DEBTS RECOVERY TRIBUNAL, JAIPUR
PRESIDING OFFICER: SH. VIMAL GUPTA

Appeal No.: 5/2019
(In Recovery Proceeding No. 68/2002 In
Canara Bank vs Punsumi Devices & Others)

Smt. Mamta Sogani w/o Shri Shanti Kumar Sogani R/o 99 Dhuleshwar Garden, C-Scheme, Jaipur through Power of Attorney Holder Shri Dinesh Kumar Sharma S/o Shri Virendra Pal Sharma R/o P 82,Shyam Encalave, Panchyawala, Sirsi Road, Jaipur.

.....Appellant

Versus

1. **Canara Bank,** through Branch manager, Branch at Arvind Marg C-Scheme, Jaipur (Raj.).
2. **Shri Sumeet Bhargava** S/o Shri V.K. Bhargava R/o D 16 Meera Marg, Banipark, Jaipur through Power of Attorney Holder Shir G.C. Chaturvedy S/o R.K. Chaturvedy R/o G 18, Krishna Marg, C-Scheme, Jaipur (Raj.).
3. **Punsumi Devices,** a partnership firm through partners Shri V.K. Bhargava, Madhu Bhargava, Shri Puneet Bhargava, office at D-16 Meera Marg, Banipark, Jaipur (Raj.)
4. **Recovery Officer-II, Debts Recovery Tribunal,** Nehru Place, Jaipur (Raj.)

.....Respondents

Present

Sh. Roshan Sethi along with Sh. Shubham Maheshwari, Counsel for the Applicant

Sh. Kirti Kapoor along with Sh. Mohit Khandelwal, Counsel for the Respondent No. 1

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Senior Counsel Sh. Sanjay Jhawar along with Ms. Anita Agarwal, Counsel for the Respondent No. 2

Ms. Meeta Pareek, Counsel for the Respondent No. 3 (ex-parte)

(Final Order)
(03.10.2026)

1. Counsel for the Appellant submitted that Smt. Mamta Sogani (herein after referred as Appellant) files this appeal through power of Attorney holder Dinesh Kumar Sharma aggrieved by order dated 25-1-2019 passed by Ld. Recovery Officer II, DRT Jaipur in M.A in Recovery Proceeding No. 68/2002.
2. It is submitted that Smt. Mamta Sogani filed Miscellaneous Application in Recovery Proceeding No. 68/2002 to set aside and recall order dated 07-12-2010 and in lieu of that, order for Sale Certificate dated 14-12-2010 issued to Sumeet Bhargava by Hon1ble Recovery Officer, DRT, Jaipur (Raj).
3. It is submitted that M.A. in Recovery Proceeding No. 68/2002 was filed by Smt. Mamta Sogani in light of following facts. That Smt. Shanti Devi Bhargava sold the property D-16, Meera Marg, Banipark, Jaipur (Hereinafter referred as property) to Smt. Mamta Sogani vide agreement to sale dated 02-12-2003 in presence of Lt. Col. Yogendra Bhargava, Vishnu Kumar Bhargava, Smt. Kanta Bhargava, Vinesh Kumar Bhargava, Umesh Kumar Bhargava and Smt. Usha Bhargava who were also attesting and confirming witnesses to the said agreement to sale. After this agreement to sale extension was sought and another agreement to sale was made on 16-12-2003, which was then extended by Agreement to sale dated 14-02-2004, which was again extended by Agreement to sale dated 05-03-2004 and after this through registered

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Agreement to sale dated 29-04-2004 which was further extended by Agreement to sale dated16-10-2004 and the last agreement to extend this Agreement to sale dated was on 27-04-2005.

4. It is submitted that after requesting to make sale deed for said property Smt. Shanti Devi Bhargava didn't carry out the same, thereafter, Appellant filed Civil Suit for Specific Performance of Agreement which was registered as case No 86/2005 and in that case a reply was filed on 02-09-2005 and thereafter, a decree was granted in favour of Appellant on 03-09-2005 by Additional District Judge No. 1, Jaipur.
5. It is submitted that after decree was passed in the Civil Suit, Sale Deed as Decreed was not carried out and so Appellant filed execution in ADDITIONAL DISTRICT JUDGE No 1, Jaipur Metropolitan, Jaipur on 15-09-2005. While during pendency of this Execution in ADDITIONAL DISTRICT JUDGE No 1 Smt. Shanti Devi Bhargava died on 18-03-2006 and so her Legal Representatives were taken on Record. Mr. Vishnu Kumar Bhargava {S/o Smt. Shanti Devi Bhargava) representing as one of Legal Representative of Smt. Shanti Devi Bhargava filed many applications in this case and after disposing them all, the court directed Appellant to deposit the payment in court and pursuant to that Appellant deposited by way of Pay Order No. 5445741 dated 15-01-2010 of 1,06,00,000/rupees. After which court ordered to make sale deed in favour of Appellant and on 25-02-2010 a Registered sale Deed in favour Appellant was made vide Book No. 1, Jild No. 311, Page 53, Sr. No. 2010397001887 and Additional Book No. 1, Jild No. 1242, Page No. 27 to 44.
6. It is submitted that on the other side a Partnership firm named Punsumi Devices in which Mr. Vishnu Kumar Bhargava, Madhu Bhargava, Puneet Bhargava are partners took loan from Canara bank and Smt.

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Shanti Devi Bhargava and Lt. Col. Yogendra Bhargava were guarantors to this loan taken by the firm Punsumi Devices. That due to irregularity the Bank initiated Recovery Proceeding in DRT, Jaipur through O.A No 114/2001 namely Canara Bank vs Punsumi Devices and thereafter, the Recovery Proceeding were initiated in court of Recovery officer DRT Jaipur for Recovery of amount due on Punsumi Devices. The important fact of this proceeding is that Property D 16, Meera Marg, Banipark, Jaipur was never mortgaged with bank or attached in the said case.

7. It is submitted that on 28-03-2005 an application U/s 22 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was filed by Mr. Vishnu Kumar Bhargava representing himself to be as Power of Attorney holder of Smt. Shanti Devi Bhargava for allowing the private sale of the property D-16, Meera Marg, Banipark, Jaipur owned by Smt. Shanti Devi Bhargava to Mr. Sumeet Bhargava S/o Mr. Vishnu Kumar Bhargava by way of private sale. That the Certificate Holder Canara Bank filed a reply to this application on 19-04-2005 expressing its concern to the fact that the purchaser Mr. Sumeet Bhargava as mentioned in the said application is in fact Grandson of Smt. Shanti Devi Bhargava and Recovery Officer can only sell a property by public auction and no certificate can be issued by Recovery Officer without public auction. Thereafter on 21-04-2005 surpassing the settled provisions of the Act and acting without jurisdiction and in excess jurisdiction Recovery Officer passed order for allowing private sale of property D-16, Meera Marg, Banipark, Jaipur to Mr. Sumeet Bhargava without assigning any reason and law for such private sale and also surpassing the legal position that Sale Certificate for private sale cannot be issued by DRT.

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8. It is submitted that on 03-ll-2005/8-11-2005 Mr. Sumeet Bhargava through Power of Attorney applied for issuance of Sale Certificate as per order of 21-04-2005 to which Certificate holder Canara Bank objected in its reply stating that the sale do not require consent of Court unless the matter is sub-judice and the order of 21-04-2005 was in itself void ab-initio as it was passed during the period when learned P.O. had stayed all proceedings before Recovery Officer, further Bank categorically mentioned that this sale is made to avoid stamp duty and if it is confirmed then the Bank cannot be held responsible in anyway and if Recovery Officer allows it then it will be at his own risk. Thereafter on 13-01-2006 Recovery Officer dismissed the application to issue sale certificate.
9. It is submitted that on 19-02-2007 Surbhi Bhargava and Mohit Bhargava Children of Mr. Vinesh Bhargava and Grandchildren of Smt. Shanti Devi Bhargava filed an Objection application for Sale Confirmation and mentioned that the property belonged to Smt. Shanti Devi Bhargava and was never attached or mortgaged with Bank and the application dated 28-03-2005 is made to play fraud on court and mentioned that even the Power of Attorney presented with that application lacks both stamp duty and creditability of attesting witnesses. They also mentioned that Smt. Shanti Devi Bhargava entered into an Agreement to Sale dated 02-12-2003 to sell the property D 16 Meera Marg, Banipark, Jaipur to Smt. Mamta Sogani for sale consideration of 127 lakhs. This agreement was made bearing signature of all legal heirs of Smt. Shanti Devi Bhargava as confirming and attesting witnesses including Mr. Vishnu Kumar Bhargava. The Application filed by Surbhi Bhargava and Mohit Bhargava is already on record.

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10. It is submitted that Smt. Shanti Devi Bhargava died on 18-03-2006 after which Mr. Vishnu Kumar Bhargava never mentioned this fact on record neither any partner of Punsumi Devices brought this fact on record nor bank filed any application to take legal Representatives on record.

11. It is submitted that on 20-10-2010 Mr. Sumeet Bhargava filed an application for confirmation of Private Sale and issuance of Sale Certificate for property D-16, Meera Marg, Banipark, Jaipur and on 07-12-2010 Recovery Officer confirmed sale of the said property in favour of Mr. Sumeet Bhargava and on 14-12-2010 issued Sale Certificate for the same even when the fact that property was already sold to Smt. Mamta Sogani was brought in knowledge of Ld. Recovery Officer by Application of Surbhi Bhargava and Mohit Bhargava.

12. It is submitted that during all these proceedings in DRT, Jaipur the Execution No. 21/2005 was still pending in ADDITIONAL DISTRICT JUDGE No.-1 Jaipur and after death of Smt. Shanti Devi Bhargava all her legal representatives were brought on record in this case and Mr. Vishnu Kumar Bhargava was also brought in capacity of legal representative and thereafter he had been appearing in the said case and was fully aware of the fact that the Sale deed of property D-16, Meera Marg, Banipark, Jaipur was already made in favour of Smt. Mamta Sogani on 22-02-2010 by ADDITIONAL DISTRICT JUDGE No.-1 Jaipur Metropolitan Jaipur. An objection thereafter, was filed by Transit Voltage Systems in capacity of a tenant present on the Property and brought this fact on record that Debts Recovery Tribunal, Jaipur has passed order of private sale in favour of Mr. Sumeet Bhargava and further another objection was filed by Mr. Sumeet Bhargava mentioning that a Sale Certificate has been issued in his favour by Ld. Recovery Officer, Debts Recovery Tribunal, Jaipur on 14-12-2010.

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13. It is submitted that Appellant Smt. Mamta Sogani moved an application in Court of Ld. Recovery Officer, DRT, Jaipur on 19-07-2012 to set aside the order of 07-12-2010 and cancel all the proceedings in relation to property D-16, Meera Marg, Banipark, Jaipur owing to which Sale Certificate dated 14-12-2010 was issued and further has been regularly appearing in the matter to set aside the order obtained by Mr. Sumeet Bhargava and Mr. Vishnu Kumar Bhargava by playing fraud on Court. The Miscellaneous application was filed by Smt Mamta Sogani on ground of fraud committed by Mr. Vishnu Kumar Bhargava and Mr. Sumeet Bhargava. This application challenged the order passed for sale of property D-16, Meera Marg, Banipark, Jaipur to Mr. Sumeet Bhargava which was neither mortgaged nor attached by DRT also it was mentioned that Mr. Vishnu Kumar Bhargava deliberately concealed the fact of execution of the property pending in ADDITIONAL DISTRICT JUDGE No 1 Jaipur Court from DRT in order to be benefitted from this fraudulent transfer, and thereby Appellant demanded to cancel the sale certificate issued by Ld. Recovery Officer in light of fraud and misrepresentation.

14. It is submitted that Reply to this Misc. Application was filed by Respondent no. 2 (Sumeet Bhargava) wherein he challenged the misc. application on the ground that the application is filed beyond the time of 30 days as provided under Rule 62 of Procedure for Recovery of Tax II schedule. The Respondent in this reply mentioned that since sale has become absolute it cannot be cancelled and further mentioned that since Rule 2 notice was served to Smt. Shanti Devi Bhargava and so, she was not allowed for private transfer of property.

15. It is submitted that the Bank in its reply to this misc. application stated that the Applicant Smt. Mamta Sogani should go to appeal against the

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sale confirmation order and should not proceed with the application in front of Recovery Officer II, DRT Jaipur.

16. It is submitted that Smt. Mamta Sogani filed rejoinder to reply filed by Mr. Sumeet Bhargava wherein she mentioned that the property was purchased from Smt. Shanti Devi Bhargava on 02-12-2003 for total sum of Rs. 1,27,00,000/-. It was also pointed out through this rejoinder that Mr. Vishnu Kumar Bhargava. represented himself to be Power of Attorney Holder of Smt. Shanti Devi Bhargava & applied for private sale of property by way of Application filed on 28-03-2.005 even though he was aware of a pending execution in ADDITIONAL DISTRICT JUDGE No. 1, Jaipur. Also, the agreement to sale made by Smt. Shanti Devi 14 Bhargava with Smt. Mamta Sogani had his signature as witness. It was also pointed out that Power of Attorney filed by Mr. Vishnu Kumar Bhargava with Application dated 28-03-2005 was not valid as it was not registered which is mandatory for dealing with immovable property. Also, the Application for private sale dated 28-03-2005 was not presented by Smt. Shanti Devi Bhargava but they were filed through Mr. Vishnu Kumar Bhargava relying on unregistered Power of Attorney without any affidavit to support that Application.

17. It is submitted that Smt. Mamta Sogani in her rejoinder mentioned that a Power of Attorney in favor of Surbhi Bhargava was made by Smt. Shanti Devi Bhargava and that two Power of Attorney cannot exists for same property at the same time. That Mr. Vishnu Kumar Bhargava even after being aware of the fact that Smt. Shanti Devi Bhargava has sold her property to Smt. Mamta Sogani for which execution was also pending, he with intention to deceive and play fraud on Court filed an Application U/s 22 of Recovery of Debts Due to Banks and Financial

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Institutions Act, 1993 for private sale of the property for allowing private sale of this property to his son. In the rejoinder Smt. Mamta Sogani pointed out that private sale cannot be allowed by DRT as property can only be sold by way of public auction and the act of Mr. Sumeet Bhargava and Mr. Vishnu Kumar Bhargava is done to play fraud on Smt. Mamta Sogani.

18. It is submitted that in rejoinder Smt. Mamta Sogani further pointed out that Surbhi Bhargava and Mohit Bhargava (Grand Children of Smt. Shanti Devi Bhargava) filed an Application to Ld. Recovery Officer, to cancel order of 21-04-2005 and brought this fact on record that the property is already sold to Smt. Mamta Sogani even then the order of 07-12-2010 was passed and Sale Certificate was issued by Ld. Recovery Officer in favor of Sumeet Bhargava. That further appellant in rejoinder mentioned that after death of Smt. Shanti Devi Bhargava on 18-03-2006 the Application was filed by Mr. G.C. Chaturvedi Power of Attorney Holder of Mr. Sumeet Bhargava for issuing of Sale Certificate and none of the LRs of Smt. Shanti Devi Bhargava were made party to this pending Recovery Proceeding. That Mr. Vishnu Kumar Bhargava was regularly appearing in execution pending in ADDITIONAL DISTRICT JUDGE No. 1, Jaipur in capacity of one of the L.R.s of Smt. Shanti Devi Bhargava after her death and did not mention anything about the proceedings of DRT, Jaipur.

19. It is submitted that in rejoinder it was pointed out that entire proceeding in DRT for obtaining Sale Certificate of property was a plan to deceive Smt. Mamta Sogani and the entire act was against the Law. It was also mentioned that since property was never mortgaged nor attached by DRT, it never came under jurisdiction of DRT and hence DRT had no right to allow private sale of such property. Even service of notice

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Under Rule 2 of II Schedule, procedure for Recovery of Tax was not made Smt. Shanti Devi Bhargava.

20. It is submitted that in rejoinder Smt. Mamta Sogani pointed out that even after death of Smt. Shanti Devi Bhargava and without taking any L.R.s on record Recovery Officer passed order dated 14-12-2010 without jurisdiction. The order obtained by Ld. Recovery Officer clearly shows that misrepresentation and fraud has been played by Mr. Sumeet Bhargava and any order received through this can be cancelled at any point of time and there is no limitation to do so.

21. It is submitted that the above facts lead to filing of this Appeal by Appellant as the Misc. application was disposed of by the Ld. Recovery Officer- II, DRT, Jaipur and order was passed dated 25-01-2019 in which the objections raised by Applicant/Appellant were disposed of citing reason that the Ld. Recovery Officer does not have jurisdiction to cancel the Sale Certificate issued and the objection raised by Applicant/ Appellant to cancel the Sale Certificate were not filed within 30 days under Rule 62 of Procedure for Recovery of Tax llnd Schedule. That by order dated 25-01-2019 The Ld. Recovery Officer II held that Sale Certificate issued cannot be cancelled by him for lack of jurisdiction to decide such objection. The Ld. Recovery Officer further held that without going into the merits of the objections filed by Appellant the application is disposed of on primary objection raised. The Ld. Recovery Officer also held that there is no error apparent on face of record.

22. It is submitted that thus, aggrieved by the order dated 25-01-2019 passed by Ld. Recovery Officer II, the Appellant prefers this appeal to set aside Sale Certificate and cancel order dated 25-01-2019 and cancel

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Sale Certificate issued on 14-12-2010 and set aside order dated 07-12-2010 and order dated 21-04-2005.

23. It is submitted that The Ld. Recovery Officer, DRT, Jaipur has erred in the order dated 25-01-2019 where without going into the merits of the case and objections filed The Recovery Officer has disposed of the application filed by Appellant / Applicant just on the basis of primary objections. It is well settled principles that order obtained by playing fraud on Court can be cancelled at any stage and any judicial forum, yet the Ld. Recovery Officer did not exercise its jurisdiction to cancel the Sale Certificate.

24. It is submitted that The Ld. Recovery Officer, DRT, Jaipur has erred in the order dated 25-01-2019 wherein under Rule 87 of Procedure for Recovery of Tax IInd Schedule "any mistake apparent from the record" He found no error on the face of record even when bare reading of objections filed and noting made in daily order sheets it is apparent that fraud was played in obtaining Sale Certificate from the Ld. Recovery Officer, DRT, Jaipur.

25. It is submitted that the law provides right to court to cancel any order obtained by way of fraud and misrepresentation, which has been reiterated by various judgements in India. It is well settled principle *fraus et jus nunquam cohabitant and fraus et dolus nemini patrochinari debent* which means fraud & justice never dwell together and fraud and deceit ought to benefit none respectively. In **S.P. CHENGALVARAYA NAIDU (DEAD) BY LRS. Versus Jaganath (DEAD) BY LRS. AND OTHERS 1994 (1) SCC 1** 'Fraud' - Meaning of - Non Disclosure of Relevant and material documents with a view to obtain advantage amounts to fraud -Partition Suit filed by respondent without disclosing deed of release executed by him relinquishing his

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rights in the property and preliminary decree obtained-At the time of hearing of application for final decree filed by respondents, appellants-defendants coming to know about want of locus standi of the respondent and as such challenging the application on ground of fraud - Held- Decree Obtained by Non-disclosure of the release deed amounted to fraud on court and hence decree is liable to be set aside. Also, the Hon'ble Supreme Court held in **A.V. Papayya Sastry V. Government of A.P. A.I.R 2007 S. Cl 546** ". Now, it is well settled principle of law that if any judgment or order is obtained by fraud. It cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed; *"Fraud avoids all judicial acts, ecclesiastical or temporal*".

26. It is submitted that it is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order - by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. " Supreme Court again in **2008 (8)SCC 383 MEGHMALA v. G. NARASIMHA REDDY (Dr. Chauhan, J.)** held *"33.Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due."*

27. It is submitted that since the property D-16, Meera Marg, Banipark, Jaipur was never attached by Recovery officer neither it was mortgaged with Bank, such property never came under purview of DRT, Jaipur and thereby any order passed on its de-facto and in law becomes void-ab-

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initio. The court even if approached for allowing for private sale couldn't have allowed that application as the property was free from jurisdiction of court and even bank in its reply stated that there's no permission necessary from DRT for private sale of property. The act clearly establishes the intention to play fraud by Mr. Sumeet Bhargava and Mr. Vishnu Kumar Bhargava as by applying for private sale from DRT, they intended to cover their fraudulent act through judicial process. The property cannot be assumed to be attached and there's no presumption that can lead up to that, attachment before judgement is necessary act as it is mentioned in **AIR 1995 KARNATAKA 35 M.M. MIRDHE AND K.H.N. KURANGA**, **JJ**. It was held that- "Attachment before judgment - Order passed - Presumption that property must have been in fact attached does not thereby arise.

28. It is submitted that the Recovery Officer allowed sale of property by way of private sale which is not valid according to Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Acts clearly provides for sale by way of public auction only and any private transfer by order of Recovery Officer is not recognized under the II Schedule, procedure for Recovery of Tax. The Rules under this Schedule specifically provides for mode of Recovery U/r 4 which clearly mentions that attachment is necessary of Defaulter's property whether movable or immovable for Recovery under this Schedule. The Recovery Officer never attached the property and thus it was not valid to allow private sale of such property. That Part III Attachment and Sale of Immovable Property of II Schedule, procedure for Recovery of Tax provides U/r 48 that attachment of immovable property is necessary further it provides U/r 56 that sale can only be made by way of public auction and not otherwise. Recovery Officer was bound to adhere to the

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Rules mentioned in this Schedule and any non-compliance of such rule ipso- facto negates the order passed in non-contravention. The order passed allowing for private sale of property is not valid for violating above provisions.

29. It is submitted that violating the provisions Ld. Recovery Officer allowed Private Sale of property to be made in favor of Mr. Sumeet Bhargava, thereafter a Sale Certificate was issued by Ld. Recovery Officer for this Private Sale, even, when no provision or rule governing procedure of DRT proceedings provides that Recovery Officer has power to issue Sale Certificate for Private Sale. That Mr. Sumeet Bhargava applied for issuance of Sale Certificate of this property to which Bank objected that this is sale made to avoid Stamp Duty and if confirmed Bank cannot be held responsible. Ld. Recovery Officer without having jurisdiction over the property passed order for Private Sale and further acting in excess jurisdiction issued Sale Confirmation Certificate for this Private Sale which clearly violates the provisions of II Schedule, procedure for Recovery of Tax.

30. It is submitted that the entire procedure adopted by Mr. Sumeet Bhargava and Mr. Vishnu Kumar Bhargava establishes their malafide intention to play fraud on Court and Smt. Mamta Sogani. That both of them concealed material information from Court in obtaining permission of Private Sale and Sale Certificate thereafter, the pending executing proceeding in ADJ No. 1 Jaipur was also not brought on record by them in order to play fraud. The act of seeking permission of private transfer and Sale Certificate was only made to cloak the fraudulent act by Judicial proceeding, DRT was only involved by them in this fraudulent transfer to ensure that they can use the unlawful Sale Certificate in future to play fraud on Smt. Mamta Sogani. The

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fraudulent act is further corroborated by the fact that the Application filed for seeking permission of private transfer by Mr. Vishnu Kumar Bhargava representing himself to be Power of Attorney Holder of Smt. Shanti Devi Bhargava was unregistered Power of Attorney and this Application was filed without any affidavit supporting that Application. The act of fraud further is found when Smt. Shanti Devi Bhargava died and none of her Legal Representatives were brought on record to represent her after her death. The allegation fraud also finds substance in Application filed by Surbhi Bhargava and Mohit Bhargava wherein they brought this fact on record that Smt. Mamta Sogani has purchased the property D-16, Meera Marg, Banipark, Jaipur from Smt. Shanti Devi Bhargava and the Private Sale cannot be allowed in favor of Mr. Sumeet Bhargava.

31. It is submitted that The Ld. Recovery Officer disposed of the objections filed by Appellant /Applicant to set aside the sale made to Sumeet Bhargava on the ground that such were not filed within 30 days as required Under Rule 62 of Procedure for Recovery of Tax llnd Schedule. The reason cited by The Ld. Recovery Officer has no merits as the llnd Schedule Procedure for Recovery of Tax specifically provides that the sale made under Part II-Attachment and Sale of Immovable Property shall be by public auction under Rule 56 and such sale can be objected under Rule 62 which read as hereunder **"At any time within 30 days of the sale the purchaser may apply to Tax Recovery Officer to set aside the sale on the ground that the defaulter had no salable interest in the property sold".** That this makes it clear that the objection which needs to be filed within 30 days only apply to sale made by way of public auction carried out under Rule 56 of this Schedule. The time limit of 30 days to file objection against

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the sale made cannot be applied to sale made by way of private sale. As the sale never was done by way of public auction, the provision that safeguards rights of purchaser from objectors of public auction cannot come to the rescue of purchaser Mr. Sumeet Bhargava who has purchased property by way of private sale by playing fraud on Court.

32. It is submitted that Ld. Recovery Officer has erred in order dated 25-01-2019 wherein the M.A. of Appellant has been disposed of without getting into merits of the case and not exercising the power of review under rule 87 II Schedule, procedure for Recovery of Tax has there is apparent mistake on the face of record in issuance of Sale Certificate to Mr. Sumeet Bhargava.

33. Counsel for the Appellant seek relief that the Hon'ble Tribunal must set aside the order passed by Ld. Recovery Officer II, DRT, Jaipur on 25-01-2019. That Hon'ble Tribunal must cancel the Sale Certificate dated 14-12-2010 issued by Recovery Officer in lieu of order dated 07-12-2010 which also needs to be cancelled and set aside along with order dated 21-04-2005 with costs in interest of justice.

34. **Counsel for the Respondent No. 1 Shri Kersi J. Mehta** filed reply to the Appeal on 31.07.2019.

35. Counsel for the Respondent No. 1 submitted that the Bank has opposed private sale of the immovable property in question. However, the learned Recovery Officer (hereinafter referred to as the RO) had, in his wisdom, permitted the private sale.

36. It is submitted that the borrower then deposited Rs. 82 Lac with the RO who has kept the same in a Fixed Deposit.

37. It is submitted that the borrower subsequently deposited Rs. 202 Lac with the RO and filed an application u/s 26(2) for RC to be withdrawn on the ground that the entire dues have been paid as per the One-time-

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settlement arrived with the Bank. This money is also lying with the RO in a Fixed deposit.

38. It is submitted that the Bank has opposed this application on the ground that unless the Bank recovers its complete dues, the RC cannot be withdrawn.

39. It is submitted that since the Hon'ble High Court has passed an order dated 2 December 2014 for a stay on the proceedings before the DRT regarding another mortgaged property, no order has been passed in the said application u/s 26(2) of the Act.

40. It is submitted that the contents of paras 5(1) to 5(2) do not concern the Bank as they were never a party to those proceedings and therefore, denied due to lack of knowledge.

41. It is submitted that Bank denies that the immovable property situated at D-16, Meera Marg, Bani Park, Jaipur is not mortgaged with the Banks stated in Para 5(6). The rest of the contents do not concern the Bank and are denied for want of knowledge.

42. It is submitted that the contents of Para 5(7) to 5(9) are admitted and the contents of Para 5(10) are denied for want of knowledge. But the contents of Para 5(11) are only denied to the extent that the fact of the sale of property to appellant was brought to the attention of the RO. That the contents of Para 5(12) are denied for want of knowledge. Whereas the contents of Paras 5(13) to 5(21) are a matter of record and do not need a rejoinder.

43. **Counsel for the Respondent No. 2 has filed his** reply to appeal and also filed written statement on 17.07.2025 and 17.09.2025.

44. It is submitted that the Mis. Application was filed with a great delay of one and half year from the date of the order of issuance of the sale

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certificate. The delay has not been explained and as such objections deserve to be dismissed.

45. It is submitted that the M.A. was filed without challenging the order dated 21.04.2025 and the sale certificate dated 14.12.2010. However, in the appeal relief has been claimed against the aforesaid orders. The appeal is not maintainable on this ground as well. The Misc. Application was filed after a long delay of 7 years if calculated from the date of order granting permission of sale and a delay of one and a half year if taken from the date of order permitting issuance of sale certificate. The M.A. as such was hopelessly time barred and the order passed by the Ld. Recovery Officer has been passed taking the aforesaid inordinate delay into consideration. The appeal as such deserves to be dismissed.

46. It is submitted that the sale certificate has already been granted on 14.12.2010. It has attained finality in as much as same has not been challenged by filing any appeal. No relief was sought in regard to the sale certificate while filing the misc. application and as such no relief for cancellation of sale certificate can be claimed at this stage. Even no relief with regard to the order dated 21.04.2005 was claimed in the objections and as such the same cannot be allowed to be raised at the appellate stage.

47. It is submitted that the objections were filed under the Rule 62 which, interalia, provides that the purchaser may apply to Tax Recovery Officer within a period of 30 days' time to set aside the sale on the ground that the defaulter had no saleable interest in the property. Therefore, it is established that the said provision of Rule 62 is not attracted in the present case. Firstly, the appellant was not the purchaser

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and secondly it has no saleable interest and thirdly it was not filed within a period of 30 days' time.

48. It is submitted that the objections are not maintainable under Rule 62 and Regulation 71 is not attracted in the present case it is submitted that the entire case of the applicant is to the effect that the Recovery Officer had no jurisdiction to sell the properties by a private treaty. This objection is also not tenable in the light of Rule 66 of the Second Schedule to the IT Act. The said provision provides, interalia, that where an order of sale of immovable property has been made and, in the case, when the defaulter can satisfy the recover officer that the amount in question can be raised by private sale of such property then the recovery officer has the jurisdiction to allow the private sale to enable him to raise such amount. The rule of private sale is there, thus the objections in regard to the sale are not sustainable besides the permission granted by the recovery officer in the year 2005 has attained finality as they have not been challenged in any court of law.

49. It is submitted that as per rule 16 the defaulter is barred from alienating the property in any manner whatsoever after the issuance of Rule 2 notice and same being receiver by the defaulter. In the present case the notices were issued on 25.02.2003 and the same was served on defaulter in the month of March, 2003, thus any subsequent transaction entered into without the leave of recovery officer, is void. The decree granted on 03.09.2005 by the District Judge on specific performance is against the provision of Rule 16.

50. It is submitted that suit for specific performance came to be filed on 28.08.2005 and consequent a consent decree was granted on 03.09.2005 i.e. within a period of 7 days. The same is also indicative of the collusion between the parties to the suit to usurp the property.

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51. It is submitted that the recovery officer does not have any jurisdiction to review its order already passed on 07.12.2010 under any provision of the Act except the provision of rule 87. No application under rule 87 for review has been made by the objector. In the present case objections so filed by the objector are not sustainable in the eye of law under any of the provision.

52. It is submitted that as per the provision of the rule 66 and sub rule 2 second proviso, the sale would not become absolute until it has been confirmed by the R.O. In the present case sale has already been confirmed by the R.O. vide order dated 07.12.2010 and in pursuance thereof the sale certificate has been issued on 14.12.2010.

53. It is submitted that the R.O. was having a jurisdiction under rule 16 read with rule 66 to grant permission for sale by private treaty.

54. It is submitted that the RO has already confirmed the sale under Rule 63, therein the sale become absolute and thereafter issued a sale certificate under the provisions of rule 65 further confirming that the sale has become absolute w.e.f 20.05.2005.

55. It is submitted that the contents of para 5(2) of the appeal are admitted to the extent of filing of the Misc. Application for recall of order dated 07.12.2010. However, it is humbly submitted that the said application for recall came to be filed after a lapse of one and a half year and no cogent reason for the delay caused was provided by the appellant. Further the sale certificate came to be issued in pursuance to the order dated 07.12.2010 which was never put to challenge and hence attained finality. Without there being any challenge to the same no relief could have been granted in favour of the appellant.

56. It is submitted the contents of para 5(3) of the appeal are denied and replied in terms that after the notice under rule 2 of the second schedule

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were issued on 25.02.2003, the appellant could not have entered into any transaction particularly when the said notice were duly served on them and no prior leave was sought from the RO. As such the agreement to sale executed in favour of the appellant, if any, are void.

57. It is submitted that the contents of para 5(4), 5(5) are replied in terms that the consent decree as passed on 03.09.2005 was sought to be executed and two objections came to be filed in the execution petitions, one by the answering respondent and the other by the tenant. In the tenant's objection, it was specifically mentioned that shri Sumeet Bhargava has paid the entire sale consideration after permission has been granted in his favour. The appellant was aware of the permission granted by the RO. As regards the decree so granted by the District Judge for specific performance is concerned, it is against the provision of rule 16. Further, the said decree has been obtained in collusion with the other parties. The suit was filed on 28.08.2005 and the consent decree came to be granted on 03.09.2005.

58. It is submitted that contents of para 5(6) are admitted to the extent of granted of loan to Punsumi Devices, it's getting irregular, filing of OA and thereafter initiation of recovery proceedings. However, rest of the contents are denied. Once the notice under rule 2 of the second schedule came to be issued, the defaulter could not have entered into any transaction without the permission of the RO.

59. It is submitted that the contents of para 5(7) of the appeal are denied in the light of submission made in the preliminary submissions and such are not reiterated. However, it is pertinent to mention herein that as per rule 66 of the second schedule, the RO has power to allow private sale to enable him to raise the amount in case the defaulter can satisfy the

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RO. In the instant case, the RO had allowed the same and no challenge to it was ever made and hence the order attained finality.

60. It is submitted that the contents of Para 5(8) to 5(11) of the appeal are denied and replied in terms that the earlier application though dismissed, however, the subsequent application came to be allowed as the grounds for dismissal as existed earlier were no longer prevailing and owing to the same, the subsequent application came to be allowed and the sale certificate was issued and the sale became absolute. As regard the contents with regard to the property being sold to Smt Mamta Sogani is concerned, the same are denied. Any transaction after issuance of rule 2 notice is void and no right can be claimed on the basis of said agreement to sale by the appellant.

61. It is submitted that the contents of para 5(12) to 5(13) of the appeal are replied in terms that the objections came to be filed and the tenant in its objection had specifically mentioned that Shri Sumeet Bhargava has made payment of all the dues and a sale certificate has been issued in his favour. Even after attaining the knowledge of the said fact, the application for recall of order dated 07.12.2010 came be filed on 19.07.2012 i.e. after a delay of more than one and a half year.

62. It is submitted that the contents of para 5(21) of the appeal are admitted. The order passed by the Ld RO, DRT Jaipur dated 25.01.2019 is reasoned, just and taking into consideration the material place on record.

63. It is submitted that the contents of para 5(22) of the appeal are denied and replied in terms that in the objections so raised by the appellant, no challenge whatsoever was made to the sale certificate so issued on 14.12.2010 and/or the order dated 21.04.2005 and no relief was claimed by the appellant at state of the misc. application. The appellant cannot

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seek the aforesaid relief at the appellate stage. The other prayers made by the appellant deserves to be rejected and appeal deserves to be dismissed for the following reasons:

A) It is submitted that the contents of ground 1 to 3 of the appeal are denied. The appellant alleges that a fraud has been played on the court and the sale certificate has been obtained by playing fraud but the appellant has not pointed out as to how fraud has been played on the court. No whisper has been made on the manner or the fraudulent act but only bland allegation has been raised. It is humbly submitted that no fraud has been played by the answering respondents but the order impugned has been passed in terms of the provisions of law.

B) It is submitted that the contents of ground 4 to 5 of the appeal are denied. Even though the property was not mortgaged with the bank, issuance of rule 2 notice barred the defaulter from dealing with the property in any mater whatsoever without prior permission of the RO. As such the permission was sought for private sale which was duly granted by the RO after exercising the power vested in it under rule 16 read with 66.

C) It is submitted that the contents of ground 6 are denied and replied in terms that the sale certificate cannot be challenged by the appellant as he is neither the purchaser, nor any issue with regard to the objector not having any salable interest has been raised. Further the appellant has filed the application with a delay of more than one and a half year and even no reason for the delay caused has been provided even in the appeal. As such no interference can be made in the impugned order dated 25.01.2019.

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D) It is submitted that the contents of ground 8 of the appeal are denied and replied in terms that the objections came to be filed under rule 62 and in terms of the said provisions, the same ought to have been filed within a period of 30 days. The appellant had knowledge with regard to the issuance of sale certificate, however, despite the same the objections were filed after unexplained delay of one and half years for reasons best known to the appellant. Furter, the appellant can claim no right in their favour and has no authority to challenge the sale certificate as the appellant claims to have entered into an agreement to sale with Shanti Bhargava much after the issuance of the rule 2 notice and as such any transaction after issuance of the notice under rule 2 is void. The appellant as such has no locus to challenge the order of sale confirmed or the sale certificate so issued in pursuance thereof. As such the appeal deserves to be dismissed.

E) It is submitted that contents of ground 19 of the appeal are denied. Firstly, the objections were filed under rule 62 and rule 71 which were not applicable in the present case. Secondly the application was not filed under rule 87 for review. Furter no mistake is apparent on the fact of record and as such the RO was right in not exercising the review jurisdiction. The order dated 25.01.2019 is legal, just, reasonable and in terms of the provision of law.

64. It is submitted that the contents of para 7 of the appeal are denied. No prayer for cancellation of the sale certificate dated 14.12.2010 and the order dated 21.04.2005 has been made in the objections and as such the same cannot be raised at the appellate stage. Further in the light of the detailed reply, the appeal deserves to be dismissed.

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65. It is submitted that the contents of Para 8 of the appeal are denied. No case is made by the appellant and as such no relief at the interim stage can be granted to the appellant.

66. It is submitted that the appellant had no locus to challenge the private treaty allowed by the recovery officer vide order dated 21.04.2005 and the amount deposited vide 20.05.2005 on the basis of agreement to sale which had no sanctity as per Section 54 of Transfer of Property Act. The Hon'ble Supreme Court has observed that it is axiomatic that mere agreement to sell creates no legal interest or right in the property which is the subject matter of the agreement (Basavarajappa vs. Tax Recovery Commissioner.)

67. It is submitted that the Hon'ble Supreme Court has also held that a person who had obtained an agreement to sell which is hit by Section 16 of Second Schedule of Income Tax Act cannot make an application under Section 61 for setting aside the sell as a person holding interest in the property. The Apex Court further held in reference to a person who had a mere claim under an agreement to sale, he has to swim and sink on his own. Under these circumstances, therefore, the appellant must be held to be held to be devoid of any locus standi for moving an application under Rule 60 of the Rules for setting aside this auction sales.

68. It is submitted that the order of the Recovery Officer under Rule 66 permitting and authorizing the defaulter to negotiate a sale under private treaty was not an order which was lacking any authority nor without jurisdiction. Rule 66 clearly provides as under: -

> property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale

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of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorizing him within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale;

Provided that all moneys payable under such mortgage, lease or sale shall be paid not to the defaulter but to the Tax Recovery Officer.

Provided also that no mortgage, lease or sale under this Rule shall become absolute until it has been confirmed by the Tax Recovery Officer."

69. It is submitted that Rule 66 has been held to be akin in principle and content with Order 21 Rule 83 of CPC. Rule 66 has the words "notwithstanding anything contained in the schedule" has significance and is not without meaning. It is in the nature of carving out an exception to recovery of the bank through attachment and auction. Rule 66 is concerned. The provisions of Rule 66 are independent composite and rest without qualification of any provision of the Act.

70. It is submitted that there is no dispute that the second schedule to the Act does not only speak of sale by public auction but also sale by private negotiation to defaulter to raise the amount which amount has to go to Tax Recovery Officer even if the sale made by private negotiation after the sale certificate as given by the Tax Officer. It has to be confirmed by the Tax Recovery Officer as such the sale by public auction or private negotiation is a sale under Schedule 2 of the Act. The

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respondent relies on Rule 2 read with Rule 16 and 66 of the Second Schedule of the Income Tax which may be allowed to be referred. The judgment relied are K. Basavarajappa Vs. Tax Recovery Commissioner, Bangalore, reported in AIR 1997 SC 215, Girish Sareen Vs. State of Rajasthan and others reported in (1993) 203 ITR 207, Amar Chand Agarwal and others Vs. Commissioner of Income Tax and others.

71. It is submitted that the Rule 66 also is not hit by the necessity of attachment particularly when it allows "any other immovable property of the defaulter" for a sale to be a valid sale under Rule 66, the Recovery Officer has to satisfy himself that the property is held by the defaulter devoid of any encumbrances, the sale has to be made in a specified time, the money has to be paid to the recovery officer and not to the defaulter then if he is satisfied that all the requirements are met he shall grant a certificate and the sale deposited before the Recovery Officer who then gave it to the bank. There is no irregularity of any kind.

72. It is submitted that the conduct of the appellant is not bonafide and clouded of suspicion for the reasons:

a) A total of 7 agreements were signed between 03 December, 2003 and 27 April, 2005 whereas one agreement dated 29 April, 2004 was even registered. Why?

b) The permission for private sale given on 21.04.2005. In just 6 days another agreement was signed on 27.04.2005. Just coincidence or deliberate?

c) A suit for specific performance was instituted on 29.08.2005 and a consent decree obtained in just 6 working days. Immediately thereafter, execution was also filed without making the full payment which was ultimately made in 2010.

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d) On the seven agreements signed only the first agreement of 03.12.2003 bears the signatures of all the family members as witnesses. The rest of the agreements were signed without the knowledge of the other family members except for two viz Vinesh and Umesh whose signatures appears on all the seven agreements. Again, a coincidence or part of a well-planned process? Why were other family members kept in the dark?

e) When the consent decree was obtained Smt. Shanti Bhargava had already sold the property to Sumeet and had handed over the possession to him. Why was this fact concealed from the civil court? This fact alone renders the decree invalid.

73. It is submitted that the challenge to the sale certificate in favour of the respondent also suffers from limitation. The R.O. allowed the application vide order dated 21.04.2005 and the entire amount was deposited by the respondent purchaser on 20.05.2005 and the application for grant of sale certificate was allowed vide order dated 07.12.2010 and the sale certificate was issued on 14.12.2010 whereas the objections under Rule 62 were filed on 19.07.2012. The objections challenged the order dated 07.12.2010 and no challenge was made to the order dated 21.04.2005 whereby the application for sale by the private treaty was allowed in favour of the purchaser. The objections for setting aside the sale could only be filed within 30 days of the sale as per Rule 62. The appellant is clearly a person who did not challenge the proceedings in time.

74. It is submitted that no reason for delay in filing the objections has been given particularly when there are various matters between the appellant and the judgment debtor pending before different forum as under: -

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a) Civil Suit No. 537/2008 before the ADJ No.4, Jaipur dismissed on 06.01.2018 for non-prosecution.

b) Execution No. 21/2005 is pending before the ADJ No.1.

75. It is submitted that the respondent had to approach the DRT for permission as envisaged under rule 16 since rule 2 notice had been served.

76. It is submitted that the bank has received whole of the amount under OTS and NOC was issued in 2005. The bank had also made a refund of excess amount received by it. The provision of Rule 62 in which the objections have been filed by the appellant are not attracted since the defaulter had a saleable interest being a guarantor and the judgment debtor. It is also not attracted since the sale certificate which was issued on 14.12.2010 relates to the date when the amount was paid in 2005 had attained finality and it was not challenged within a period of 30 days. Copy of the letter dated 11.11.2005 by which refund of excess amount was made by bank is enclosed herewith as, 'C'.

77. That the respondent No.2 in support of his case relied on the following judgments: -

a) Sagar Mahavidyalaya Vs. Pandit Sadashiv Rao reported in 1991 AIR 1825 wherein it has been held that once an order is made confirming the sale the title of the auction purchaser relates back to the date of sale and the title of the property vests in the auction purchaser and not the judgment debtor. The issue of sale certificate though is mandatory but the grant of certificate is a ministerial act and not judicial.

b) Dr. Bhargava Vs. Shyam Sundar Seth reported in 1995 AIR which is a condition precedent and sale certificate is issued. In the present case the full amount has been paid and also the sale certificate came

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to be issued to the answering respondent and as such the title passed to the answering respondent.

c) K. Basavarajappa Vs. Tax Recovery Commissioner, Bangalore and others wherein it has been held that by mere agreement to sale, the purchaser does not get interest in the property to enable him to apply for setting aside of the auction under Rule 60.

d) Girish Sareen Versus State of Rajasthan and others reported in (1993) 203 ITR 207: 1992 SCC online Raj 356.

e) Amar Chand Agrawal and others Vs. Commissioner of Income Tax and others reported in (1999) 238 ITR 240 (All). Thus, the appeal in the light of what is submitted above deserves to be dismissed.

78. It is submitted that vide the order dated 21st August 2025, the Hon'ble Tribunal was pleased to form a question to be answered by the parties as to whether a recovery officer (an 'RO') has the power to sell a property or issue a sale certificate when a property, that is neither mortgaged nor attached, is sold under a private treaty. These submissions address the specific question of the Hon'ble Tribunal, along with other arguments on why the present Appeal is unsustainable.

79. It is submitted that the question relates to the private sale of the concerned property situated at D-16, Meera Marg, Bani Park (the 'Property'), with the permission of the RO. The RO authorized the said sale by Smt. Shanti Bhargava (the defaulter) to the Answering Respondent and issued a sale certificate to the Answering Respondent thereafter.

80. The provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the 'RDDBFI Act') and Second Schedule of the Income Tax Act, 1961 (the 'Second Schedule') govern the powers of an RO under the present scenario. The Hon'ble Tribunal's question will be

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addressed first, followed by other submissions. **It is mandatory for the RO to issue a sale certificate for a private sale to be valid under the Second Schedule**.

81. While the Appellant has attempted to obfuscate the issue at hand by impeding oral arguments and citing isolated provisions of the Second Schedule, it is submitted that their arguments fall flat, both in light of the holistic reading of the Second Schedule and in consideration of the case law that governs the issue.

82. It is submitted that Rule 2 of the Second Schedule allows an RO to serve a notice upon a defaulter. Rule 16(1) of the Second Schedule makes a defaulter incompetent to 'deal with' any property once a notice under Rule 2 has been served on such defaulter, except with the specific permission of the RO:

> "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 or otherwise **deal with any property belonging to him <u>except with the permission of the Tax Recovery Officer</u>**, nor shall any civil court issue any process against such property in execution of a decree for the payment of money".

83. It is submitted that the law is therefore amply clear that, once a notice under Rule 2 has been served on a defaulter, the said defaulter can only sell her/his property with the permission of the RO. Pertinently, this restriction applies irrespective of whether a property is attached or mortgaged. In the instant case, since the defaulter received a Rule 2 notice on 25th February 2003, it could only have sold the property with the permission of the RO.

84. Rule 65 of the Second Schedule also makes it clear that the RO is supposed to issue a sale certificate whenever an immovable property of

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the defaulter is sold during proceedings under the Second Schedule. Notably, even Rule 65 does not limit the issuance of such a certificate to specific scenarios, such as public auctions, private sales, attached property, or mortgaged property. The Hon'ble Rajasthan High Court has explained that the same is because such sale proceeds are not to go to the defaulter, but rather to the RO (or the TRO). In Girish Sareen v. State of Rajasthan, (1993) 203 ITR 207, the Hon'ble Rajasthan High Court has stated as follows:

> "**Only after the said certificate, the defaulter could have and should have made the sale by private negotiation** and as provided under the first proviso to subparagraph 2 of paragraph 66, the whole of the consideration of Rs. 1,20,000, must have gone to the Tax Recovery Officer and not to the defaulter. Not only this, **the sale could have become absolute after confirmation of sale by the Tax Recovery Officer and the confirmation of sale by private negotiation was made by the Tax Recovery Officer**. Therefore, **there can be no dispute that the Second Schedule to the Act does not only speak of sale by public auction but also sale by private negotiation** to enable the defaulter to raise the amount which **amount has to go to the Tax Recovery Officer and not to the defaulter** and, even if the sale is made by private negotiation after the certificate is granted as aforesaid by the Tax Recovery Officer, it has to be confirmed by the Tax Recovery Officer. Thus, as said earlier, the sale **whether by public auction or by private negotiation is a sale under Schedule II to the Act."**

85. The aforementioned judgment makes it clear that any private sale during the recovery proceedings is a sale under the Second Schedule. Therefore, such a sale must be approved by an RO through a certificate

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of sale under Rule 65, despite the fact that it is not a sale under a public auction. The reason for the same is that the proceeds of such a sale are still to go to the RO and not to the defaulter. As explained above, this is also because of the embargo placed under Rule 16.

86. In Commissioner of Income Tax v. Triloknath, (1984) 147 ITR 613, the Hon'ble Madhya Pradesh High Court approved the private sale of the concerned property in the said case, which was effectuated through a certificate of sale by the TRO (equivalent of an RO) in a similar situation. While the legal analysis in the said case focused on the fairness of the price procured on sale, the factual narration of the sale approved is strikingly similar to the instant case at hand:

> "On June 30, 1977, Kasturilal wrote to the TRO, Jabalpur, that with the permission of the I.T. Dept., Bombay, the property known as Moti Building had been sold to Trilokinath and others. On the same date, the TRO, Bombay, wrote to the TRO, Jabalpur, that **the Commissioner of Income- tax, Bombay, by his letter dated May 21, 1974, had allowed a private sale of Moti Building and that Kasturilal, the legal heir of the assessee, had sold the property to the purchasers on May 10, 1977**, and the sale proceeds of Rs. 1,05,000 had been deposited in the permanent deposit account of the TRO, Bombay...**On July 4, 1977, the TRO, Jabalpur, passed an order confirming the sale. The sale is referred to as a sale in favour of the purchasers conducted by Kasturilal by private negotiations on May 10, 1977. <u>On the same date, July 4, 1977, a certificate of sale was issued by the TRO, Jabalpur, in favour of the purchasers</u>."**

87. Because the present case also involved a situation where the defaulter first received an approval from the creditor (Respondent No. 1, or the

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'Bank'), then procured the RO's permission for private sale, followed by a certificate of sale by the RO, it was permissible for the RO to issue a sale certificate. This was the exact process approved by the Hon'ble Madhya Pradesh High Court in the aforementioned case.

88. Since the Appellant in the present case has not assailed the fairness of the value for which the property is sold, their case on the impermissibility of the sale fails at the anvil of the judgments of the Hon'ble Rajasthan High Court and the Hon'ble Madhya Pradesh High Court. Because the price is not unfair, the Appellant's emphasis on the relationship between the defaulter and the Answering Respondent is nothing but an attempt to divert the focus of the present proceedings onto irrelevant considerations.

89. Therefore, it is humbly submitted that it is mandatory under law for the RO to issue a sale certificate for the sale of immovable property of a defaulter during proceedings under the Second Schedule. This is because Rule 16 prohibits private sale without the RO's permission and because the proceeds of such sale are to go to the RO and not the defaulter. Since both the embargo under Rule 16 and the requirement of proceeds to go to the RO apply irrespective of whether the sale is public or private, or whether the property is attached, the sale certificate also needs to be issued for any such private sale to be valid.

90. Further, as the Hon'ble Supreme Court has noted in The State of Punjab v. M/s Ferrous Allow Forgings P. Ltd. (Order dated 19th November 2024 in Civil Appeal No. 12527 of 2024), the certificate of sale does not by itself create or extinguish title (paragraph 14). Its only purpose is to formally declare the sale of a property by the authority in question. That is the sole and limited purpose of a sale certificate under Rule 65, which must be issued irrespective of the nature of the property sold.

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II. In any case, the Property was attached by the Recovery Officer 14.

91. Notwithstanding the above, it is submitted that the Property was indeed attached, and for that reason as well, it could not have been 'dealt with' without the sale certificate of the RO. The Hon'ble Supreme Court in Kerala State Financial Enterprises Ltd. v. Official Liquidator, (2006) 10 SCC 709 has defined the word 'attachment' as follows:

> "The word 'attachment' would only mean 'taking into the custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it'. It is used for two purposes: (i) to compel the appearance of a defendant; and (ii) **to seize and hold his property for the payment of the debt**. It may also mean prohibition of transfer, conversion, disposition or movement of property by an order issued by the court".

92. Therefore, the seizure of property by this Hon'ble Tribunal to secure the payment of debt is the attachment of property. This Hon'ble Tribunal was pleased to pass an order on 11th June 2002 wherein it stated as follows:

> "The **Applicant Bank shall entitle to recover** entire amount of Rs. 2,69,58,520.00 with interest @ 12 % per annum simple from the date of filing the Original Application till realization **from all the defendants** as they all are jointly and severally liable for payment of the entire loan, and **also from the sale of mortgaged properties and hypothetical goods, Plant & Machinery and their <u>personal properties</u>".**

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93. It is submitted that because this Hon'ble Tribunal has itself expressly stated that the personal properties of the defaulters would be used in the present case to pay off the debt to the applicant Bank, and due to the subsequent bar under Rule 16, the said properties have been considered to have been attached since the order. This is not just in alignment with the Hon'ble Supreme Court's definition of attachment, but also in line with the fact that the properties have been treated as attached by all the parties, the RO, and this Hon'ble Tribunal itself after the said order. The following facts make it absolutely clear:

(A) After this order, the RO has proceeded to initiate the auction of the personal properties of the defaulters at Khasra 325 and 327 on 7th November 2003. Notably, in the order dated 11th June, 2002, these properties have not been listed among the properties for which the Bank has successfully furnished proof of mortgage. Further, in the proclamation of sale dated 14th November 2003, these properties are described as 'attached' rather than 'mortgaged'. Therefore, the RO was clearly proceeding on the basis that there had been an attachment of these properties, which could not have been through any order other than this Hon'ble Tribunal's order dated 11th June 2002 quoted above.

(B) Further, objections to this auction have been dismissed by the RO, this Hon'ble Tribunal, and the Hon'ble DRAT. While the Second Schedule nowhere mandates attachment prior to a private sale (because the sale can be undertaken by the defaulter herself), Rule 52 certainly mandates attachment prior to a public auction (because the sale has to be undertaken by the RO). Therefore, it would be inconsistent for this Hon'ble Tribunal to state that the said

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auctions were valid but to also state that the defaulters' properties were not attached.

(C) In fact, it is only because the aforementioned amount would have been insufficient that Smt. Shanti Bhargava, who was a defaulter, decided to offer the Property for private sale to the Answering Respondent. The Answering Respondent agreed to buy it for INR 120 lakhs, which would clear the entire dues of the Bank. Due to the Bank's approval, Smt. Shanti Bhargava applied to the RO for permission to conduct a private sale, which was granted on 21st April 2005.

(D) The successful auction bidders in the aforementioned auction held on 7th November 2003 were Manoj Agarwal and Alok Agarwal. They objected to the private sale in another proceeding before this Hon'ble Tribunal, which was dismissed on 3rd June 2005 with the direction to file a contempt petition against the RO if they were aggrieved. They then filed a contempt petition against the RO, which was also dismissed on 19th November 2007 by a Presiding Officer of this Hon'ble Tribunal. It was only after such dismissals that the sale of the Property was confirmed by the RO on 7th December 2010.

(E) Therefore, this Hon'ble Tribunal itself has not just dismissed an appeal against the auction purchase but has also dismissed objections to the RO's permission for private sale.

94. These facts make it abundantly clear that, after the order dated 11th June 2002, not just the parties and the RO, but also this Hon'ble Tribunal (the Presiding Officer) has treated the properties to have been attached. There was no other reason for this Hon'ble Tribunal to

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approve the auction purchase and dismiss objections against the RO's decision to conduct a private sale of the said Property.

95. After all these facts have transpired, it would be absurd to state that there was no attachment of the properties of the defaulters. It is submitted that the combined effect – of this Hon'ble Tribunal's order dated 11th June 2002, Rule 16 of the Second Schedule, the RO's initiation of auction proceedings, and this Hon'ble Tribunal's dismissal of objections against the auction and the permission for private sale – was that the properties were deemed to be attached by virtue of this Hon'ble Tribunal's order dated 11th June 2002.

III. In any case, the Appeal cannot stand because the Appellant has no locus standi, she has not complied with the mandatory statutory time limits, and because the impugned private sale has already been challenged before and upheld by this Hon'ble Tribunal.

96. Notwithstanding the above, as emphasized by the Answering Respondent before the Hon'ble Tribunal, the present Appeal cannot stand due to multiple legal bars, each of which is independently sufficient to disqualify the Appellant from filing this Appeal. It is humbly submitted that the present Appeal ought to be dismissed at the threshold for the following reasons:

(A) **Appellant has no locus standi under Rule 62 or the Second Schedule**

(i) Rule 62 is amply clear that only 'the purchaser' of the said Property can file an application for setting aside the sale of a property under the Second Schedule under the said Rule.

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"At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold".

(ii) Since the Rule uses the article 'the' instead of 'a', it does not refer to any purchaser of the said property, but rather the specific purchaser of the said property that has been referenced elsewhere in the rules. A combined reading of Rules 57, 58, and 64 makes it clear that the only 'purchaser' referenced in the rules is a person who purchases a property in a public auction. Since the Appellant was not the auction purchaser of the property, it did not have any locus standi to file the Rule 62 challenge.

(iii) Furthermore, it is pertinent to note that the Appellant was not a purchaser of the property at all, as its claim is entirely based on an unexecuted and invalid agreement to sell. In K. Basavarajappa v. Tax Recovery Commissioner, the Hon'ble Supreme Court has held that no challenge to a sale under the Second Schedule can be made by a person who makes such a challenge merely based on an agreement to sell, be it before or after the attachment of the property. The Hon'ble Supreme Court has stated that:

"It may be that the attachment might have taken place years afterwards but on 20th November 1982 when the defaulter agreed to sell off his property to be appellant, he totally bypassed the requirement of Rule 16(2) which lays down that where a notice has been served on the defaulter under Rule 2 the defaulter or his representative- in-interest shall not be competent to mortgage. charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution

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of a decree for the payment of money. By entering into such an agreement to sell his property the defaulter had clearly committed breach of Rule 16 and had bypassed the procedure laid down therein for getting permission of the Tax Recovery Officer. By mere agreement to sell the appellant got no interest in the property put to auction to enable him to apply for setting aside such auction under Rule 60 and especially when his transaction was hit by Rule 16(1) read with Rules 51 and 48. Consequently he could not be said to be having any legal interest to entitle him to move such an application. Consequently, no fault could be found with the decision of the Division Bench of the High Court rejecting the entitlement of the appellant to move such an application."

(iv) Consequently, even if one ignores the clear requirements of Rule 62, the Hon'ble Supreme Court has made amply clear that an unexecuted agreement to sell does not confer any right to a proposed purchaser to challenge a sale under the Second Schedule. Since the Appellant is moving on the exact same basis as the appellant in K. Basavarajappa (supra), she had no locus standi to file the Rule 62 application. Therefore, it is humbly submitted that the RO was correct to dismiss the Appellant's application vide the impugned order dated 25th January 2019.

(B) **The Appellant has breached mandatory statutory requirements**

(i) As has been noted by the impugned order of the RO dated 25th January 2019, the order approving private sale was dated 7th December 2010. Rule 62 of the Second Schedule prescribes that a purchaser may apply to set aside the sale within 30 days of such sale.

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Therefore, even assuming that the Appellant was a purchaser, she ought to have filed the said application by 6th January 2011.

(ii) However, in flagrant breach of the mandatory statutory timelines, the Appellant had filed the said Section 62 applications, after more than 18 months of delay, on 19th July 2012. On top of that, the Appellant had not furnished any excuse for such gross delay in filing the said application. It is for this reason that the RO had decided to reject the said application.

(iii) The judgments of various High Courts have treated the statutory timeline of 30 days for challenge of a sale under the Second Schedule as mandatory. In Renu Jain v. Union of India, 2024 SCC OnLine Del 7638, the Hon'ble Delhi High Court approved the dismissal of a similar application solely on the ground of a delay of 1 month (paragraphs 21-23). Similarly, in Hotel Paras Garden v. Central Bank of India, 2015 SCC OnLine Bom 3398, the Hon'ble Bombay High Court approved the dismissal of a similar application on the ground that the delay of 1 month was unjustified (paragraph 35). Even the Hon'ble Supreme Court, in Sadashiv Prasad Singh v. Harendar Singh, (2015) 5 SCC 574, had dismissed a challenge to a sale under the Second Schedule on the ground of laches because the application was filed 1 year after the sale (paragraph 23.6).

(iv) As stated above, Appellant's delay of 18 months has been much more substantial than the delay in any of these judgments. Therefore, it is submitted that the RO was correct in dismissing the said Section 62 application purely on the ground of delay.

(C) **The impugned order of private sale has already been challenged before and approved by this Hon'ble Tribunal**

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(i) As noted above, the RO's permission for private sale dated 21st April 2005 had been objected to by the auction purchasers in two separate proceedings, which have been dismissed for different reasons.

(a) After the order dated 11th June 2002, RO has proceeded to initiate the auction of the personal properties of the defaulters at Khasras 325 and 327 on 7th November 2003.

(b) It is only because the aforementioned amount would have been insufficient that Smt. Shanti Bhargava, who was a defaulter, decided to offer the Property for private sale to the Answering Respondent. The Answering Respondent agreed to buy it for INR 120 lakhs, which would clear the entire dues of the Bank. Due to the Bank's approval, Smt. Shanti Bhargava applied to the RO for permission to conduct a private sale, which was granted on 21st April 2005.

(c) The successful auction bidders in the aforementioned auction held on 7th November 2003 were Manoj Agarwal and Alok Agarwal. They objected to the private sale in another proceeding before this Hon'ble Tribunal, which was dismissed on 3rd June 2005 with the direction to file a contempt petition against the RO if they were aggrieved. They then filed a contempt petition against the RO, which was also dismissed on 19th November 2007 by this Hon'ble Tribunal. It was only after such dismissals that the sale of the Property was confirmed by the RO on 7th December 2010.

(d) Therefore, this Hon'ble Tribunal itself dismissed objections to the RO's issuance of the permission for private sale.

(ii) Given this background, the present proceedings are nothing but a delayed and vicious attempt by the Appellant to reopen a question that was closed years ago. Pertinently, the Appellants have never challenged the RO's order dated 21st April 2005 granting permission for private

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sale at all. Rather, they have challenged the order dated 25th January 2019 denying their Rule 62 application. Since any challenge to the 21st April 2005 order would have been hit by laches, the Appellants are using the present Appeal as a backdoor for indirectly challenging an order that has attained finality.

(iii) As is amply clear from the judgments in Renu Jain (supra), Hotel Paras (supra), and Sadashiv Prasad (supra), such delayed indirect challenges are impermissible to challenge a sale under the Second Schedule, given the strict contours of the Second Schedule. Therefore, it is submitted that the RO correctly dismissed the said application.

(D) **This Hon'ble Tribunal does not have the extraordinary powers to entertain a question outside the scope of this appeal on an unsubstantiated allegation of fraud**

(i) The Appellants have relied upon the broad powers of the Hon'ble Tribunal to justify their indirect challenge to the order dated 21st April 2005 without filing an appeal against the same order. The Appellants have stated that the same is permissible because of the alleged fraud that has been played on the Appellant. However, the Appellants have neither substantiated their allegations of fraud nor explained why the price procured for the Property in the private sale was insufficient.

(ii) It is most respectfully submitted that, even though this Hon'ble Tribunal enjoys broad procedural powers without the confines of the strict rules of civil procedure and evidence, its substantive powers are confined when it comes to hearing a case of this nature.

(a) The Hon'ble Supreme Court in Standard Chartered Bank v. Dharminder Bhohi, (2013) 15 SCC 341 has held that a DRT can only entertain the lis that comes before it and cannot travel beyond statutory powers to decide cases based on fairness (paragraph 38).

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(b) The Hon'ble Delhi High Court has, in Padam Singhee v. SVOGL Oil, Gas & Energy, (2019) 7 Comp Cas-OL 323, also held that a DRT has no inherent powers and must confine itself to the lis that comes before it (paragraphs 20 and 21).

(c) The Hon'ble Madras High Court has, in Kamaldheep Synthetic Limited v. Debts Recovery Appellate Tribunal, 2008 SCC OnLine Mad 1208, held that a DRT and the DRAT have no inherent powers (paragraph 17).

(d) And, most importantly, in B.A. Varadarajachar v. Reliance Asset Reconstruction Company Limited, 2025 SCC OnLine Kar 3, the Hon'ble Karnataka High Court has held that DRTs do not possess the power to decide questions of fraud. Due to the summary nature of DRT proceedings and the voluminous evidence required for the determination of fraud, the Hon'ble High Court has held that such questions are appropriately better addressed in civil suits (paragraphs 3.4 and 3.5).

(iii) The above judgments make it amply clear that the Appellant cannot be permitted to set aside the order permitting private sale dated 21st April 2005 before this Hon'ble Tribunal, when it has only challenged the order dated 25th January 2019. If the Appellant succeeds in the present proceedings, the only consequence of the same ought to be that the RO will have to reconsider the Appellant's Rule 62 application. However, the Appellant cannot directly get the private sale set aside in these proceedings because that is not the lis before this Hon'ble Tribunal under Section 30 of the RDDBFI Act.

(iv) It is further submitted that the above judgments make it clear that the Appellant cannot rely on any inherent or suo moto powers of the DRT to procure a setting aside of the private sale in these

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proceedings. Various High Courts have vehemently rejected the idea that a DRT can entertain such proceedings.

(v) Finally, and most importantly, since the Appellant's challenge to the private sale is based on an alleged fraud, this Hon'ble Tribunal cannot decide the said question. As held in B.A. Varadarajachar (supra), questions of fraud cannot be decided by DRTs and must be addressed in civil suits.

97. Because of the reasons stated above, it is humbly submitted that the present Appeal suffers from multiple non-remediable irregularities, which cannot be cured by the Appellant by making unsubstantiated allegations of fraud.

98. It is submitted that to summaries, the Answering Respondent submits the following:

(A) According to multiple High Courts, not only does an RO have the power to issue a sale certificate in the case of a private sale, but such a sale certificate is also mandatory for any sale of property owned by a defaulter. This is because the proceeds of such a sale ought to be received by the RO.

(B) While attachment is not necessary for the issuance of a sale certificate in the case of a private sale, there has indeed been an attachment of all the defaulters' properties in the instant case. Not just the parties and the RO, but even this Hon'ble Tribunal has also continued the present proceedings in a manner that could only have been consistent with the fact that the properties have been attached.

(C) Notwithstanding any arguments of substance, the present Appeal ought to be independently dismissed on the grounds of absence of locus standi, breach of mandatory statutory timelines, and the impermissibility of proceedings of this nature.

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99. **Counsel for the Appellant filed rejoinder** to the reply filed by the Respondent No. 2.

100. It is submitted that the reply filed on behalf of Respondent no. 2 is filed by Dr. G. C. Chaturvedi based on a Power of Attorney dated 08-04-2010 which was executed in U.S.A however, the same is insufficiently stamped without sufficiently, identifying the Executor and the Agent.

101. It is submitted that the Para no. 2 wrongfully seeks dismissal of appeal and is not accepted.

102. It is submitted that Para no. 3 and 4 of the reply wrongfully presents the facts and are denied as the Answering Respondent did not purchase the property vide sale certificate dt. 14.12.2010 instead the sale certificate dt. 14.12.2010 was issued because the Answering Respondent and the Original Borrower colluded with each other in obtaining this certificate, by hiding the fact that the property D-16, Meer a Marg, Bani Park, Jaipur has been already sold to the Appellant.

103. It is submitted that the Para no. 5 is denied as it wrongfully mentions that the sale has become absolute it is needless to say and reiterate that any act done with an intention of fraud can never become absolute and this Appeal pending in the Court proves that the sale has not become absolute, further the execution is also pending in Additional District Judge No. 1 Jaipur Metropolitan, Jaipur.

104. It is submitted that the 'Para no. 6 and 7 does not disclose the complete facts mentioned in the Order sheet dt. 07.12.2010 and is denied. The order sheet specifically mentions that Mr. Sumeet Bhargava has stated on oath that there is no stay pending in the property even when he was aware that the property has been sold to Smt. Mamta Sogani. The order dt. 07.12.2010 does not sufficiently examine the

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reply filed by Bank dt. 19.04.2005 which specifically objected about issuing of sale certificate without carrying out public auction.

105. It is submitted that the Para no. 8 & 9 wrongfully presents the situation of the matter in hand and is denied, as the Application filed by the alleged Power of Attorney Holder Mr. V. K. Bhargava is not only insufficiently stamped but also lacks credibility of attesting witness. The Power of Attorney is unregistered and thus any sale on the basis of unregistered Power of Attorney cannot be executed. The Application dated 28.03.2005 mentioning that Smt. Shanti Devi Bhargava is the sole owner of the House, is factually incorrect as on that day an execution filed by Smt. Mamta Sogani was already pending in ADJ 1, Jaipur in which Mr. V.K. Bhargava was regularly appearing, hence the facts alleged are not true. The Bank in its reply dt. 19.04.2005 specifically objected that R.O. can only sale a property by way of public auction and no certificate can be issued without a public auction.

106. It is submitted that the Para 10 is not accepted and denied as the Appellant objects the order dated 21.04.2005 as there was no sound reason to allow private sale of property after the objection raised by Bank in reply and when the Power of Attorney was also insufficiently stamped, further Mr. Vishnu Kumar Bhargava concealed the fact about the property being already sold to Appellant and the case pending in that regard in District & Sessions Court, Jaipur.

107. It is submitted that the Para no. 11 is denied as it wrongfully tries to give a legal cover up to an act of fraud. When the property was already sold to Appellant by Smt. Shanti Bhargava and such was in the knowledge of father of Answering Respondent any amount paid by Answering Respondent cannot provide him entitlement of an already sold property.

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108. It is submitted that the Para no. 12 further corroborates to the malafide intention of the Respondent no. 2 as he in order to cover up his illegal act tried to obtain Sale Certificate from Recovery Officer even when the latter was not duty bound to issue such Sale Certificate.

109. It is submitted that the Para no. 13 is wrongfully presented by the Answering Respondent arid is denied, as the order dated 07.12.2010 does not mention that the Sale Certificate issued by the Recovery Officer was under Rule 63 of the 2nd Schedule of the Income Tax Certificate Rules further it does not mention that the Sale Certificate has to be issued under Rulle 65 of the aforesaid Schedule for any private sale carried out of unattached property for which the proclamation was never issued.

110. It is submitted that the contention of the Answering Respondent in Para no. 14 in regards to the lapse of one and a half years for moving the application of objection by the Appellant is untenable in the eyes of Law and is denied. The Answering Respondent wrongfully mentions that there has been a delay as it is accepted principle that to call out an act of fraud there cannot be any limitation. Further, it is an accepted fact that Smt. Shanti Devi Bhargava sold the property to Appellant and in the suit for specific performance filed by Appellant against Smt. Shanti Devi Bhargava it was decreed with consent and not Respondent under as compromise. The Answering Respondent as further agreed that the in execution of the said decree the Sale Deed has been registered on 20.02.2010.

111. It is submitted that the contents of Para no. 15 are wrongfully presented and are denied as the plain reading of the Order Sheet of the Recovery Proceedings makes it evident that Smt. Shanti Devi Bhargava did not appear on 01.04.2003 and the vakalatnama was only filed of

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Defendant no. 1 to 4 and Smt. Shantii Devi Bhargava was Defendant no. 5. It is also noted fact that the notice was never served on Smt. Shanti Devi Bhargava and there is no evidence/proof of service being complete or notice being sufficiently served on Smt. Shanti Devi Bhargava. That the contention of the Answering Respondent that the notice was severed to Smt. Shanti Devi Bhargava is not true. That it is clear that Smt. Shanti Devi Bhargava never appeared in Recover Proceedings as she was never severed with the notice and so rule 16 does not apply on her. The reply furnished by Answering Respondent further points out the malafide intention of the Answering Respondent as father of the Answering Respondent was constantly appearing in the case pending in the Civil Court and in front of Recovery Officer then also he purposely concealed the facts in both the Courts.

112. It is submitted that the contents of Para no. 16 are wrong and denied as the objection of the limitation raised by Answering Respondent does not find any merit as it is a settled principle of Law that there can be no limitation in cases of fraud.

113. It is submitted that the contents of Para no. 17 wrongfully mention about the delay and filing the objection application by the Appellant and is denied. There cannot be any time or period of limitation which can validate a fraud committed while concealing facts.

114. It is submitted that the contents of Para no. 18 are wrong and are denied.

115. It is submitted that the contents of Para no. 19 are not true and denied as the execution petition filed by Appellant has not been deferred and is being regularly heard and awaiting reply of Respondents in the said execution petition.

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116. It is submitted that as mentioned in Para A the miscellaneous application is not beyond the period of limitation as the Sale Certificate issued was unlawful and obtained by fraud and misrepresentation and it is settled principle of Law that there can be no limitation for fraud.

117. It is submitted that as mentioned in Para B the Appellant is entitled to challenge the order dated 21.05.2005 and Sale Certificate dated 14.12.2010 as order dated .21.04.2005 was confirmed in order dated 07.12.2010 and further on basis of this order dated 07.12.2010 Sale Certificate dated 14 .12. 2010 was issued which the Appellant has sought to be quashed in the Original Objection filed in the Court of Recovery Officer DRT, Jaipur. The submission made in regard to delay is not tenable in the eyes of Law as there cannot be any restriction of time to rectify an order obtained the committing fraud.

118. It is submitted that the submissions made under Para C cannot be entertained as the Sale Certificate dated 14.12.2010 cannot attain finality as it was wrongfully issued. The objections Application filed asks for cancellation of order dated 07.12.2010 which was passed on basis of the order dated 21.04.2005 and the Sale Certificate was also issued on basis of the order passed on 07.12.2010 which has been sought to be quashed by the Appellant.

119. It is submitted that the submissions made in Para D cannot be accepted as the Answering Respondent cannot seek benefit of Legislation/Rules which are convenient to him and forget the other rules of same Legislation, which he so conveniently uses to safeguard his interests. The Appellant has raised objection in regard to the time of 30 days as mentioned under rule 62 of procedure for recover of tax 2nd schedule as the said limitation of 30 days apply only when the sale has been conducted under the said rules and further the procedure of the

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rules laid down have been strictly followed. The rule 52 describes about the sale and the proclamation and proclamation of the attached immovable property is essential under the said rule which was never done. Further, there is no rule which sanctions the private sale for which a Sale Certificate can be issued by DRT and hence, the submission of the Answering Respondent in using the said rules in a clandestine manner is untenable in the eyes of Law.

120. It is submitted that the submissions made in Para -E wrongfully expresses the intention behind the rules. The rule 66 may allow for a private transfer, however the said rule is applicable only when the order for the sale of immovable property has been made in pursuant to rule 52 i.e. Proclamation of Sale of attached immovable property. The rule 66 does not allow any property to be transferred via private sale for which Recovery Officer can issue a Sale Certificate, the certificate under this rule-can only be issued where an order for sale of immovable property has been made after the said immovable property has been duly attached and proclamation for sale has been issued. The order of year 2005 has been challenged by seeking relief against the order dated 07.12.2016. The Answering Respondent cannot presume finality of sale under rule 66 when the other rules of the 2nd schedule of I.T. Act have not been duly complied with.

121. It is submitted that submission made under Para F are an absolute misrepresentation of the facts as notice alleged to have been issued under rule 2 was never severed on Smt. Shanti Devi Bhargava and such is evident from the Order Sheet dated 01.04.2003 noted in the Recovery Proceedings by Recovery Officer and neither any vakalatnama on behalf of Smt. Shanti Devi Bhargava was filed in the said proceedings hence, any relief of rule 16 cannot be taken by Answering Respondent

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as Smt. Shanti Devi Bhargava was never severed with the notice. The objection raised about the decree dated 03.09.2005 passed by District Judge, Jaipur cannot be against rule 16 and when the father of Answering Respondent was regularly appearing in both the proceedings of District Court and DRT, the fact that any such proceedings are pending in DRT was never brought in attention of the Civil Court, further neither did he mention in Recovery Proceedings about the fact that the property sought to be sold by way of private sale has already been sold to Smt. Mamta Sogani (Appellant). The notice was not served on her raising a possibility that Mr. Vishnu Kumar Bhargava kept silence about the proceedings in DRT and did not inform Smt. Shanti Devi Bhargava about this so that the property can be sold to Answering Respondent in a clandestine manner unregistered by insufficiently stamped Power of Attorney.

122. It is submitted that submission made under Para G are blatant misrepresentation as the suit being filed for specific performance on 28.08.2005 and which was decreed by consent on 03.09.2005, indicates that Smt. Shanti Devi Bhargava was never served with a notice under rule 2 and that the property was not mortgaged or attached.

123. It is submitted that submissions made under Para H are not accepted as the rule 87 provides the power and jurisdiction to the Recovery Officer to review its own order. There is no need to file any specific application for such review as it is in the inherent power of Recovery Officer to review any order in which the mistake is apparent on record.

124. It is submitted that submission made under Para I are not accepted as the certificate issued under rule 65 is for an immovable property sold by public auction which has been attached and for which a proclamation has been issued hence the sale certificate issued for a sale not made by

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public auction of a property which was neither attached nor mortgaged and for which no proclamation was issued, the Recovery Officer was not entitled to issue a Sale Certificate.

125. It is submitted that submission made under Para J are not accepted as Recovery Officer was empowered to allow private treaty under rule 16 and 66, however the rule 16 was not attracted to the present case as the notice under rule 2 was never served and Smt. Shanti Devi Bhargava was never appearing on record of Recovery Proceedings, further the property for which Sale Certificate has been issued was never mortgaged or attached. The rule 52 provided specifically for attachment of property for proclamation of sale, however no proclamation or attachment of the property was made, the rule 66 allows private - transfer only when an order for sale of immovable property has been made, however no such express order for sale of the attached immovable property of Smt. Shanti Devi Bhargava was ever made by the Recovery Officer and hence any benefit under such rule cannot be taken.

126. It is submitted that submission made under Para K are not accepted as the Recovery Officer was not entitled to confirm the sale under rule 63 and make it absolute as the property was never attached and the property in question was never mentioned in any proclamation of sale issued, further the Sale Certificate issued under rule 65 is untenable in the eyes of Law as there has been disregard to the rule laid down for sale of property and any private sale made cannot supersede the settled rules for sale of property under the Act.

127. It is submitted that the contents of Para no. 3 of the reply is already answered on the question of limitation in the preceding paras of this rejoinder and are not repeated for sake of brevity. It is objected that the

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Sale Certificate attained any finality. The Appellant has objected order dated 07.12.2010 in pursuant which the Sale Certificate has been issued and hence the relief is already claimed and should be granted in favour of Appellant.

128. It is submitted that the contents of Para no. 4 of the reply are not accepted. The Answering Respondent has mentioned in the reply that Appellant was served with the notice under rule 2 of the 2nd schedule and hence could not have entered into any transaction; the Appellant was never served with any notice under rule 2. The sale made to the Appellant by Smt. Shanti Devi Bhargva is not void as even Smt. Shanti Devi Bhargava was never served with the notice under rule 2.

129. It is submitted that the contents the Para 5 of reply are presented in an absolute misrepresentation of the factual position. It is clarified the execution proceeding pending in the Court of Additional District Judge-1, Jaipur Metropolitan, Jaipur Mr. Vishnu Kumar Bhargava along with other legal representatives of Smt. Shanti Devi Bhargava was taken on record after her death and the objections which are mentioned in the reply which were filed in this pending execution proceedings were filed on a very later stage, after the Registered Sale Deed was executed by order of Court. The Appellant was not aware of any permission given by Recovery Officer to the Answering Respondent, further; neither any fact about this permission was ever brought on record of execution proceeding by the father of Answering Respondent who was impleaded as legal representative of Smt. Shanti Devi Bhargava after her death. It is absolutely denied that the District Judge acted against the provision of rule 16. It is also vehemently denied that the decree was obtained by any collusion as the consent of Smt. Shanti Devi Bhargava was given in person in the Court, however, her presence in Recovery Proceedings

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still a question to be decided by the Hon'ble Tribunal as she never appeared in their Recovery Proceedings which indicates collusion and fraud on part of Answering Respondent.

130. It is submitted that in Para 6 of the reply is wrongly stated as the notice under rule 2 was not served and any consequence flowing from such service cannot be taken by the Answering Respondent.

131. It is submitted that the contents of Para 7 of the reply are wrong and are wrongfully invoking benefit under rule 66 of the 2nd schedule which has already been answered in the preceding Paras and they are not repeated for the sake of brevity.

132. It is submitted that the contents of Para 8 of the reply are not accepted and the benefit sought to be invoked under rule 2 of the 2nd schedule cannot be taken for the reasons cited in the preceding paras of this rejoinder. Further it is submitted that the Recovery Officer neither had any power nor any reason to issue a Sale Certificate for property which was never attached or mortgaged and for which the proclamation of sale was not issued. The Para 5 (8) to 5 (11) of the appeal have not been answered specifically and should be deemed to have been accepted by the Answering Respondent.

133. It is submitted that the contents of Para 9 of the reply are not accepted as the question of limitation raised has already been answered in the preceding Paras that there cannot be any limitation to challenge the fraud done and the Court can call out a fraud done in· any stage of the case whether in appeal or otherwise.

134. It is submitted that the contents of Para 11 of the reply are not being answered by the Answering Respondent and should be deemed to have been accepted by them.

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135. It is submitted that the contents of Para 12 of the reply are not accepted as the order dated 25.01.2019 passed by Ld. Recovery Officer DRT Jaipur was not reasoned or just and hence the appeal has been filed being aggrieved of such order.

136. It is submitted that the contents of Para 13 of reply are not accepted as the Appellant in appeal and in rejoinder has pointed out the fraud done and further replies that the relief sought in the appeal needs to be granted as the Answering Respondent has committed fraud and any Law whatsoever cannot save the Answering Respondent from liability arising from the above act of misrepresentation and fraud.

137. It is submitted that Para 1 is untenable in the eyes of Law as the said Para evasively address the grounds raised in the appeal. The Appellant has in the objection application and in Misc. Application and in this rejoinder has specifically pointed out on how the fraud has been done. The reply that the allegations raised are bland is not true as is evident from the record of the case. The order is evidently obtained by playing fraud and misrepresentation.

138. It is submitted that in Para 2 the Answering Respondent has accepted that the property was never mortgaged with the Bank which makes the order of attachment necessary under the rule 4 of the 2nd schedule. Further it has already been denied that the ru1e 2 notice was served on Smt. Shanti Devi Bhargava. The benefit sought to be invoked under rule 16 and 66 cannot be claimed by the Answering Respondent and as such the grounds of appeal raised are valid for the appeal to be admitted and decided in the favour of Appellant.

139. It is submitted that the contents of Para 3 are not accepted as the objection raised by the Appellant is valid and she has the right to raise such objections. The question of delay has already been answered and

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the interference in the order dated 25.01.2019 will be in the interest of justice.

140. It is submitted that the contents of Para 4 further point out the malafide intention of the Answering Respondent as they are not providing any detailed reply to the ground and is evasively answering this ground in denial.

141. It is submitted that the contents of Para 5 are not accepted as the Appellant has all the authority to challenge the Sale Certificate issued and further the Appellant had a11 the right to challenge and raise objection in the Court of DRT, Jaipur and the question raised is not acceptable on the ground that there cannot be limitation to correct any wrong done or benefit obtained by fraud. It is further clarified that the notice under rule 2 was not served and locus of Appellant is well within the precincts of Law.

142. It is submitted that the contents of Para 6 are not true as there was mistake apparent on the face of record and the Recovery Officer should have cancelled the Sale Certificate issued. The order dated 25.01. 2019 is not legal, just, reasonable and is liable to be set aside.

143. It is submitted that the contents of Para 14 cannot be accepted as the detailed rejoinder supports as to why Para 7 claiming relief should be granted to the Appellant.

144. It is submitted that the contents of Para 15 cannot be accepted as Appellant has established the facts and law in regard to why the reliefs should be granted.

145. It is further prayed that the reply filed by the Answering Respondent evasively answers in the appeal and further fails to accept the fraud done by Answering Respondent and hence should not be taken on

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record and the appeal should be allowed after imposing heavy cost on Answering Respondent.

146. **Heard arguments and peruse the record**.

147. **Core Legal Question:-**

Whether a Recovery Officer can permit/complete a private sale of immovable property instead of public auction under the Second Schedule to the Income-tax Act, as applied to DRT recovery proceedings by Section 29 of the RDB Act, and whether a sale deed/sale certificate can follow such transaction.

148. **Statutory provisions.**

- Section 25, RDB Act, 1993: Recovery Officer may recover the debt through attachment and sale of movable/immovable property and other prescribed modes.
- Section 29, RDB Act: The Second and Third Schedules to the Income-tax Act, 1961 and the relevant Rules apply, as far as possible, to recovery proceedings before the Recovery Officer.
- Rule 52, Second Schedule: Recovery Officer may direct sale of attached immovable property.
- Rule 56: Ordinary mode of sale is public auction.
- Rule 66: Provides a specific mechanism for postponing sale and permitting the defaulter to raise the certificate amount through mortgage, lease or private sale, including of 'any other immovable property of the defaulter'.
- Rule 65: After the sale becomes absolute/confirmed, the prescribed sale certificate can be issued.

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3. What Rule 66 Actually Permits

- Private sale/private negotiation is legally recognised; public auction is not the only possible mode in every situation.
- The mechanism is conditional. The Recovery Officer must first invoke Rule 66 in accordance with its requirements.
- Rule 66 contemplates the Recovery Officer authorising the DEFAULTER to make the proposed mortgage, lease or sale within a specified period.
- Money payable under the transaction must be paid to the Recovery Officer, not to the defaulter.
- The private sale does not become absolute merely on execution; it requires confirmation by the Recovery Officer.
- After a valid and confirmed Rule 66 sale, a sale certificate may be issued under Rule 65.

4. Important Case Laws

In Girish Sareen v. State of Rajasthan & Ors.

(1993) 203 ITR 207 (Raj.)

This is particularly important because it is a **Rajasthan High Court judgment** and deals directly with Rule 66 and private negotiation and the property in that case had been attached. The public sale was postponed and the defaulter was authorised to sell by private negotiation.

The Rajasthan High Court held that:

- private negotiation is permissible under Rule 66;
- the consideration must go to the Tax Recovery Officer;
- the sale must be confirmed by the Tax Recovery Officer;

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- a sale under private negotiation is nevertheless a sale under the Second Schedule; and
- the Tax Recovery Officer could issue a sale certificate after confirmation.

149. The judgment is particularly significant because it rejected the proposition that a sale certificate can **only** be issued following a public auction.

The Court expressly recognised that the Second Schedule contemplates both:

public auction and private negotiation.

Therefore, The proposition in the *Mamta Sogani* appellant's submissions that:

"Recovery Officer can only sell by public auction and no sale certificate can be issued for private sale" is **too broad**. It is contrary to *Girish Sareen*, provided the requirements of Rule 66 are actually satisfied.

In *Amar Chand Agrawal & Ors. v. Commissioner of Income Tax & Ors.* (1999) 238 ITR 240 (All.)

This case is particularly useful for your specific question concerning a **sale deed with a private party**.

The Allahabad High Court examined Rule 66 and described the mechanism as follows:

- public auction may be changed to private negotiation;
- the defaulter is given **specific authorisation** to negotiate;
- consideration is paid to the Tax Recovery Officer;
- the sale requires confirmation by the RO.

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Even more importantly, the facts record that the RO, authorised the defaulter to **execute a sale** within the specified period. The judgment records that the defaulter was authorised to execute the sale, while the consideration was to be deposited with the RO and the sale would not become absolute until confirmation. The Court ultimately treated Rule 66 as an independent statutory mechanism for private negotiation.

So, the answer is **not** that "a sale deed can never be executed because the RO must always conduct a public auction."

150. **Summary of cases and its relevancy with present matter.**

Case	Principle	Relevance
Girish Sareen v. State of Rajasthan, Rajasthan HC (1992)	Rule 66 permits private negotiation after postponement of sale; consideration is to go to the Recovery Officer and the sale requires confirmation.	Directly supports the proposition that private negotiation can be a valid statutory mode.
Amar Chand Agrawal v. CIT, Allahabad HC (1998)	Rule 66 permits the defaulter to execute a private sale pursuant to Recovery Officer's authorisation; consideration is paid to the Recovery Officer and sale is confirmed.	Shows the practical mechanism of a private sale/sale deed under Rule 66.
K. Basavarajappa v. Tax Recovery	Rule 16 restricts private dealings after recovery	Relevant to the effect of Rule 2

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Commissioner, Supreme Court (1996)	proceedings/attachment and protects the recovery claim against prohibited transfers.	notice/attachment and transactions outside the statutory permission.
State of Punjab v. Ferrous Alloy Forgings Pvt. Ltd., Supreme Court (2024)	Sale certificate is evidence/formal declaration following completion and confirmation of sale; it does not itself create the underlying title.	Useful for distinguishing the completed sale from the later sale certificate.

The legal question is NOT simply whether private sale is permissible. It is permissible under Rule 66, subject to its statutory conditions. The decisive question is whether those conditions were actually satisfied in respect of property D-16, Meera Marg, in Recovery Proceeding No. 68/2002.

- Appellant's contention: D-16 was never mortgaged/attached; there was no order/proclamation of sale; therefore Rule 66/Rule 65 could not validly support the subsequent sale certificate.
- Respondent's contention: Rule 16 read with Rule 66 permitted the private sale; notice was served, consideration was deposited with the Recovery Officer, the sale was confirmed and the sale certificate was issued.
- Important qualification: absence of mortgage or attachment does not, by itself, automatically answer the Rule 66 issue because Rule 66 expressly refers to 'any other immovable property of the defaulter'. However, the

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opening condition of Rule 66 refers to a case where 'an order for the sale of immovable property has been made'. The record must therefore establish the necessary jurisdictional steps.

151. **Short Conclusion**

The statutory scheme under Sections 25 and 29 of the Recovery of Debts and Bankruptcy Act, 1993, read with Rules 48, 52, 56, 65 and particularly Rule 66 of the Second Schedule to the Income-tax Act, does not confine recovery sales exclusively to public auction. Rule 66 expressly recognises private sale/private negotiation as an exceptional statutory mode by which the defaulter may raise the amount due under the Recovery Certificate, subject to authorisation by the Recovery Officer, payment of the entire consideration to the Recovery Officer and subsequent confirmation of the sale.

The Recovery Officer, however, does not thereby become the private vendor of the property. Rule 66 contemplates authorisation being granted to the defaulter to effectuate the proposed private sale, followed by confirmation by the Recovery Officer and issuance of the statutory sale certificate.

The Rajasthan High Court in *Girish Sareen v. State of Rajasthan*, (1993) 203 ITR 207, has expressly recognised private negotiation under Rule 66 and upheld issuance of a sale certificate following such sale and confirmation. *Amar Chand Agrawal v. CIT*, (1999) 238 ITR 240 (All.), similarly recognises the mechanism of specific authorisation to the defaulter to execute the private sale, deposit of consideration with the Recovery Officer and subsequent confirmation.

152. The Second Schedule does not confine recovery sales exclusively to public auction. Rule 66 provides a statutory route for private

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sale/private negotiation, but it is a controlled mechanism. Ordinarily, the Recovery Officer authorizes the defaulter to make the private sale; the consideration is paid to the Recovery Officer; and the transaction becomes effective for recovery purposes only.

153. **The Recovery Officer CAN permit CD a private treaty/private sale and permission to sale deed can be executed by CD pursuant to Rule 66; however, the Recovery Officer simply cannot sell the property privately at his discretion or execute private sale deed.**

154. The Appeal is disposed of on the following terms: -

The Recovery Officer can allow the defaulter to make the private sale, but Recovery Officer himself is not entitled to issue a sale certificate. Since it is the gambit of the defaulter who never produces the CD before the Recovery Officer or the Civil Court, thus sale is liable to be set aside.

155. The sale certificate issued by the Recovery Officer stands quashed. Sub-Registrar is directed to record the cancellation of the sale certificate since money was paid by the son of the borrower, who himself has now got the property in heritance of the deceased, therefore bank should not return any money to them.

156. The sale Certificate issued by the Recovery Officer in favour of son of CD and grandson of Smt. Shanti Devi, therefore, it is the money has already been arranged by the CD himself and just to come out of the clutches of law he has played fraud not only with the Tribunal, but also with the applicant and Civil Court where after getting the sale certificate issued despite the fact that the matter was pending before Civil Court.

157. Parties to bear their own cost since the money was paid by the CD himself and the bank is required to inform the same.

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158. Registrar Stamp is directed to refund the stamp duty as per law. Recovery Officer to note that the sale certificate is cancelled and he may consign the file to record, if further payment is not required under Recovery Certificate.

159. In view of above, this Appeal stands disposed of. File be consigned to record, as per rules. Copy of order be uploaded on website.

(Vimal Gupta)
Presiding Officer
Debts Recovery Tribunal, Jaipur

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