of objections qua the third floor also which

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is not permissible under law. It has further been submitted that attachment orders were passed and were served as per the provisions of the law and the appellant cannot agitate the issue as the CDs as well as the Vendors from whom they have purchased the property were well within their knowledge about the orders. It has further been submitted that in the another Sale Deed it has been mentioned that the Vendors has assured the Vendees that the property is free from all sort of encumbrances, court attachments, and if proved otherwise or whole or part of the properties goes out of the ownership /possession of the Vendee, the Vendor shall be liable and responsible for the same and indemnify the Vendees of all cost, expenses, damages etc. sustained by the Vendees. It has further been submitted that despite all these mentioned in the Sale Deeds, what steps have been taken by the appellants and they are blaming the respondent bank as well as Ld. Recovery Officer for the same instead of CDs and their respective Vendors. It has further been submitted that the CDs had filed application for recalling and reviewing of orders, which clear the doubts raised in the para under reply, furthermore, the objections of the appellants in respect of Ground and First Floor of the property in question were dismissed vide order dated 06.10.2015 and no objections were filed by the claimed owner of third floor and no appeal was preferred against the dismissal

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of their objections vide order dated 06.10.2015 and hence those orders have attained finality in all aspects and they cannot now raise any appeal on any of the grounds. It has further been submitted that all the appellants who are owners of different floors, deliberately and malafidely, filed only one objection in respect of all floors knowing well that objections of Ground Floor and First Floor of the property were dismissed vide order dated 06.10.2015 and the appellants filed the objections jointly which were dismissed and the present appeal have been filed jointly so that the orders dated 06.10.2015 passed on earlier objections by the Ld. recovery officer which have attained finality on all aspects may be challenged under the garb of dismissal of objections qua the third floor also which is not permissible under law. It has further been submitted that the orders passed by the Ld. Recovery Officer are matter of record and the orders passed by the Ld. Recovery Officer are in accordance with the provisions of law and any of the properties can be put to auction by the Ld. Recovery Officer as per the provisions of Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the allegations made are baseless. Accordingly, it has been prayed for dismissal of the present appeal.

5. Heard Ld. Counsels for both the parties and perused the record.

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6. Apparently, the present appeal has been filed by the appellants against the order 03.06.2017 passed by the Ld. Recovery Officer vide which the Ld. Recovery Officer has dismissed the objections of the appellant. It has been argued on behalf of the appellant that the appellants are the lawful and bonafide owners of the property bearing no.95, Old Gupta Colony, Delhi-110009 in the manner that Mr. Ram Kishan Kapoor is the owner of the Ground Floor, Mr. Praful Kapoor is the owner of the First Floor and Mr. Deepak Gupta & Mrs. Prem Lata Gupta are the owners of the Third Floor of the property bearing no. 95, Old Gupta Colony, Delhi-110009 and the Appellants are neither the mortgagor/guarantors/borrowers of the CH Bank nor the CD/party in the present matter. It has further been argued that the appellants purchased the floor-wise property vide registered sale deeds and the appellants are in the possession and occupation of the property floor-wise since the purchase of the property. It has further been argued that at the time of purchasing the aforesaid property the appellants were not aware about any claim of CH Bank against the said property as at the time of executions of sale deeds in their favour the previous documents indicates that the said property was mortgaged with Punjab & Sind Bank and after getting the No Dues Certificate from Punjab & Sind Bank in the year 2011 the subsequent purchaser Mr. Jitender Singh and

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Mr. Harpreet Singh Oberoi and Mr. Anil Kumar Bahmbri prop. Sanat Properties reconstructed the property in question and after construction of property in four floor the property was sold floor-wise to different persons/appellants. It has further been argued that the appellants were shocked on receiving the warrant of attachment dated 08/09/2016 and immediately rushed to the counsel who appeared on behalf of the appellant before the Tribunal and the earlier counsel didn't reply properly to the appellant so the appellants approached to the present counsel and the present counsel applied for the certified copies of the complete file. It has further been submitted that in the meantime the appellants received another notice of proclamation of sale dated 09/12/2016 for the property in question as the property was put on auction on 14/02/2017 and after getting the certified copies of the file the appellant's present counsel filed the objections under Rule 11, 31, 49, 51, 61 & 68 B of the Second Schedule of Income Tax Act, 1961 before the Recovery Officer-II, DRT-III, New Delhi on 24/01/2017. It has further been argued that the warrant of attachment dated 07/02/2011 issued by the Ld. Recovery Officer-II, DRT-III, New Delhi for the Half portion of the property bearing no.95, Old Gupta Colony, Delhi-110009 was illegal and bad in law as the same was issued without any verification and appropriate information of whether it belongs

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to the CD's or not and secondly the whole property was mortgaged to Punjab and Sind Bank and the OA No.108/2002 was pending before the Ld. Debt Recovery Tribunal -II, New Delhi titled P&SB vs M/s Sudama Marketing Pvt. Ltd. & another at the time of issuance of warrant of attachment dated 07.02.2011. It has also been argued on behalf of the appellant that as per record the CD's filed review application on 16/02/2012 in which they submitted complete story of the mortgage as well as the selling of the property for clearance of the dues to Punjab & Sind Bank and the review application was dismissed by the Ld. Recovery Officer on 06/10/2015 for non-prosecution and in between on the request of the CH Bank the notice to the occupants were issued regularly till 25/09/2013. It has further been submitted that as per record on 12/08/2016 the Ld. Recovery Officer issued first time show cause of warrant of attachment for the whole/entire property bearing 95, Old Gupta Colony, Delhi-110009 and subsequently the warrant of attachment dated 08/09/2016 was issued and notice for proclamation of sale dated 19/12/2016 was issued and the property in question was put on auction on 14/02/2017 by the Ld. Recovery Officer. It has further been argued that as per the Rule 49 of second schedule of Income Tax Act say, "A copy of the order of attachment shall be served on the defaulter" but in this matter no notice was served to the defaulter as the

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property in question is in the occupation and possession of the appellants only and no defaulters of the above mentioned matters are available in the property in question from 2011 and the appellant filed objections before the Ld. Recovery Officer that the warrant of attachment dated 08/09/2016 and notice for proclamation of sale dated 19/12/2016 was bad in law and illegal in nature as the above notices were not served to the defaulters of the CH Bank, but the Ld. Recovery Officer ignored these facts/submission while passing the order dated 03/06/2017 for dismissing the objections filed by the appellant. It has further been argued that the appellant also submitted before the Hon'ble Recovery Officer that as per the Rule 51 of second schedule of Income Tax Act "Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter" but the warrant of attachment dated 16/12/2016 was not served to the defaulter as the property in question is in the occupation and possession of the appellants only and no defaulters of the above mentioned matter are available in the property in question from 2011 so there is no question of attachment arises but the Ld. Recovery Officer ignored this Rule while passing the order dated 03/06/2017. It has further been argued that the appellants also

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submitted before the Ld. Recovery Officer that if the warrant of attachment dated 08/09/2016 was treated as valid warrant of attachment by the DRT then the question of Rule 49 and 51 of Second Schedule of Income Tax Act applies and as per these rules the notices should be served on the defaulters, whereas no notices dated 08/09/2016 (warrant of attachment) and dated 19/12/2016(notice for proclamation of sale) was ever served on the defaulters as the property in question is under the possession and occupation of the appellant till 2013 and the CD's of this matter has no concern with this property since 2011. It has further been argued that the appellants further submitted before the Recovery Officer in writing as well as in the arguments that if this Tribunal consider the demand notice dated 21/05/2010 and warrant of attachment dated 07/02/2011 then Rule 68B of second schedule of Income Tax Act, "No sale of immovable property shall be made under this Part after the expiry of three years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-1 or, as the case may be, final in terms of the provisions of Chapter XX" applies in this matter and the appellants also argued that if this Tribunal covers this rule and issued fresh notice for warrant of

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attachment then the fresh warrant of attachment dated 08/09/2016 is bad in law and illegal in nature as the notice for warrant of attachment dated 08/09/2016 was not served on the defaulters as the property in question on which the notice was pasted and immediately removed is not belongs to the CD's of the CH Bank in any manner since 2011 and the property in question is under the possession and occupation of the appellants since 2013, but the Recovery Officer ignored Rule 68B, 49 and 51 of the second schedule of Income Tax Act, 1961 while passing the order dated 03/06/2017. It has further been argued that the Recovery Officer has not issued any directions to the Sub-Registrar Concerned at any stage between receiving of RC order in 2010 to till date due to which the appellants being the innocent persons purchased the property in question bonafide in the year 2013 and again and again presents this fact before the Hon'ble Recovery Officer but he ignored this fact. It has further been argued that as per the record the Recovery Officer mentioned in his order dated 09.12.2011 that the CD no.2 is not cooperating with the CH Bank in identification of the mortgaged property situated at CC Colony, Delhi which clearly means that the CH Bank is not initiating against the mortgaged property and requested the Recovery Officer to initiate against the property which was already mortgaged with P&SB and the litigation was pending

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before the DRT-II, New Delhi without intimating the Principal mortgagee and the court where the matter is adjudicated for decision and as well as the CH Bank without taking any action over the mortgaged property and without taking any action against the purchaser of the property in question in 2011 till 2013. Accordingly, it has been prayed for setting aside the impugned order dated 03.06.2017 passed by the Ld. Recovery Officer. On the other hand, it has been argued on behalf of the respondent bank that the present appeal filed by the appellants in connivance with CDs in Recovery Certificate with malafide intentions and as such the appeal is liable to be dismissed. It has further been argued that the aforesaid Sale Deed has been executed much after attachment orders passed by the Ld. Tribunal which were duly served upon the CDs and the said attachment order dated 07.02.2011 was passed for attachment of property and subsequently application moved by CDs for recalling the order dated 07.02.2011 was also dismissed and as such the appeal is liable to be dismissed. It has further been argued that as such any subsequent sale deed after attachment notice as well as after issuance of demand Notice Rule 16 of the 2nd Schedule of the Income Tax 1961 comes into play and any action would amount to nullity in the eyes of law and the appellants have not taken any steps against the CD/ their vendor from whom they have purchased the property. It has

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further been argued that once the property has been attached by the Ld. Recovery Officer, any subsequent sale is a nullity in the eyes of law and the Sale Deed has been executed much after attachment orders passed by the Ld. Recovery Officer which were duly served upon the CDs and as such any subsequent sale deed after attachment notice as well as after issuance of Demand Notice Rule 16 of the 2nd Schedule of the Income Tax 1961 comes into play and any action would amount to nullity in the eyes of law and the appellants have not taken any steps against the CD/ their vendor from whom they have purchased the property. It has further been argued that the Warrant of Attachment dated 07.02.2011 in respect of 12 portion of the Property i.e. 95 Old Gupta Colony, Delhi and the orders of attachment passed by the Ld. Recovery Officer are correct and the CDs had moved application for recalling and reviewing of the said orders, which were dismissed by the Ld. Recovery Officer and no appeal was preferred against those orders, which has attained finality in all aspects and hence the present claim of the appellant is not maintainable in the eyes of law. It has further been argued that as far as pendency of the original application before Ld. Debt Recovery Tribunal II, Delhi and the whole property lying mortgaged with the Punjab & Sind Bank is a matter of record. It has further been argued that the aforesaid provisions are not applicable to the present

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proceedings and moresoever the property was attached and also demand notice was served upon the CDs, as such any subsequent sale deed after attachment notice as well as after issuance of Demand Notice Rule 16 of the 2nd Schedule of the Income Tax 1961 comes into play and any action would amount to nullity in the eyes of law and the Appellants have not taken any steps against the CD/ their vendor from whom they have purchased the property. It has further been argued that what steps were taken by the CDs / their Vendors when they were in full knowledge of warrant of attachment issued by the Ld. Recovery Officer and even the Vendors failed to receive the Notices and refused to accept the Notice which were issued by the Ld. Recovery Officer in Recovery Certificate proceedings vide order dated 17.10.2012 and the same Vendor sold the property vide Sale Deed dated 12.07.2013 to one of the appellant and all the Vendors had full knowledge about the Warrant of Attachment issued by the Ld. Recovery Officer and they deliberately did not disclosed in the Sale Deeds and the contents of Sale Deed shows that there is no attachment which is factually incorrect and what steps the appellants have taken against those vendors as well as CDs and in fact all are in collusion with each other i.e. appellants as well as the Vendors and the CDs and they have making false and frivolous allegations / assertions. It has further been argued that the

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legal requirement for attachment was duly complied with and the appellant cannot shift the blame upon the respondent bank/ Ld. Recovery Officer. It has further been argued that property was attached and also demand notice was served upon the CDs, as such any subsequent sale deed after attachment notice as well as after issuance of Demand Notice Rule 16 of the 2nd Schedule of the Income Tax 1961 comes into play and any action would amount to nullity in the eyes of law and the objector have not taken any steps against the CD/ their vendor from whom they have purchased the property. It has further been argued that the objections of the appellants in respect of ground and first floor of the property in question were dismissed vide order dated 06.10.2015 and no objections were filed by the claimed owner of third floor and no appeal was preferred against the dismissal of their objections vide order dated 06.10.2015 and hence those orders have attained finality in all aspects and they cannot now raise any appeal on any of the grounds. It has further been argued that all the appellants who are owners of different floors, deliberately and malafidely, filed only one objection in respect of all floors knowing well that objections of Ground Floor and First Floor of the property were dismissed vide order dated 06.10.2015 and the appellants filed the objections jointly which were dismissed and the present appeal have been filed jointly so that the

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orders dated 06.10.2015 passed on earlier objections by the Ld. recovery officer which have attained finality on all aspects may be challenged under the garb of dismissal of objections qua the third floor also which is not permissible under law. It has further been argued that the orders passed by the Ld. Recovery Officer are matter of record and the orders passed by the Ld. Recovery Officer are in accordance with the provisions of law and any of the properties can be put to auction by the Ld. Recovery Officer as per the provisions of Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the allegations made are baseless. Accordingly, it has been prayed for dismissal of the present appeal.

7. Before proceeding in the present matter, we may go through the following Rules of the second schedule of Income Tax Act, 1961:

> **Rule-2:**
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> "When a certificate has been drawn up by the Tax Recovery Officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realize the amount under this Schedule."
>
> **Rule 16:**
>
> (1) "Where a notice has been served on a defaulter under Rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease of otherwise deal with any property belonging

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

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

8. Apparently, the appellants are claiming as the owners of the properties in question (entire first floor without roofs owned by Mr. Ram Kishan Kapoor & Mr. Praful Kapoor and third floor with roof rights owned by Mr. Deepak Gupta and Mrs. Prem Lata Gupta) by way of two separate registered sale deeds dated 18.09.2013 and 12.07.2013. From perusal of the records, it appears that the appellants i.e. Mr. Deepak Gupta and Mrs. Prem Lata Gupta have purchased the property being third floor with roof rights of the property in question vide registered sale deed dated 18.09.2013 from Shri Anil Kumar Bahmbri, who has purchased the said property from Smt. Seema Goel and Shri Neeraj Goel vide registered sale deed dated 10.12.2011 and Smt. Seema Goel and Shri Neeraj Goel are the certificate debtors/CDs in the present recovery proceedings. Further, on perusal of record it appears that the appellants i.e. Mr. Ram Kishan Kapoor & Mr. Praful Kapoor have purchased the entire first floor without roof rights of the

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property in question vide registered sale deed dated 12.07.2013 from Mr. Jitender Singh, who has purchased the said property from Smt. Seema Goel and Shri Neeraj Goel vide registered sale deed dated 10.12.2011 and Smt. Seema Goel and Shri Neeraj Goel are the certificate debtors/CDs in the present recovery proceedings. In the present recovery proceeding, the demand notice was issued and served upon the CDs on 20.07.2010 as per CH Bank has filed the report vide dy. no.2326 dated 21.07.2010. Thereafter, the attachment order dated 07.02.2011 was passed by the Ld. Recovery Officer qua the property in question and after passing the aforesaid attachment order, the Certificate Debtors/defaulters cannot deal with the property/assets as per the Rule 16 of the Second Schedule of Income Tax Act, 1961. However, in the present matter, after passing the aforesaid attachment order dated 07.02.2011, the CDs namely Smt. Seema Goel and Shri Neeraj Goel have sold the property in question, vide two separate sale deeds dated 10.12.2011 to Shri Anil Kumar Bahmbri and Mr. Jitender Singh from whom the appellants have purchased the property in question and such transactions are bad in law as per the Rule 16 of the Second Schedule of Income Tax Act, 1961. Thus, it is proved that the CDs have illegally sold the property in question after passing the aforesaid attachment

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order dated 07.02.2011, which is bad in law as per the Rule 16 of the Second Schedule of Income Tax Act, 1961.

9. In sequel of the above said discussion, this Tribunal is of the affirm view that the impugned order dated 03.06.2017, does not suffer from any infirmity or perversity, accordingly, the same is sustainable.

10. Resultantly, finding no merits, in the present appeal, the same stands dismissed with no order as to costs.

Final Order signed, sealed, dated and pronounced in the open court on this 23.07.2026.

File be consigned to records.

Dictated & Corrected by me.

Sd/-

(GOVIND BALLABH SHARMA)
PRESIDING OFFICER,
DRT-I, Delhi