Bombay High Court Keshrimal Jivji Shah And Anr. vs Bank Of Maharashtra And Ors. on 22 April, 2004 Equivalent citations: IV (2004) BC 6, 2004 122 CompCas 831 Bom, (2005) 193 CTR Bom 229, 2005 273 ITR 451 Bom, 2004 (3) MhLj 893 Author: S Dharmadhikari Bench: A Shah, S Dharmadhikari JUDGMENT S.C. Dharmadhikari, J. 1. Rule. Respondent No. 1 waives service. Respondent Nos. 2 to 5 have been served. However, they have not appeared in the Courts below as well. Therefore, in our view, petition can be disposed of at this stage. Rule is made returnable forthwith by consent. 2. Two questions arise for consideration in this petition under Article 226 of the Constitution of India, challenging an order dated 9th February 2004 in Misc. Appeal No. 396 of 2003 passed by the learned Chairperson of Debt Recovery Appellate Tribunal (for short Tribunal). 3. The questions are :– i) is transfer of an immovable property in contravention of a prohibitory or injunction order of a Court illegal or void; ii) Whether and to what extent, the procedure under Rule 11 of Second Schedule to Income Tax Act, 1961 is applicable in execution of a recovery certificate issued under Section 19(7) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short RDB Act) 4. To answer these questions, it is necessary to set out the facts. Petitioner No. 1 is a partner of petitioner No. 2, a firm registered under the provisions of Indian Partnership Act, 1932. Respondent No. 1 is a nationalised bank which instituted proceedings for recovery of its dues. Respondent No. 2 is a proprietary firm of respondent No. 3. They are Original Defendant Nos. 1 and 2. Respondent Nos. 4 and 5 are original defendant Nos. 3 and 4. 5. It is not in dispute that a suit being Suit No. 1523 of 1994 was filed by respondent No. 1 against respondent Nos. 2 to 5 on the original side of this Court. In this suit plaintiffs claimed a decree in the sum of Rs. 50,01,885.40. It is the case of respondent No. 1 that on 3rd November 1988, an agreement to lease was entered into by City Industrial and Development Corporation (CIDCO) in favour of respondent No. 2. The lease was in respect of property being warehouse plot No. 177, admeasuring 900 sq. mtrs. situate at Kalamboli, Vashi, Navi Mumbai (hereinafter referred to as said property). In pursuance of the request to grant loan, respondent No. 2 had on 30th November 1988 deposited title deeds in respect of said property with respondent No. 1. It is contended that title deeds were deposited with an intention to create equitable mortgage in respect of said property in favour of respondent No. 1. As a result of persistent defaults committed by respondent No. 2 in repayment of loan, respondent No. 1 instituted Suit No. 1523 of 1994 on the original side of this Court for recovery of aforesaid sum along with other reliefs. 6. It is pertinent to note that for protecting its security, respondent No. 1 bank moved an application for temporary injunction by way of Notice of Motion in the said suit. This Court (R.M. Lodha, J), after hearing respondent Nos. 1 and 2 granted ad-interim order of injunction on 6th March 1998 in terms of prayer Clause (b) which reads as under :– "(b) that pending the hearing and final disposal of the suit, the Defendant No. 2 be restrained by himself, his servants and agents or otherwise howsoever by an order and injunction of this Hon'ble Court from in any manner disposing of or parting with possession of or alienating or entering or transferring or creating any right, title or interest

in the said immovable property described in Exh.E to the plaint and in respect of the hypothecated goods and book debts described in the Deed of Hypothecation being Exh.15 to the plaint and/or from recovering or realising the book debts or any part thereof." 7. On the establishment of Debt Recovery Tribunal, Mumbai the suit was transferred to its file and was numbered as O.A. No. 1277 of 1999. 8. O.A. No. 1277 of 1999, was decreed ex parte by DRT-II, Mumbai on 6th July 2001. In pursuance of the same, recovery certificate was issued by the Tribunal. 9. It appears that during pendency of injunction order passed by this Court, respondent No. 2 transferred and assigned its lease hold rights in the said property in favour of petitioner No. 2. This document was registered on 29th August 2000. Prior thereto, it appears that a lease deed was executed by CIDCO in favour of respondent No. 2 on 28th July 2000. On 2nd August 2000, lease was registered with Sub-Registrar, Panvel. On 4th August 2000, it appears that CIDCO granted permission to respondent No. 2 to transfer its rights, title and interest in the said property in favour of petitioner No. 2 with condition to register the lease deed on or before 3rd November 2000. 10. It is the case of petitioners that on 8th October 2002, they came to know that the said property was put up for auction on 10th October 2002, pursuant to directions of Recovery Officer of DRT-II, Mumbai. This action was taken in pursuance of the order dated 30th August 2002 passed by the Recovery Officer attaching the said property. Being aggrieved by these actions, petitioner No. 2 filed an intervention application Exh.79. That application was heard by Recovery Officer, DRT Mumbai. By an order dated 4th February 2003. Recovery Officer rejected the said application. Aggrieved by this rejection, petitioner preferred an appeal being Appeal No. 16 of 2003 before Presiding Officer, DRT Mumbai. Learned Presiding Officer after hearing parties, dismissed the said appeal by an order dated 4th December 2003. Thus he confirmed order of Recovery Officer, rejecting intervention application of petitioner herein. 11. Being aggrieved and dissatisfied with order of Presiding Officer dated 4th December 2003, petitioners preferred Misc. Appeal No. 396 of 2003 before Debt Recovery Appellate Tribunal (DRAT). Since, the learned Chairperson of DRAT was on leave, a writ petition was filed in this Court and this Court granted interim reliefs in favour of petitioners staying auction of the said property. Thereafter, on resumption of duty, the Chairperson heard the Misc. Appeal preferred by petitioners. Learned Chairperson, after hearing parties and perusing record, dismissed Misc. Appeal by her order dated 9th February 2004. 12. Being aggrieved by this order, petitioners have approached this Court invoking its jurisdiction under Article 226 of Constitution of India. The Courts below were of the view that sub-lease in favour of petitioners being in contravention of the order of injunction passed by this Court on 6th March 1998 is void and confers no right, title and interest in favour of petitioners herein. Besides this, the Courts below have observed that petitioners have failed to substantiate their pleas that they are bona fide purchasers for value without notice. This conclusion arrived at by the Courts below is seriously challenged on the ground that it is vitiated by errors apparent on the face of record and is wholly perverse. It is contended that Recovery Officer and D.R.T. had no jurisdiction to declare the transfer in favour of petitioners

as void. 13. Shri Naphade, learned Senior Counsel appearing for petitioners contended before us that the Courts below erred in holding that transfer during the pendency of restraint/prohibitory/injunction order is void. He contended that there is no provision either in the Civil Procedure Code or elsewhere which makes transfer of immovable property in violation of an injunction order/ prohibitory order null and void. After inviting our attention to Order XXXIX, Rules 1, 2, 2(a) of Civil Procedure Code and Bombay Amendment i.e. Rule 11 it is contended by Shri Naphade that the law visits parties acting in violation of orders of Court with serious penalties but does not render the transaction itself null and void or of no legal effect. Once, the law does not make such provision, then it is not permissible for the Courts below to hold that transfer in favour of petitioners is void. 14. The next contention of Shri Naphade is that right, title and interest in the immovable property does not come to an end merely because a restraint is placed by Court of law on its alienation or disposal. If this being the legal position, then there was no impediment in respondent No. 2 transferring the said property in favour of petitioners. He contends that admittedly, the said property belongs to CIDCO and what is granted in favour of respondent No. 2 is lease hold right. Such lease hold rights have been duly assigned by respondent No. 2 in favour of petitioners with prior concurrence and transfer of CIDCO. That being the case, it cannot by any stretch of imagination be said that respondent No. 2 had no right in law to effect the transfer. That apart, contends Shri Naphade, pendency of proceedings either before this Court or DRT was not known to petitioners herein. They are neither parties to these proceedings nor are they aware of the injunction order dated 6th March 1998. They are bona fide purchasers for value without notice. Therefore, the transaction in their favour could not have been nullified by the Courts below in the manner done in the instant case. 15. It is contended by Shri Naphade that no lis pendens was registered. All precautions were taken by petitioners and, therefore, it is not a case where petitioners could be accused of being in collusion with respondent No. 2. It is contended by him that order of injunction is in personem and not in rem. Hence at the most injunction would be binding on respondent No. 2 and not petitioners herein. After inviting our attention to Sections 19, 25, 28 and 29 of RDB Act, it is contended by Shri Naphade that provisions of second and third Schedule to Income Tax Act, 1961 and Income Tax (Certificate Proceedings) Rules, 1962 are applicable when recovering the dues under a recovery certificate issued by DRT. The word "assessee" applies with the same meaning to defendant/judgment debtor under the Rules. Inviting our attention to Rule 11 of the Rules set out in second schedule to Income Tax Act, 1961, it is contended by Shri Naphade that claim preferred or objection is raised to attachment or sale of any property in execution of certificate on the ground that such property is not liable to such attachment or sale, then the Recovery Officer is obliged to investigate the claim or objection in accordance with these rules. He submits that the sale has to be necessarily postponed till the investigation takes place. At such an investigation claimant or objector has liberty to show that he had some interest in or was possessed of property in question. Even if Tax Recovery Officer is satisfied that the claim or objection

is not substantiated even then his conclusion is not final and is subject to a civil suit as contemplated by Rule 11(6). 16. Shri Naphade submits that in the instant case, recovery officer has failed to abide by the mandate of the aforesaid rule and, therefore, the conclusion reached by him that the objection or claim of petitioners is meritless, is not tenable in law. Even otherwise, no finality could be attached to such a conclusion it being subject to civil suit. Therefore, the said property cannot be auctioned in execution of recovery certificate. He submits that it is pertinent to note that what is granted by the decree is nothing but a money claim and the relief of declaration that respondent No. 2 was bound to specifically perform the agreement to create mortgage in favour of respondent No. 1 has not been granted, if this relief is expressly denied, then in execution of money decree, said property could not have been auctioned at all. These are issues which could not have been conclusively decided in proceedings before recovery officer and, therefore, it is necessary to afford an opportunity to petitioners to approach Civil Court and till that time, auction be stayed is the last contention of Shri Naphade. 17. In support of his contention, Shri Naphade has relied upon a decision of the Supreme Court in the case of Tax Recovery Officer, II v. Gangadhar Vishwanath Ranade, . He also relied upon the decision of Lahore High Court in the case of Lalchand v. Sohanlal and Ors. reported in AIR 1938 Lahore 220. He also relied upon a decision of the Supreme Court in the case of Krishan Kumar Narula v. State of Jammu and Kashmir . Shri Naphade urged that the decision of Lahore High Court is still good law, inasmuch as it has been followed subsequently and he relied upon a Division bench decision of Orissa High Court in the case of Parnakrushna and Ors. v. Umkanta Panda and Ors. . 18. On the other hand, Shri Kulkarni, learned Counsel appearing for respondent No. 1 submits that the Courts below have concurrently held that petitioners have purchased the said property from respondent No. 2 in violation of order of injunction passed by this Court on 6th March 1998. He submits that said transaction was wholly illegal. A transaction which is entered into either to defeat the order of Court of law or to violate it, confers no right, title or interest in favour of transferee. Legal effect, according to Shri Kulkarni is that the sublease is not a transfer in the eyes of law. Once this principle is accepted, then nothing further needs to be considered in this matter. He submits that if parties are allowed to claim an advantage from a transaction which is in violation of an order of Court of law, then drastic consequences will follow. Entire respect for rule of law and administration of justice is gone, if despite prohibitory orders, immovable properties are alienated or disposed of with impunity. Such an approach is contrary to public policy. He submits that Courts below have held that petitioners have registered a sub-lease in their favour by colluding with respondent No. 2 and this finding of fact cannot be disturbed by us in our jurisdiction under Article 226 of the Constitution of India. 19. As far as applicability of Rule 11 of IInd Schedule of I.T. Act is concerned, Shri Kulkarni contends that the said rules have to be applied as far as possible with necessary modifications by Recovery Officer, exercising powers under Article 29 of RDB Act. That being the position, there is no substance in the contention of Shri Naphade that impugned orders are vitiated by an error apparent on the

face of record. He submits that recovery officer, D.R.T. and D.R.A.T. are well within their jurisdiction and have rightly considered the claim/ objection of petitioners to the Auction Sale. He submits that this is not a case involving any complex issue of facts requiring oral and documentary evidence. Therefore, the investigation conducted by Recovery Officer was consistent with the object and purpose for which R.D.B. Act has been enacted. If the conclusions of Recovery Officer, which are subject to appeals before D.R.T. and D.R.A.T., are not given finality then the very purpose of establishing Tribunals under R.D.B. Act would be frustrated and defeated. If parties are allowed to agitate such issues again in a suit, then Recovery of bank dues, which are also public monies, would be unduly delayed resulting in virtual break-down of economy. Therefore, he submits that this is a fit case where we should not exercise our writ jurisdiction and dismiss the petition. He says that conduct of petitioners disentitles them from any discretionary and equitable reliefs. 20. For proper appreciation of rival contentions, it is necessary to refer to some relevant statutory provisions. R.D.B. Act is an Act to provide for establishment of Tribunals for expeditious adjudication and recovery of debts due to Bank and financial Institutions. Statement of object and reasons leading to enactment of R.D.B. Act, 1993 state that locking up huge amount of public money in litigation prevents proper utilisation and re-cycling of funds for the development of country. It notes the fact that Banks and financial institutions experience considerable difficulties in recovering loans and enforcement of securities charged with them. Existing procedure for recovery of debts due to banks and financial institutions has blocked a significant portion of their funds in unproductive assets value of which deteriorates with the passage of time. An urgent need was, therefore, felt to work out a suitable method through which dues of Banks and financial institutions could be realised without delay. The Government of India set up committee and as a result of the recommendations made by them decision of setting up of special tribunals for recovery of dues of banks and financial institutions by following summary procedure was taken by the Government. 21. We cannot ignore the object and purpose of RDB Act while answering the question posed for our consideration. In the case of Union of India v. Delhi High Court Bar Association, the Supreme Court upheld validity of R.D.B. Act, 1993 after noticing the abovementioned aspects. It reversed the decision of Delhi High Court striking down provisions of this Act and more particularly the conclusion therein that establishment of such Tribunals is ultra vires Articles 323-A and 323-B of Constitution of India. The emergent need for summary procedure to recover dues of banks and financial institutions has been recognised in this decision. Similarly, in another decision in the case of Allahabad Bank v. Canara Bank reported in AIR 2000 SC 1535 the Supreme Court in paras 23, 24, 25 and 53 observed as under :– "23. Even in regard to execution, the jurisdiction of the Recovery Officer is exclusive. Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained in Chapter V of the Act and is covered by Sections 25 to 30. It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the Banks/ Financial institutions should go to the

Civil Court or the Company Court or some other authority outside the Act for the actual realisation of the amount. The certificates granted under Section 19(22) has, in our opinion, to be executed only by the recovery officer. No dual jurisdictions at different stages are contemplated. Further, Section 34 of the Act gives overriding effect to the provisions of RDB Act. 24. There is one more reason as to why it must be held that the jurisdiction of the Recovery Officer is exclusive. The Tiwari Committee which recommended the constitution of a Special Tribunal in 1981 for recovery of debts due to Banks and financial institutions stated in its Report that the exclusive jurisdiction of the Tribunal must relate not only to regard to the adjudication of the liability but also in regard to the execution proceedings. It stated in Annexure XI of its Report that all"execution proceedings" must be taken up only by the Special Tribunal under the Act. In our opinion, in view of the special procedure for recovery prescribed in Chapter V of the Act, and Section 34, execution of the certificate is also within the exclusive jurisdiction of Recovery Officer. 25. Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act... 53. ..... Section 22 of the RDB Act, in our view, gives sufficiently wide powers to the Tribunal and the Appellate Tribunal to decide such questions of priorities, subject only to the principles of natural justice. This Court has explained, that the powers under Section 22 are wider than those of Civil Courts and the only restriction on its powers is that principles of natural justice have to be followed. See Industrial Credit and Investment Corporation of India Ltd. v. Grapco Industries Ltd., and Allahabad Bank Calcutta v. Radha Krishna Maity, . 22. Since both sides have placed reliance upon Section 29 of R.D.B. Act and Rule 11 of the Rules under the 2nd Schedule part I of Income Tax Act, 1961 we reproduce them for ready reference :– "Section 29 of R.D.B. Act : Application of certain provisions of Income Tax Act :– The provisions of the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income Tax?" Rule 11 IInd Schedule Part I of Income Tax Act:– "Investigation by Tax Recovery Officer :– (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection; Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed. (2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit. (3) The claimant or objector must adduce evidence to show that - (a) (in the case

of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or (b) (in the case of movable property) at the date of the attachment, he had some interest in, or was possessed of, the property in question? (4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale; (5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim. (6) Where a claim or an abjection is preferred, the party against whom an order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive." 23. To enable us to answer question No. 1, it is necessary to refer to the decision of the Supreme Court in the case of Sujit Singh and Ors. v. Harbans Singh and Ors. to which our attention has been invited by Shri Kulkarni, learned Counsel for respondent No. 1. In this decision the Supreme Court has observed thus :– "4. As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is per se property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property per se had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees- respondents could not have been impleaded by the trial Court as parties to the suit, in disobedience of its orders. The principles of lis pendens are altogether on a different footing. We do not propose to examine their involvement presently. All that is emphasised is that the assignees in the present

facts and circumstances had no cause to be impleaded as parties to the suit. On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treaded by the Courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the Courts below and reject the application of the assignees for impleadment under Order 22, Rule 10, Civil Procedure Code." 24. We cannot be unmindful and ignorant of the importance of this aspect, which has been repeatedly emphasised by the Supreme Court. We would be failing in our duty if, we do not abide by the ratio laid down in the aforesaid decisions. That part, in the case of Ramchandra Ganpat Shinde v. State of Maharashtra and Ors. the Supreme Court in paras 12 and 13 has observed as under :– "12. Mr. Justice Arthur, J. Venderbilt in his"The Change of Law Reforms 1955" at pages 4 and 5, stated that:– ". . . . . It is the Courts and not in the legislature that our citizens primarily feel the keen, the cutting edge of the law. If they have respect for the work of their Courts, their respect for law will survive the shortcomings of every other branch of the Government; but if they lost their respect for the work of the Courts, their respect for the law and order will vanish with it to the great detriment of society." 13. Respect for law is one of the cardinal principles for an "effective operation of the Constitution, law and the popular Government. The faith of the people is the source and succour to invigorate justice intertwined with the efficacy of law. The principle of justice is ingrained in our conscience and though ours is a nascent democracy which has now taken deep roots in our ethos of adjudication – be it judicial, quasi-judicial or administrative as hallmark, the faith of the people in the efficacy of judicial process would be disillusioned, if the parties are permitted to abuse its process and allowed to go scot free. It is but the primary duty and highest responsibility of the Court to correct such orders at the earliest and restore the confidence of the litigant public, in the purity of -fountain of justice; remove stains on the efficacy of judicial adjudication and respect for rule of law, lest people would lose faith in the Courts and take recourse to extra-constitutional remedies which is a death-knell to the rule of law." In the case of Satya Brata Biswal v. Kalyan Kumar Kisku and Ors. while outlining the importance of rule of law, administration of justice and the role of Courts, the Supreme Court has observed. "29. Apart from the fact whether A. K. Ghosh had a legal authority to sub-lease or not it was not open to him to grant a sub-lease in violation of the order. It is no use contending as Mr. Chidambaram, learned Counsel for the respondents does, that there was a bar to such a sub-lease under the terms of the status quo order. It has the effect of violating the preservation of status of the property. This will all the more be so when this was done without the leave of the Court to disturb the state of things as they then stood. It would amount to violation of the order. The principle contained in the maxim : Actus Curiae Neminem Gravabit has no application at all to the facts of this case when in violation of status quo order a sub-tenancy has been created. Equally, the contention that even a trespasser cannot be evicted without recourse to law is without merit, because the state of affairs in relation to property as on 15-9-1988 is what the Court is concerned with. Such an order cannot be circumvented by parties with

impunity and expect the Court to confer its blessings. It does not matter that to the contempt proceedings Somani Builders was not a party. It cannot gain an advantage in derogation of the rights of the parties, who were litigating originally. If the right of sub-tenancy is recognised, how is status quo as of 15-9-1988 maintained? Hence, the grant of sub-lease contrary to the order of status quo is clearly illegal. All actions including the grant of sub-lease are clearly illegal." 25. In our view, therefore, if the facts in the present case are appreciated in the light of the decisions of the Supreme Court (supra), it is clear that during the pendency of the order of injunction issued by this Court on 6th March 1998, respondent No. 2 has created sub-lease in favour of petitioners herein. It is of considerable significance that respondent No. 2 to 4 did not appear either to oppose the O.A. or during the proceedings, initiated by petitioners herein. Their silence on the material aspect of violation of injunction order is eloquent enough. We cannot hold that conclusion of the Courts below to the effect that power to transfer the said property was subject to the injunction order issued by this Court, is in any way vitiated by error of law or is in any way perverse. In the light of the decision of the Supreme Court, the transfer was clearly illegal if not void. 26. We cannot accept Shri Naphade's contention that observations of the Supreme Court in the case of Surjeet Singh should be read as restricted to proceedings under Order 22, Rule 10 of Civil Procedure Code and the same cannot be extended to defiance of injunction order issued under Order 39, Rule 1 of Civil Procedure Code. Once the issue is placed on the pedestal of public policy and the very faith of litigants in Rule of law and administration of justice, then it is not possible to make the distinction or bifurcation suggested by Shri Naphade. It would mean that consequences of nullifying such transaction not being provided by the Statute, it would not lose its legal efficacy even if it is in utter disregard to or in violation of or breach of prohibitory order or order of injunction issued by a Court of law. It would mean that parties can breach and violate Court orders openly and with impunity and neither they nor the beneficiaries suffer any consequences. It is time that we recognise the principle that transfer of immovable property in violation of an order of injunction or prohibition issued by Court of law, confers no right, title or interest in the transferee, as it is no transfer at all. The transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not party to the proceedings in which order of injunction or other prohibitory direction or restraint came to be issued. It is enough that the transferor is a party and the order was in force. These two conditions being satisfied, the transfer must not be upheld. If this course is not adopted then the tendency to flout orders of Courts which is increasing day by day can never be curbed. The Court exercises its powers on the foundation of respect and regard for its authority by litigating public. People would loose faith and respect completely if the Court does not curb and prevent this tendency. The note of caution of the Supreme Court must be consistently at the back of everybody's mind. Therefore, Shri Naphade is not right in the distinction which he is trying to make. 27. Equally untenable is the contention of Shri Naphade that an order of injunction will bind only the transferor in this case. It is his submission that the said order

does not bind the world at large. He submits that ownership rights are neither taken away nor restricted in any manner by order of injunction or other preventive directions. He submits that the transfer in favour of his client was thus neither invalid nor illegal, leave alone null and void. For the reasons already recorded above, we find it difficult to accept this contention of Shri Naphade. Decision of the Supreme Court in the case of Krishan Kumar Narula v. State of Jammu and Kashmir, has no application. There, the Supreme Court was distinguishing an order of stay from an order of injunction. The distinction was made in the context of consequences upon breach and violation of such orders. It is in that context that the Supreme Court observed that the order of stay is qua a Court, whereas an order of injunction reaches and touches a party to the lis. These observations cannot be applied when it is noticed that during the pendency of an order of injunction, immovable property, which is subject matter of restraint or injunction, is transferred. When this course is admittedly adopted, then there is no choice but to declare the transaction as illegal. There is no question of then deciding the nature and effect of the order of injunction. 28. Mr. Naphade's submissions overlook the effect of an order of injunction. An order issuing interlocutory injunction is issued with a view to preserve and protect status quo during the pendency of the suit or litigation. The true effect of such an order is, therefore, preservation of status quo prevailing as on the date of issuance of the order. Any alteration in the status quo as prevailing and directed to be maintained by the Court of law is not permissible except with leave or sanction of Court. It is well settled that if Courts are not to honour and implement their own orders and encourage party litigants, be they public authorities, to invent methods of their own to short circuit and give a go by to the obligations and liabilities incurred by them under orders of Courts, the rule of law will become casualty in the process - a consequence to be jealously averred by all and at any rate by the highest Courts in the State, (see). 29. The Courts below have observed that there is no substance in the contention of petitioners that they had no knowledge of injunction. The Courts below have observed that petitioners cannot be allowed to go scot free by trying to plead a case that they were bona fide purchasers for value without notice. According to Courts below, petitioners have not taken any steps to verify whether the title of transferor was clear and valid. They have not pleaded any where as to what steps were taken by them, as a prudent transferee to ascertain facts about pendency of proceedings or encumbrance on the said property. Admittedly, land belongs to CIDCO and it is subject matter of lease in favour of respondent No. 2. On the date when respondent No. 2 entered into a lease deed with CIDCO and on the date when lease deed was registered by it, the injunction order was in force. Yet, respondent No. 2 obtained permission from CIDCO to transfer the right, title and interest in favour of petitioner No. 2. Admittedly, respondent No. 2 was aware of pendency of proceedings as well as the injunction order. Therefore, it cannot be said that the conclusion of Courts below is based on no material or is perverse. A prohibitory order has the effect of placing restriction on powers of disposition and respondent No. 2 could not have legally created a sub-lease in favour of petitioners. That apart, the learned Chairperson of

DRAT has observed that petitioners, produced no evidence in support of their claim or objection to show that on the date when the property was attached, they had some interest in or they were possessed of the property in question. They did not tender any evidence to support the claim or objection. Therefore, it is clear that the transfer had no legal effect. In view of our conclusion that the transfer was illegal, strictly speaking it is not necessary to go into other aspects and deal with contentions of Shri Naphade. In the light of the aforesaid discussion, answer to question No. 1 is that transfer is illegal and cannot be recognised. Consequently, transferee gets no valid title nor does he acquire any right or interest in the immovable property. 30. Mr. Naphade's reliance upon the decision of the Lahore High Court, subsequently followed, according to him, is misplaced. Considering the view of the Supreme Court in matters of this nature, it will not be possible for us to accept the pleas raised by Shri Naphade. The Court cannot allow a party to get away with violation of its prohibitory orders and uphold the transactions contrary to and in violation of its directions on the spacious plea that only way in which the Court can regulate such acts is to visit the guilty party with penalties. It is time that Courts reach the transaction itself and put an end to purported rights created thereby. Failing which, it will become possible for parties to retain fruits or benefits of such acts by suffering penalties. It is well settled that no person can take advantage of his own wrong. In the instant case, respondent No. 2 in violation of the order of this Court, transferred the property by creating sub-lease in favour of petitioner. The approach suggested by Shri Naphade, if accepted, will allow respondent No. 2 to retain the benefits under the sub-lease. It will also allow the petitioners to get away easily when the Courts below have found that they have not acted bona fide. 31. Considering the importance of the matter and as the issue frequently crops up for consideration we proceed to answer question No. 2 as well. In our view, we cannot ignore the plain words of the Statute. Section 29 in clearest terms states that provisions of second and third schedule of I.T. Act and 1962 Rules, as in force from time to time, shall as far as possible, apply with necessary modifications as if, the said provisions and Rules refer to the amount of debt due under this Act instead of Income Tax Act. Whenever Legislature uses words such as "as far as possible" "as far as practicable" etc., the intent is not to apply the provisions in their entirety. 32. The provisions do not get themselves incorporated completely. They have to be read into as far as possible and subject to such modifications, as the context as well as object and purpose of the Act, require. The setting in which the words occur, the Statute in which they appear, the object and purpose for which the Statute has been enacted and the mischief that is sought to be taken care of and remedied, are factors which would be extremely relevant in determining such issues. In the case of N.K. Chauhan v. State of Gujarat and Ors. the Supreme Court has held that these words are to be assigned one and the same meaning. Whenever, the Legislature says as far as practicable, as far as possible it conveys one and the same meaning. If the purpose of RDB Act is to expediently recover public monies in a summary manner then an interpretation which would advance this purpose should be placed on Section 29 of R.D.B. Act. So interpreted and considered, in

our view, it will not be possible to read provisions, of second schedule and more particularly Rule 11 in their -entirety in Section 29. They will have to be read as far as possible and with such modifications as the facts and circumstances of a case and the nature of an investigation require. Though it is not possible or advisable to lay down a general rule in this behalf. However, Rule 11 need not be completely adhered to by the Recovery Officer always. If the contentions of Shri Naphade are accepted, it would result in investigation of claim or objection to attachment and sale never achieving any finality in proceedings under R.D.B. Act. If outcome of such investigation is made subject to another round of litigation by way of civil suit, then the very purpose of establishing Tribunals and creating machinery for speedy and expeditious recovery of public monies would be defeated. If Banks and financial institutions are made to face another round of litigation in the form of civil suit after consideration of the claim to attachment and sale then it will become impossible for them to recover and realise their dues. Even otherwise, in the case of Gopalpur Tea Co. v. Corporation of Calcutta , it has been held that non following of procedure of seizure strictly in accordance with the provisions made in that behalf, would not vitiate the seizure itself once the Legislature does not make it obligatory and mandatory to follow the same. Similar analogy can be applied here. The Parliament does not make it mandatory nor compulsory for the recovery officer to apply the second and third Schedule of I.T. Act and 1962 Rules, advisedly because the Legislature has provided safeguards after investigation of claims and objections by recovery officer. This investigation can be challenged in Appeal under Section 30 of the Act which has been substituted with effect from 17th January 2000. Even proceedings in such appeal are not final because Section 20 of R.D.B. Act provides for a further appeal by person aggrieved against any order made or deemed to have been made by a Tribunal under R.D.B. Act. Such an appeal lies to the Debt Recovery Appellate Tribunal. To compel banks or financial institutions to either institute or defend proceedings after all this before a Civil Court is defeating and frustrating the Legislative intent completely. Investigation and adjudication cannot be endless. That apart, the remedy to approach this Court in appropriate cases by invoking its jurisdiction under Articles 226 and 227 or the Constitution of India is always available. Hence, question No. 2 is answered in these terms that it is not obligatory to apply second and third schedule of I.T. Act, and 1962 Rules while investigating a claim or objection to attachment and sale during the course of execution of recovery certificate under R.D.B. Act. We are supported in these conclusions by a Division Bench decision of A.P. High Court . 33. In the view we have taken, it is not necessary to consider the effect of the decision of the Supreme Court in the case of Tax Recovery Officer v. Gangadhar Ranade (supra). Even otherwise, that decision was rendered in the context of the proceedings before the Tax Recovery Officer, where the tax recovery officer could not have ignored mandate of Rule 11. He was exercising powers under I.T. Act and Rules. The 2nd Schedule, therefore, was applicable to the proceedings before him. It is in that context that the Apex Court made the observations relied upon by Shri Naphade. 34. On facts, the Courts below having held that the sub-lease being in breach or violation

of the order of this Court and further petitioners being unable to substantiate their claim or objection to the attachment and sale, it is not possible for us to re-appreciate or reappraise the material in our extraordinary jurisdiction under Article 226 of the Constitution of India. That apart, the conduct of petitioners is such that they are disentitled from claiming equitable and discretionary reliefs in our jurisdiction under Article 226 of the Constitution of India. 35. In the result, Rule is discharged. Petition is dismissed. No costs. 36. At the request of learned Counsel for petitioners, ad-interim order granted by this Court on 9th February 2004 is to continue for a period of eight weeks from today, C.C. expedited.