

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 23RD DAY OF MARCH 2021 / 2ND CHAITHRA, 1943

WA. No. 384 OF 2021

[AGAINST THE JUDGMENT DATED 05.02.2021 IN WP(C) NO. 2966/2021(U) OF
HIGH COURT OF KERALA]

APPELLANTS/PETITIONERS IN THE WPC:

- 1 M/S. KERALA FASHION JEWELLERY,
D.NO.PP/VI, 656, MANJERY ROAD, PANDIKKAD,
MALAPPURAM-676 521, REPRESENTED BY
ITS MANAGING PARTNER O.K. BIJU, 4/43,
THEKKARA OLARI, OLLUR, TRISSUR-680 306.
- 2 MR. O.K.ROY,
S/O. OLARI KOCHUVAREED KOCHUVARUNNI, NO.4/562,
THEKKEKARA PERINTHALMANNA, MALAPPURAM-679 322.
- 3 O.K.JOJU, S/O. OLARI KOCHUVAREED KOCHUVARUNNI,
4/43, THEKKARA OLARI, OLLUR THRISSUR-680 306.
- 4 MRS. SHEEJA ROY
W/O. O.K.ROY, RESIDING AT NO.4/562, THEKKEKARA,
PERINTHALMANNA, MALAPPURAM-679 322.
- 5 O.K.BIJU, S/O. LATE OLARI KOCHUVEED KOCHUVARUNNI,
RESIDING 4/43, THEKKARA OLARI, OLLUR, THRISSUR-680 306.
- 6 SINDRELLA JOJU
W/O. O.K.JOJU, RESIDING AT 4/43,
THEKKARA OLARI, OLLUR THRISSUR-680 306.
- 7 MINI BIJU, W/O. O.K.BIJU,
4/286, NAMBADAN HOUSE,
CHALAKUDY, THRISSUR-680 307.
- 8 KOCHU THRESSIA
W/O. OLARI KOCHUVAREED KOCHUVARUNNI, 4/43,
THEKKARA OLARI, OLLUR, THRISSUR-680 306.

BY ADVS. SRI.P.CHANDRASEKHAR
SRI.K.K.MOHAMED RAVUF
SRI.SATHEESH V.T.
SMT.MANJARI G.B.
SRI.C.S.ULLAS

RESPONDENTS/RESPONDENTS IN THE WPC:

- 1 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF FINANCE (DEPARTMENT OF
FINANCIAL SERVICE), NEW DELHI-110 001.
- 2 THE DEBTS RECOVERY TRIBUNAL-2,
(ERNAKULAM & LAKSHADWEEP), 5TH FLOOR,
KERALA STATE HOUSING BOARD BUILDING,
PANAMPILLY NAGAR, ERNAKULAM-682 014, REPRESENTED BY
ITS REGISTRAR.
- 3 MS.S.V.GOURAMMA, THE PRESIDING OFFICER,
DEBT RECOVERY TRIBUNAL-2, BANGALURU-560 025.
- 4 KOTAK MAHINDRA BANK LIMITED,
REGD. OFFICE 27 BKC, C 27, G BLOCK,
BANDRA KURLA COMPLEX, BANDRA (E),
MUMBAI-400 051, REPRESENTED BY
ITS MANAGING DIRECTOR.
- 5 THE AUTHORISED OFFICER,
M/S. KOTAK MAHINDRA BANK LIMITED, BKC,
C 27, G BLOCK, BANDRA KURLA COMPLEX,
BANDRA (E), MUMBAI-400 051.

R1 BY ADV. SHRI P.VIJAYAKUMAR, ASG OF INDIA
R4 & R5 BY ADVS. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.V.T.LITHA
SMT.K.R.MONISHA
SMT.SHRUTHI SARA JACOB

BY ADV. SRI. JAGADEESH LAKSHMAN, CGC FOR R1

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23.03.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 23rd day of March, 2021

S. Manikumar, CJ

Being aggrieved by the judgment dated 5.2.2021 in W.P.(C) No.2966 of 2021, instant writ appeal is filed.

2. Short facts leading to the filing of the writ petition are petitioners are the applicants in S.A. No.372 of 2018 on the file of the Debt Recovery Tribunal-II, Ernakulam, filed under Section 17(1) of the SARFAESI Act, 2002, challenging the physical possession measures taken by the 4th respondent-M/s. Kotak Mahindra Bank Limited, Mumbai, represented by its Managing Partner. The petitioners are aggrieved by the additional charge given by the Union of India, 1st respondent, to the 3rd respondent, the Presiding Officer of Debt Recovery Tribunal-II, Bangalore, as the said action of issuing order authorising the Presiding Officer of one Debt Recovery Tribunal to act as such, as additional charge by the 1st respondent, is *ultra vires* of Section 4 sub sections (2)(a) and (b) of the Recovery of Debts and Bankruptcy Act, 1993, which came into force from 2016, repealing and substituting the previous provision, authorising additional charge to the Presiding Officer of another Debt Recovery Tribunal. The petitioners, therefore seek, to quash Exhibit-P1 notification dated 4.1.2021 and for issuance of a writ of prohibition against the 3rd respondent restraining from acting as in charge of Debt Recovery Tribunal-II,

Ernakulam, as per Exhibit P1, and also for a direction to 1st respondent to entrust the additional charge of Debt Recovery Tribunal-II, Ernakulam to any Presiding Officer or Judicial member of any other Tribunal established and constituted under any other law other than the Recovery of Debts and Bankruptcy Act, 1993 functioning under the Government of India in Ernakulam till a regular incumbent joins as a Presiding Officer in Debt Recovery Tribunal-II, Ernakulam, or till further orders.

3. After hearing the learned counsel for the parties, the learned single Judge dismissed the writ petition, holding thus:

“6. It is trite that every word used in the legislation is to be given meaning. The golden rule is to adopt to the ordinary meaning of the words used and to the grammatical construction unless the same leads to manifest absurdity. The inconvenience however great would be of little consequence. Similarly, it is also well established that such interpretation as would reduce the legislation to futility needs to be avoided.

In the case in hand, the term 'Tribunal' is defined to mean that the Tribunal established under sub section 1 of Section 3 of the Recovery of Debts and Bankruptcy Act, 1993. The Central Government is empowered to establish one or more Tribunal to be known as DRT by notification for exercising the jurisdiction, power and authority conferred on such Tribunal under the said Act. If the meaning of the word 'Tribunal' as defined by this Act is kept in mind, then it is clear that the Government can entrust the charge of one DRT

to any other DRT so also to other Tribunals established under any other law for the time being in force. The provisions of sub section 2 of Section 4 cannot be read to exclude entrustment of powers of one DRT with another DRT.”

4. Assailing the correctness of the said judgment, appellants have, *inter alia*, raised the following grounds:

- A. Learned Single Judge went wrong in holding that power of the Central Government to entrust the charge of a Debt Recovery Tribunal to any other Debt Recovery Tribunal, established under any other law, is in addition to the power of the Central Government to entrust the charge of one Debt Recovery Tribunal to any other Debt Recovery Tribunal.
- B. Learned Single Judge went wrong in reading an additional provision into Section 4(2) of RDB Act which has been intentionally and consciously deleted by the Parliament as per the Amendment Act 44 of 2016.
- C. Learned single Judge failed to note that on a plain reading of Section 4(2) of RDB Act, 1993, as amended by Act 44 of 2016, the power granted to the Central Government is only to authorize the Presiding officer or Judicial Member of any other Tribunal, established under any other law for the time being in force, to discharge the function of the Presiding Officer of Debt Recovery Tribunal.
- D. Learned Single Judge went wrong in not adopting purposive construction and interpretation of Section 4(2) of RDB Act, 1993 as per the law laid down by the Hon'ble Supreme Court in the matter of interpretation of statute.

- E. Learned Single Judge failed to note that the very purpose of Act 44 of 2006 and amendment to Section 4(2) of RDB Act, 1993 is to safeguard the interest of the litigants, so that they would be entitled to access justice and get their case adjudicated at the same place they reside and where the cause of action has arisen.
- F. Learned Single Judge failed to note that the impugned notification, inasmuch as it relates to the discharge of function of the Presiding Officer of Debt Recovery Tribunal-II, Ernakulam by Debt Recovery Tribunal -II, Bangalore is highly arbitrary, unreasonable and beyond the scope and intention of Section 4(2) of RDB Act, 1993, and therefore, the said notification is in violation of Articles 14 and 21 of the Constitution of India.

5. Respondents 1 to 3 have filed a statement dated 26.02.2021, the relevant portions of which read thus:

"2. There has been no regular Presiding Officer in DRT-2, Ernakulam since 01.07.2020. In pursuance of Exhibit-P1 notification No. F. No.7/1/2019-DRT dated 04.01.2021 issued by the 1st respondent - Government of India, Ministry of Finance, Smt. S. V. Gowramma, Presiding Officer of DRT-2, Bengaluru has taken over additional charge of the post of Presiding Officer, DRT -2, Ernakulam on 11.01.2021 for a period of six months. In view of the present COVID-19 pandemic situation, urgent matters pertaining to DRT-2, Ernakulam are being taken up for hearing by Smt. S. V. Gowramma., Hon'ble Presiding Officer, through Video Conferencing facilities on all Thursdays and Fridays and most urgent matters, if any, regarding sale of the secured assets, dispossession etc., are being taken up on other working days as well.

3. It is further contended that M/s. Kerala Fashion Jewellery & 7 others had filed SA No.372/2018 before the Tribunal on 15.09.2018 under S.17(1) of the SARFAESI Act against M/s. Kotak Mahindra Bank Ltd., challenging the order dated 21.08.2018 of the CJM Court, Thrissur in Crl.M.P.No.1082/2017. As the subject matter pertains to the measures/action taken by the secured creditor bank under the provisions of the SARFAESI Act, the question of taking evidence does not arise; and the matter can be decided based on the pleadings and documents (photocopies only) available on record.

4. It is further contended that the matter was already heard and reserved for orders on 16.11.2019. However, as the applicants themselves have come out with I.A.No.1711/2019 for amendment, I.A.No.1712/2019 for reopening the hearing of the S.A., I.A.No.1713/2019 for production of documents and I.A.No.1714/2019 for joint trial with another S.A., the matter was re-opened on 14.11.2019 and adjourned for hearing from time to time at the instance of the parties to the S.A. Finally, the matter was taken up for hearing on 11.02.2021 through Video Conference and now stands posted for hearing on 12.03.2021.

5. It is further contended that the Hon'ble Supreme Court in in **Union of India & Anr v. Delhi High Court Bar Association & others** [AIR 2002 SC 1479] held that it is common knowledge that hardly any transaction with the Bank would be oral and without proper documentation, whether in the form of letters or formal agreements. In such an event, the *bona fide* need for the oral examination of a witness should rarely arise.

6. Heard learned counsel for the parties and perused the material available on record.

7. Exhibit-P1 notification dated 4.1.2021 - F. No.7/1/2019-DRT, giving additional charge of the post of Presiding Officer of Debts Recovery Tribunals, is extracted hereunder:

(TO BE PUBLISHED IN PART I, SECTION 2 OF THE GAZETTE OF INDIA)

F.No.7/1/2019-DRT
Government of India
Ministry of Finance
Department of Financial Service

.....
New Delhi, dated the 4th January, 2021

NOTIFICATION

In exercise of powers conferred by Sub-Section 2 (a) of Section 4 of the Recovery of Debts and Bankruptcy Act, 1993, the Central Government hereby entrusts the additional charge of the post of Presiding Officer in Debts Recovery Tribunals for a period 06 months, or till joining of a regular incumbent, or till further orders, whichever is the earliest, as per following details:

S. No	DRT	Name of PO to whom additional charge is entrusted	Period of the additional charge arrangement	
			From	To
1	Pune	Shri Vimal Gupta DRT Aurangabad	05.01.2021	04.07.2021
2	Patna	Shri Sanjiv Kumar, DRT Ranchi	06.01.2021	05.07.2021
3	Jabalpur	Shri Azaj Hussain Khan, DRT Lucknow	07.01.2021	06.07.2021
4	Chandigarh-1	Sh.Vivek Saxena,	07.01.2021	06.07.2021
5	Chandigarh-2	DRT Jaipur	13.01.2021	12.07.2021
6	Ernakulam-2	Ms. S.V. Gowramma, DRT-2, Bengaluru	10.01.2021	09.07.2021


(Jnanatosh Roy)

Under Secretary to the Government of India

To,
The Manager,
Government of India Press,
Minto Road,
New Delhi-110001

Copy to:

1. Shri Vimal Gupta, Presiding Officer, Debts Recovery Tribunal, Aurangabad
2. Shri Sanjiv Kumar, Presiding Officer, Debts Recovery Tribunal, Ranchi
3. Shri Azaj Hussain Khan, Presiding Officer, Debts Recovery Tribunal, Lucknow
4. Sh.Vivek Saxena, Presiding Officer, Debts Recovery Tribunal, Jaipur
5. Ms. S.V. Gowramma, Presiding Officer, Debts Recovery Tribunal-2, Bengaluru

8. Before adverting to the submissions, let us see the impugned order issued by the Central Government.

9. Recovery of Debts and Bankruptcy Act, 1993 is an Act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions insolvency resolution and bankruptcy of individuals and partnership firms and for matters connected therewith or incidental thereto. Chapter II of the Act deals with establishment of Tribunal and Appellate Tribunal. Section 3 of Chapter II speaks about establishment of tribunal and it reads thus:

“3. Establishment of Tribunal. - (1) The Central Government shall, by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

[(1A) The Central Government shall by notification establish such number of Debts Recovery Tribunals and its benches as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under the Insolvency and Bankruptcy Code, 2016.]

(2) The Central Government shall also specify, in the notification referred to in sub-section (1), the areas within which the Tribunal may exercise jurisdiction for entertaining and deciding the applications filed before it.”

10. That apart, Section 4 speaks about composition of Tribunal and it reads thus:

"4. Composition of Tribunal. - (1) A Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer) to be appointed, by notification, by the Central Government.

[(2) Notwithstanding anything contained in sub-section (1), the Central Government may-

(a) authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or

(b) authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal."

11. The subject issue relates to posting of cases on the file of the Debt Recovery Tribunal-II, Ernakulam with the Presiding Officer of Debt Recovery Tribunal-II, Bangalore. The paramount contention advanced by the learned counsel for the appellants is that going by the statutory provisions, there is no power vested with the Central Government to entrust the Charge of the Tribunal to any other Debt Recovery Tribunal outside the State of Kerala.

12. The case put forth by the appellants is that as per the amended Section 4(2) of the Recovery of Debts and Bankruptcy Act, 1993, the functions of a Debt Recovery Tribunal can be entrusted only to a Presiding

Officer of any other Tribunal established under any other law for the time being in force to discharge the functions of a Presiding Officer of a Debt Recovery Tribunal under the Act, 1993, in addition to his being the Presiding Officer of that Tribunal. In fact, sub-section (2) of Section 4 of the Act, 1993 as above substituted the following:

“(2) Notwithstanding anything contained in sub-section (1), the Central Government may authorise the Presiding Officer of one Tribunal to discharge also the function of the Presiding Officer of another Tribunal.”

13. Therefore, it was contended by the learned counsel for the appellants that the provision, which enabled the Central Government to authorise the Presiding Officer of one Debt Recovery Tribunal to discharge the functions of the Presiding Officer of another Debt Recovery Tribunal under the Act, 1993, is taken away and the only option available to the Central Government is, to authorise the Presiding Officer of any other Tribunal under any other law, to discharge the functions of the Presiding Officer of a DRT under the Act, 1993, in addition to his being the Presiding Officer of that Tribunal. However, the learned single Judge had relied on the definition of Tribunal contained under Section 2(o) of the Recovery of Debts and Bankruptcy Act, 1993 defined to mean, the Tribunal established under sub-section (1) of Section 3, and concluded the findings holding that on a conjoint reading of the relevant provisions discussed above, the Central Government was vested with powers to authorise the Debt Recovery Tribunal constituted in

another State, and in the instant case, the Tribunal at Bangalore to hold the additional charge of the Tribunal at Ernakulam. But, sub-section (1) of Section 3 mandates that the Central Government shall by notification establish one or more Tribunals to be known as the Debt Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the Act, 1993. Therefore, when two Tribunals were established within the State of Kerala, as per the provisions of the Act, 1993, the Central Government was vested with powers to entrust the charge to the other existing Tribunal, constituted under the Act, 1993, when the post of the Presiding Officer, Debt Recovery Tribunal-II, Ernakulam became vacant, or to appoint the presiding officer of any other Tribunal in contemplation of Section 4(2) of Act 1993.

14. Going by the provisions of the Amended Act, 1993 and consequent to the substitution of sub-section (2) of Section 4, it is clear that when there is a vacancy, the Central Government is vested with the powers only to authorise a Presiding Officer of any other Tribunal constituted by the Central Government in the State under any other law for the time being in force to discharge the functions of the Presiding Officer of a Debt Recovery Tribunal under the Act, 1993. This would be more clear, on a reading of the unamended sub-section (2) of Section 4 of Act, 1993 that even though the Central Government was vested with powers, to authorise the Presiding Officer of one Tribunal to discharge also the functions of the Presiding Officer of

another Tribunal, that was taken away consequent to the substitution of sub-section (2) of Section 4 of Act, 1993, by virtue of Section 27 of the Amendment Act 44 of 2016.

15. However, the learned single Judge was of the opinion that by virtue of the definition of 'Tribunal' given under the Act, 1993, the Central Government was vested with the powers to authorise any other Tribunal, constituted under the Act, 1993, to discharge the functions of a vacant Tribunal. But, going by the provisions of Section 4 of the Act, 1993, there is no doubt that the view adopted by the learned single Judge in the impugned judgment is not correct, because, if and when the office of the Tribunal under the Act, 1993 falls vacant, the course open to the Central Government is only to authorise the Presiding Officer of any other Tribunal constituted under any other law within the jurisdictional State, to discharge the functions of the Presiding Officer of a DRT, which would be more beneficial and accessible to the litigant public. That being so, we are of the definite opinion that the stand taken by the learned single Judge cannot be sustained in law and, therefore, Exhibit-P1 notification dated 4.1.2021 to the extend entrusting the additional charge to the Presiding Officer of DRT-II, Bangalore, to function as the Presiding Officer, of DRT-II, Ernakulam has to be quashed.

In the result, we set aside the judgment of the learned single Judge dated 5.2.2021 in W.P.(C) No.2966 of 2021 and quash Exhibit-P1 notification

dated 4.1.2021, to the extent of conferring additional charge of the Debt Recovery Tribunal-II, Ernakulam, to the Presiding Officer, Debt Recovery Tribunal-II, Bangalore, with effect from 10.01.2021 to 09.07.2021, however, leave open the liberty of the Central Government to issue a fresh notification, in terms of the provisions of Section 4(2) or otherwise, in accordance with law as per the provisions of the Recovery of Debts and Bankruptcy Act, 1993, at the earliest. Writ appeal is allowed.

Sd/-
S. Manikumar
Chief Justice

Sd/-
Shaji P. Chaly
Judge

vpv & krj

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P.A. TO C.J.