DEBTS RECOVERY TRIBUNAL No.1, MUMBAI

ORDER
In
APPEAL 19 OF 2024
(Delivered on 10.08.2026)

KOKILA H SHAH ... Applicant/s

Versus

ALCHEMIST ASSET RECONSTRUCTION CO. LTD. ... Respondent

Advocate Puneet Gogad (through vc) a/w Adv. Prashant Pandit, Adv. Saurish Shetye and Adv. Devesh Naik i/b Ajay Law Associates for the Appellant.
Advocate Chirag Modi a/w Adv. Shobha Chavan i/b Adv. V. Deshpande & Co. for the Respondent no.1.
Advocate Sharath Pai for the Respondent no.3.
Advocate Minesh K. Shah for the Respondent no.4.

AND ORDER
In
APPEAL 25 OF 2025
(Delivered on 10.08.2026)

ALCHEMIST ASSET RECONSTRUCTION CO. LTD. ... Applicant/s

Versus

JUPITER INDUSTRIES AND LEASING LTD. & ORS. ... Respondent

Advocate Chirag Modi a/w Adv. Shobha Chavan i/b Adv. V. Deshpande & Co. for the Appellant.

Advocate Puneet Gogad (through vc) a/w Adv. Prashant Pandit, Adv. Saurish Shetye and Adv. Devesh Naik i/b Ajay Law Associates for the Respondent no.1.

Advocate Sharath Pai for the Respondent no.2.

Advocate Minesh K. Shah i/b Mr. Mulunty for the Respondent no.3(a) & (b).

ORDER

1. Appeal 19 of 2024 is filed by Appellant against the order passed by Ld. Recovery Officer in the Recovery Proceedings as 473/2002 wherein the Ld. Recovery Officer had attached the Arbitral award dated 12.07.2011.

2. It is contended by the appellant that she is not a certificate debtor, as she is not a borrower, guarantor nor mortgagor. She is a beneficiary of 50% of the arbitral award dated 12.07.2011 directing grant of 19.32 crores at 6% simple interest. The said amount is to be divided proportionally to appellant and Respondent No.3. The Ld. Recovery Officer had attached the said award as per order dated 05.11.2024 and the present appeal is filed against the said order of Ld. Recovery Officer.

3. According to the appellant, the aforesaid attachment order had been passed by Ld. Recovery Officer in violation to the mandatory direction in Order XXI Rule 53 CPC which directs, issuance of a notice to the executing court before attaching a decree. Here the arbitral award is under execution before Hon'ble High Court Bombay. Before attaching the award, Ld. Recovery Officer had omitted to comply with

order XXI Rule 53 of CPC. So the order of Ld. Recovery Officer in attaching the award without intimation or notice to the executing court as Hon'ble High Court Bombay, is illegal and so the said order is to be set aside.

4. The respondent contends that, the contention now raised by appellant are frivolous. The Ld. Recovery Officer under the Recovery of Debts and Bankruptcy Act has the same powers as the Tax Recovery Officer under the second schedule of Income Tax Act. Under the scheme of RDDB Act Recovery Officer exercises the same powers as a Tax Recovery Officer under the Second Schedule of Income Tax Act. Rule 27 of the Second Schedule of Income Tax Act, provides for attachment of a decree by Tax Recovery Officer, and the same can be attached by Recovery Officer also. The arbitral award operates as a decree of Civil Court, as per Section 36 of the Arbitration and Constitution Act.

5. Respondent further contends that money payable under the arbitral award being movable property, the action of Ld. Recovery Officer attaching the award, for the amount to be paid under the award is proper. So the proceedings initiated by Ld. Recovery Officer are proper and do not warrant any interference by this Tribunal.

6. The respondent/ARC/in appeal 19 of 2026, who filed the Appeal 25 of 2025 contends that, after the order of attachment dated 11.12.2017, the steps sought to be taken for issuance to notice to Hon'ble High Court, had been rejected by Ld. Recovery Officer. Civil Procedure

Code is not applicable to the proceedings and Rules 26,27,28 of 2nd schedule of Income Tax Act are applicable to the present proceedings before the Recovery Officer.

7. According to the appellant in Appeal 25 of 2025 issuance of notice to Hon'ble High Court is only a procedural act, to be done after passing of the order of attachment. The rejection had been made by Ld. Recovery Officer, by not taking into account, the point that, the Hon'ble High Court is a Civil Court and so notice is required to be issued. So the order passed by the Ld. Recovery Officer in this matter being erroneous has to be set aside.

8. The only points to be considered in appeal 19 of 2024 is

1) Whether the order of Ld. Recovery Officer dated 05.11.2024 is liable to be set aside?
2) Relief & Costs?

9. The points that arise in for consideration in Appeal 25 of 2025 is

1) Whether the order of Ld. Recovery Officer dated 06.12.2024is liable to be set aside?
2) Relief & Costs?

10. Point no. 1 in Appeal 19 of 2024and appeal 25 of 2025.

Before entering into a discussion on the contentions of both sides, a brief history of the matter shall be addressed to.

11. Pursuant to the MOU between family members of H D Shah group and C D Shah group, for the division of jointly owned property, arbitral award was passed on 12.07.2011. The award directed C D Shah group to pay Rs. 19.32 crores at 6% Simple Interest, to be divided between Respondent/ARC in Appeal 19 of 2024 and appellant therein, for which H D Shah group filed execution application before the Hon'ble High Court Bombay.

12. The debt was assigned by Canara Bank, to Green Malabar, Finance Ventures, Limited, which is a non-notified NBFC, who was substituted as the creditor, and then Ld. Recovery Officer DRT-I had attached the arbitral award. Green Malabar then assigned the Recovery Certificate in favour of Capri Global Capital Limited, which then had assigned the Recovery Certificate to Alchemist Asset Reconstructions Co. (ARC) who is the present Respondent/ ARC in the Appeal 19 of 2024.

13. The Respondent/ARC moved a petition to issue notice to the executing court after the attachment of the arbitral award which was dismissed by Ld. Recovery Officer and then ARC filed Appeal 25 of 2025 against the said order of Ld. Recovery Officer. The appellant in Appeal 19 of 2024 is the wife of H D Shah.

14. It is contended by the appellant in Appeal 19/24 that, she is neither a borrower, guarantor and is not a Corporate Debtor in the recovery proceedings. She is a beneficiary in the award dated 12.07.2011

passed in the matter of HD Shah and CD Shah where by the CD Shah group was directed to pay a sum of Rs.19.32 Crores @6% Simple Interest, which award is attached by Recovery Officer as per order dt.05.11.2024. The said attachment was made by the Recovery Officer in violation of mandatory procedural requirements under Order XXI Rule 53 CPC.

15. Respondent no. 4(a) and 4(b) also request to dismiss the appeal 19 of 2024 contending that it is filed merely to delay the rights to be enured to them. It is contended that the late C D Shah had not given any proposal for OTS and such averments are made without any basis. Whether the said OTS was made or not by late C D Shah is not the matter to be considered by this forum, as the execution of the award is pending before Hon'ble High Court Bombay.

16. The only point that now arises here, is as to whether the said attachment effected by Recovery Officer on 11.12.2017 is proper or valid. Order 21 Rule 53 CPC directs that, when the property sought to be attached is a decree passed by another court, the attaching court is mandated to issue notice to the court executing the decree, requesting it to stay the execution.

17. The aforesaid provision protects the interest of Decree Holder, ensures orderly execution, and avoids conflicting execution proceedings in different courts. Here in this case, the property attached is the arbitral award which is pending execution before Hon'ble Bombay High Court in Execution Application no.2252 of 2016. So, the

attachment to be proper, as specified in Order 21 Rule 53 CPC, intimation should have been given to the executing the decree. Here, as the execution court is the Hon'ble High Court, before effecting attachment of the decree, pending in execution before Hon'ble High Court, it was mandatory for the Ld. Recovery Officer to request for permission in view of Order 21 Rule 53 CPC.

18. Though Arsee/Respondent in Appeal 19 of 2024 attempts to reply on the Rule27(1)(i) and Rule27(3)of Income Tax Certificate Procedure Rules read with Second Schedule of the Income Tax Act, no satisfactory explanation is offered by to application of Rule 27(2)Income Tax Certificate Procedure Rule.

19. Rule 27(2) of Income Tax Certificate Procedure Rule provides that, when a civil court receives an application under Clause (ii) of Sub-Rule(I), it shall, on the application of the Tax Recovery Officer or the defaulters, proceed to execute the attached decree, subject to the provisions of the CPC, and apply the net proceeds in satisfaction of the certificate.

20. The said provision means that, on receipt of an application under Rule 27(1)(ii), the civil court is to proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate. As per the mandate of this section, the civil court, which is the Hon'ble High Court herein, must be notified of the attachment. So, Rule 27(2) read with Rule 27(1)(i) mandates issuance of prior notice to the executing court, before attachment. Here the executing court being

the Hon'ble High Court Bombay, it was incumbent on the Recovery Officer to seek for permission of Hon'ble High Court before effecting the attachment.

21. Ld. Counsel for the Respondent No.1 contends that the words stated are 'attached decree' which means attachment is to be effected first. But Rule27(2) Income Tax Certificate Procedure Rule reads that, "Where a civil court receives an application under clause (ii) of sub-rule (1), it shall, on the application of the Income-tax Officer or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate." By the words subject to the provisions of Civil Procedure Code, it has to be taken that strict compliance is to be made to Order 21 Rule 53 CPC.

22. It is further seen that, when the matter had come up before Hon'ble Bombay High Court in IA No.80/2025 in IA No.2252/16 ARSEC/Respondent in Appeal 19 of 2024 had submitted to the query by Hon'ble Bombay High Court, admitting that, no notice under order XXI Rule 53 CPC had been issued by Ld. Recovery Officer. It is not the case of Respondent before Hon'ble Bombay High Court that, notice under Order XXI Rule 53 CPC was not required prior to attachment or that Civil Procedure Code is not applicable. There, the Ld. Counsel for the Respondent had conceded that no such notice was issued before attachment of the arbitral award.

23. After making such an admission before Hon'ble High

Court, now Respondent cannot contend before this forum that, the said provision of CPC is not applicable, as the provision under Rule 27(2) Income Tax Certificate Procedure Rule specifies the word as attached decree. The Ld. Counsel does not offer any acceptable explanation to the words in the aforesaid rule as, subject to the provisions of the Civil Procedure Code.

24. In view of the aforesaid admission by Ld. Counsel for the Respondent No.1, before Hon'ble High Court of Bombay, liberty was granted by Hon'ble Bombay High Court to the JDs in the EA2252/2016 to take appropriate steps for raising the attachment effected by this Tribunal. By this liberty granted by Hon'ble Bombay High Court, it would only be natural to conclude that, the attachment of the arbitial award by Ld. Recovery Officer without complying the provision under Order XXI Rule 53 Civil Procedure Code, was not proper.

25. ARC/Respondent in Appeal 19 of 2024 then is seen to have moved Ld. Recovery Officer by moving application on 28.11.2024, for issuance of notice to Hon'ble Bombay High Court, after attachment of the arbitral award. This petition is misconceived before Ld. Recovery Officer, as per the provisions as Order XXI Rule 53 and Rule 27(2) Income Tax Certificate Procedure Rule, provide for action by the Civil Court on presentation of petition before it. An invalid action cannot be validated by filing an intimation, after the said invalid action.

26. Ld. Recovery Officer cannot be termed as a court and has no jurisdiction to entertain the application. So, the said petition was

rightly dismissed by the Ld. Recovery Officer . The Ld. Recovery Officer is an officer formed under Section 7 of the Recovery of Debts and Bankruptcy Act, and is mandated only to execute the Recovery certificate issued by the presiding officer of DRT. So, the rejection of the application by ARSEC/Respondent in Appeal 19 of 2024 to issue notice to Hon'ble Bombay High Court, that too after attachment of the award in violation to the accepted rule without informing Hon'ble Bombay High court, is seen to be proper and correct.

27. For reasons best known to ARSEC/Respondent in Appeal 19 of 2024, the presentation of petition on 28.11.2024 before Ld. Recovery Officer for issuing notice to Hon'ble Bombay High Court, the rejection of the same by Ld. Recovery Officer, and filing of this appeal before this forum were not mentioned before Hon'ble Bombay High Court. Even when the matter came up before Hon'ble Bombay High Court on 13.10.2025 and despite the query by Hon'ble Bombay High Court regarding compliance of Order XX1 Rule 53 CPC, none of the aforestated matters are seen submitted before Hon'ble High Court Bombay.

28. ARSEC/Respondent in Appeal 19 of 2024 is seen to have moved a forum as Ld. Recovery Officer who has no jurisdiction to entertain the same, as a belated attempt to correct an irregularity made by effecting an attachment in flagrant violation of the mandate of Order XXI Rule 53 of CPC.

29. The attachment of arbitral award without issuance of

mandatory notice under Order XXI Rule 53 CPC is outside the jurisdiction of Ld. Recovery Officer, and the attachment effected without notice as directed in Order XXI Rule 53 CPC is void. The point No.1 in Appeal 19 of 2024 is found in favour of Appellant therein and point No.1 in Appeal 25 of 2025 is found against the Appellant.

30. Point-No.2 in Appeal 19 of 2024 and Appeal 25 of 2025 This forum had entered into a finding that, the order passed by Ld. Recovery Officer on 05.11.2024 is in violation of the accepted rules. No infirmity is seen in the order passed by Ld. Recovery Officer in the order dt. 06.12.2024. So the Appeal no. 19 of 2024 is allowed and Appeal no. 25 of 2025 stands dismissed. It goes without saying that this order in both appeals would be subject to the order of Hon'ble High Court passed in this matter, which is pending consideration by Hon'ble High Court.

31. Parties to suffer costs.

(Dictated to my Stenographer, transcribed by her corrected and signed by me and pronounced in open forum on 10.08.2026)

Presiding Officer
Debts Recovery Tribunal,
Mumbai-I
(Sreekala-Suresh)

Date: 10.08.2026