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HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 33632 of 2024

REGIONAL STRESSED ASSET RECOVERY BRANCH BANK OF
BARODAPetitioner(s)

versus

STATE OF U.P AND 9 OTHERSRespondent(s)

Counsel for Petitioner(s)	:	Atul Dayal, Sr. Advocate Maneesh Mehrotra
Counsel for Respondent(s)	:	C.S.C., Ram Kishun Misra

Court No. - 35

**HON'BLE SHEKHAR B. SARAF, J.
HON'BLE PRAVEEN KUMAR GIRI, J.**

HON'BLE SHEKHAR B. SARAF, J. : The present writ petition has been filed under Article 226 of the Constitution of India wherein the petitioner (hereinafter referred to as the 'bank') have prayed for the issuance of a writ of certiorari quashing the impugned attachment order dated February 9, 2015 passed by Sub-Divisional Magistrate Sadar, Jaunpur (hereinafter referred to as the 'respondent no.4'). The petitioner in furtherance prays for the issuance of a writ of mandamus commanding the respondent no.4 to withdraw the attachment order dated February 9, 2015 and direct him to not interfere in recovery proceedings initiated by the bank in view of priority of dues of bank over the dues of State Government/Central Government/Local Bodies

in view of the provisions laid down under Section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') and 31B of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the 'RDB Act').

FACTS

2. The factual matrix of the present writ petition is delineated below:
 - a. The bank sanctioned a cash credit facility of Rs.30,00,000 on November 10, 2011 in favour of M/s L.G. Corporation, a proprietorship firm owned by one Smt. Geeta Devi (hereinafter referred to as the 'respondent no.9') wherein respondent no.9 had mortgaged 20407.23 square feet land out of 0.089 Hectare from her land situated at Siddiqpur, Pargana Haveli, Tehsil Sadar, District Jaunpur, Khata No. 603, 255/0.809 (new no. 825/809) as secured asset in favour of bank by depositing title deeds.
 - b. Since respondent no.9 was unable to maintain financial discipline and defaulted in payment of interest on the loan, the account was declared as Non-Performing Asset (NPA) on September 11, 2015 and consequently bank initiated proceedings under SARFAESI Act against respondent no.9.
 - c. On December 28, 2015, bank issued demand notice to respondent no.9 and other guarantors under Section 13(2) of the SARFAESI Act for discharging liability of Rs.42,27,417/- towards bank within 60 days from the date of notice.
 - d. Upon failure to discharge the liability within 60 days period, the bank issued possession notice on March 1, 2016 under Section 13(4) of the SARFAESI Act and also took over the symbolic possession by pasting over the possession notice on the same date.
 - e. Bank then moved an application under Section 14 of the

SARFAESI Act, wherein order was passed by the Additional District Magistrate (Finance and Revenue) (hereinafter referred to as 'respondent no.3') for handing over physical possession of the property to the bank.

- f. However, during the pendency of the execution of the aforesaid order before civil authorities, it was encountered that before passing of the aforesaid order a recovery certificate had already been issued on October 16, 2014 by the department of Food and Civil Supply, U.P. , Jaunpur for the recovery of outstanding amount of Rs.54,75,499 from respondent no.9 and on default of payment of dues the mortgage property was confiscated vide order dated February 9, 2015 passed by respondent no.4 but could not be auctioned due to absence of participants. Similarly, another notice dated September 12, 2014 was issued for recovery of tax liability of petitioner from commercial tax department. Therefore, the bank raised specific objections before the concerned authority with regard to the priority of charge of the bank over the properties .
- g. The bank also filed a writ petition bearing no. 32446 of 2022 before the coordinate bench of this Court for taking over possession of the secured assets which was dismissed on the ground of alternative remedy vide order dated December 1, 2022 wherein the court directed bank to approach Debt Recovery Tribunal wherein the Securitisation application filed by the borrower and third party was pending.
- h. Both the Securitisation application filed by the borrower and third party was dismissed vide order dated April 21, 2023 and September 25, 2023 on want of prosecution.
- i. Bank again filed a writ petition no. 8501 of 2024 before the coordinate bench of this court for getting physical possession over the property wherein it was formed by the State that the secured asset had already been attached by the respondent no.4

vide order dated February 9, 2015 for the dues of other two departments, therefore, writ petition was dismissed as withdrawn by the bank vide order dated April 19, 2024 for seeking other alternative remedies.

- j. Being aggrieved by the order dated February 9, 2015 passed by respondent no.4 for attaching the secured assets in contravention to Section 26E and 31B of the SARFAESI Act, the bank has approached this Court by means of the present writ petition.

ISSUE

3. Whether the secured creditors have priority over the charge of unsecured creditors?

CONTENTIONS OF PETITIONER

4. The senior advocate appearing on behalf of the petitioner has made the following submissions:
 - a. The order of attachment passed by respondent no.4 against the secured assets is totally illegal and without jurisdiction in view of Section 26E of the SARFAESI Act and Section 31B of RDB Act.
 - b. Respondent no.2 is duty bound to hand over the possession of the secured assets to the secured creditor under Section 14(1A) of the SARFAESI Act.
 - c. Respondent no.4 attaching the secured assets is an action against the provisions of law and the power of respondent no.4 is barred under Section 26E of the SARFAESI Act and Section 31B of the RDB Act. Therefore, the attachment order is not sustainable.
 - d. The aforesaid land is mortgaged in favour of the petitioner bank since November 10, 2009 and the original title deed is still in possession of the secured creditor-petitioner/bank.

- e. The mortgage was created in the year 2009 in favour of the petitioner by depositing title deeds. Hence, in view of Section 26E of SARFAESI Act and Section 31B of the RDB Act, the petitioner has priority over the State dues. Ergo, the secured assets cannot be attached under the recovery certificate issued by State Government and respondent no.4 has no power to attach the secured assets.
- f. The impugned attachment order passed by respondent no.4 is against the settled principles of law and is liable to be set aside
- g. To buttress his arguments, counsel has placed reliance on **Punjab National Bank v. Union of India and others** reported in (2022) 7 SCC 260; **Kotak Mahindra Bank Limited v. Girnar Corrugators Private Limited and Others** reported in (2023) 3 SCC 210; **Central Bank of India v. Siriguppa Sugars & Chemical limited and others** reported in (2007) 8 SCC 353; **Union of India and others v. Sicom Limited** reported in (2009) 2 SCC 121 wherein the court has held that secured debt has priority over unsecured debt.

CONTENTIONS OF RESPONDENTS

5. The learned counsel appearing on behalf of the respondents has rebutted the arguments of the petitioner and made the following submissions:

- a. No information was provided by the petitioner bank to the Sub-Registrar office or Tehsil Office regarding the mortgage of the said property due to which the mortgaged property could not be recorded in the revenue records and the mortgaged property remained in the original Khata.
- b. Before the order passed by respondent no.3, a recovery certificate was issued on October 16, 2014 by the Department of Food and Civil Supply, U.P., Jaunpur for the recovery of dues from the petitioner and as the respondent no. 9 failed to

discharge their liability of the said due amount, the concerned property was confiscated and the same was also recorded in the revenue records.

- c. The recovery certificate was issued on October 16, 2014 by the Department of Food and Civil Supply, U.P., Jaunpur for the recovery of outstanding amount of Rs.54,75,499 from respondent no.9 and was prior to the recovery actions initiated by the Bank under the SARFAESI Act.
- d. The impugned order passed by respondent no.4 is passed within the parameters of law and does not suffer from any infirmity.

ANALYSIS

6. I have given my thoughtful consideration to the submissions canvassed by the learned counsel for the parties and have also perused the relevant records and the affidavits filed on behalf of both the parties.

7. Banks and financial institutions provide financial assistance to borrowers and upon default in repayment the due amount becomes Non-Performing Assets. On the recommendation of a committee headed by Mr. M. Narasimham in the year 1991, a quasi-judicial establishment was required for the speedy recovery of debts. Ergo, the RDB Act was enacted in 1993 by which Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs) were established. Subsequently, to facilitate a special machinery for speedy recovery of debt and to further smoothen the functioning of DRTs and DRATs, the SARFAESI Act was passed in the year 2002.

8. In this regard, the Supreme Court in **United Bank of India v. Debts Recovery Tribunal** reported in (1999) 4 SCC 69 while dealing with the provision of RDB Act, inter alia remarked as quoted hereinbelow:

“The prime object of the enactment appears to be to provide for the establishment of tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto.”

9. With the continuous advancement of the financial regulations, the rights of the secured creditors/banks have gained much importance. To fortify the rights of the secured creditors and provide priority to the secured creditors to recover their secured debts over all other debts and all revenues, taxes, cesses, and other rates payable to the Government, the SARFAESI Act and the RDB Act was amended by the Amendment Act of 2016 respectively which inserted a non-obstante clause in Section 26E and Section 31B that provides for payment to secured creditors in priority over all other debts. Section 26E of the SARFAESI Act and Section 31B of the RDB Act are delineated below:

“26E. Priority to secured creditors.--Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

31B. Priority to secured creditors.—Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.”

10. It is evidently clear that respondent no. 9 has taken loans from petitioner bank and also from the Department of Food and Civil Supply that is a Department of the State Government. It is undisputed that the loan taken from the petitioner bank was a secured one by mortgaging the land whereas the loan taken from State Government was an unsecured one.

11. The SARFAESI Act was purposefully enacted to regulate securitisation and reconstruction of financial assets and the enforcement of security interests and in furtherance to provide a central database of security interests created over the property rights. This act empowered the secured creditors to recover the dues by enforcing the security interest created in the secured assets without the intervention of the court or tribunal.

12. Concomitantly, it is quite discernible from a bare perusal of Section 26E of the SARFAESI Act and 31B of the RDB Act that both are non-

obstante clause that starts with the phrase ‘notwithstanding anything contained in any other law for the time being in force’ which enunciates that this provision will prevail over any other provision in any other law that is concurrently in force at the same time.

13. One may look into the judgment of the Supreme Court in **SICOM Limited** (Supra) wherein the court while dealing with the issue of priority of charge for realisation of dues under the Central Excise Act vis-a-vis secured debts under the State Financial Corporations Act, 1951 has succinctly held that a debt which by statute becomes the first charge over the property must be held to prevail over the crown debt which is an unsecured one. The relevant paragraphs of the judgment are quoted hereinbelow:

“9. Generally, the rights of the Crown to recover the debt would prevail over the right of a subject. Crown debt means the “debts due to the State or the King; debts which a prerogative entitles the Crown to claim priority for before all other creditors”. [See Advanced Law Lexicon by P. Ramanatha Aiyar (3rd Edn.), p. 1147.] Such creditors, however, must be held to mean unsecured creditors. Principle of Crown debt as such pertains to the common law principle. A common law which is a law within the meaning of Article 13 of the Constitution is saved in terms of Article 372 thereof. Those principles of common law, thus, which were existing at the time of coming into force of the Constitution of India are saved by reason of the aforementioned provision. A debt which is secured or which by reason of the provisions of a statute becomes the first charge over the property having regard to the plain meaning of Article 372 of the Constitution of India must be held to prevail over the Crown debt which is an unsecured one.

10. It is trite that when Parliament or a State Legislature makes an enactment, the same would prevail over the common law. Thus, the common law principle which was existing on the date of coming into force of the Constitution of India must yield to a statutory provision. To achieve the same purpose, Parliament as also the State Legislatures inserted provisions in various statutes, some of which have been referred to hereinbefore providing that the statutory dues shall be the first charge over the properties of the taxpayer. This aspect of the matter has been considered by this Court in a series of judgments.

23. Furthermore, the right of a State Financial Corporation is a statutory one. The Act contains a non obstante clause in Section 46-B of the Act which reads as under:

“46-B. Effect of Act on other laws.—The provisions of this Act and of any rule or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern.”

The non obstante clause shall not only prevail over the contract but also other laws. (See Periyar & Pareekanni Rubbers Ltd. v. State of Kerala [(2008) 14 SCC 704 : (2008) 4 Scale 125] .)”

14. The Supreme Court in **Punjab National Bank** (Supra) has held the dues of the secured creditor that is the appellant Bank, will have priority over the dues of the Central Excise Department, as even after insertion of Section 11E in the Central Excise Act, the provisions contained in the Sarfaesi Act, 2002 will have an overriding effect on the provisions of the Central Excise Act, 1944. The relevant paragraphs of the judgment are quoted hereinbelow:

“42. Secondly, coming to the issue of priority of secured creditor's debt over that of the Excise Department, the High Court in the impugned judgment has held [Punjab National Bank v. Union of India, 2008 SCC OnLine All 1576] that “In this view of the matter, the question of first charge or second charge over the properties would not arise”. In this context, we are of the opinion that the High Court has misinterpreted the issue to state that the question of first charge or second charge over the properties, would not arise.

43. A Full Bench of the Madras High Court in UTI Bank Ltd. v. CCE [UTI Bank Ltd. v. CCE, 2006 SCC OnLine Mad 1182 (FB)] , while dealing with a similar issue, has held that : (SCC OnLine Mad paras 25-26)

“25. In the case on hand, the petitioner Bank which took possession of the property under Section 13 of the Sarfaesi Act, being a special enactment, undoubtedly is a secured creditor. We have already referred to the provisions of the Central Excise Act and the Customs Act. They envisage procedures to be followed and how the amounts due to the Departments are to be recovered. There is no specific provision either in the Central Excise Act or the Customs Act, claiming “first charge” as provided in other enactments, which we have pointed out in earlier paragraphs.

26. In the light of the above discussion, we conclude,

‘(i) Generally, the dues to Government i.e. tax, duties, etc. (Crown's debts) get priority over ordinary debts.

(ii) Only when there is a specific provision in the statute claiming “first charge” over the property, the Crown's debt is entitled to have priority over the claim of others.

(iii) Since there is no specific provision claiming “first charge” in the Central Excise Act and the Customs Act, the claim of the Central Excise Department cannot have precedence over the claim of secured creditor viz. the petitioner Bank.

(iv) In the absence of such specific provision in the Central Excise Act as well as in Customs Act, we hold that the claim of secured creditor will prevail over Crown's debts.’

In view of our above conclusion, the petitioner UTI Bank, being a secured creditor is entitled to have preference over the claim of the Deputy Commissioner of Central Excise, first respondent herein.”

46. This Court in Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. [Dena Bank v. Bhikhabhai Prabhudas Parekh & Co., (2000) 5 SCC 694] , wherein the question raised was whether the recovery of sales tax dues (amounting to crown debt) shall have precedence over the right of the bank to proceed against the property of the borrowers mortgaged in favour of the bank, observed as under : (SCC p. 703, para 10)

“10. However, the Crown's preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right of recovery of its debts over a mortgagee or pledgee of goods or a secured creditor.”

47. Further, in Central Bank of India v. Siriguppa Sugars & Chemicals Ltd. [Central Bank of India v. Siriguppa Sugars & Chemicals Ltd., (2007) 8 SCC 353 : (2007) 2 SCC (L&S) 919] , while adjudicating a similar matter, this Court has held as under : (SCC pp. 360-61, para 17)

“17. Thus, going by the principles governing the matter propounded by this Court there cannot be any doubt that the rights of the appellant Bank over the pawned sugar had precedence over the claims of the Cane Commissioner and that of the workmen. The High Court was, therefore, in error in passing an interim order to pay parts of the proceeds to the Cane Commissioner and to the Labour Commissioner for disbursal to the cane growers and to the employees. There is no dispute that the sugar was pledged with the appellant Bank for securing a loan of the first respondent and the loan had not been repaid. The goods were forcibly taken possession of at the instance of the revenue recovery authority from the custody of the pawnee, the appellant Bank. In view of the fact that the goods were validly pawned to the appellant Bank, the rights of the

appellant Bank as pawnee cannot be affected by the orders of the Cane Commissioner or the demands made by him or the demands made on behalf of the workmen. Both the Cane Commissioner and the workmen in the absence of a liquidation, stand only as unsecured creditors and their rights cannot prevail over the rights of the pawnee of the goods.”

48. *The Bombay High Court in Krishna Lifestyle Technologies Ltd. v. Union of India [Krishna Lifestyle Technologies Ltd. v. Union of India, 2008 SCC OnLine Bom 137] , wherein the issue for consideration was “whether tax dues recoverable under the provisions of the Central Excise Act, 1944 have priority of claim over the claim of secured creditors under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002” held that : (SCC OnLine Bom paras 19-20)*

“19. Considering the language of Section 35 and the decided case law, in our opinion it would be of no effect, as the provisions of the Sarfaesi Act override the provisions of the Central Sales Tax Act and as such the priority given to a secured creditor would override Crown dues or the State dues.

20. Insofar as the Sarfaesi Act is concerned a Full Bench of the Madras High Court in UTI Bank Ltd. v. CCE [UTI Bank Ltd. v. CCE, 2006 SCC OnLine Mad 1182 (FB)] has examined the issue in depth. The Court was pleased to hold that tax dues under the Customs Act and Central Excise Act, do not have priority of claim over the dues of a secured creditor as there is no specific provision either in the Central Excise Act or the Customs Act giving those dues first charge, and that the claims of the secured creditors will prevail over the claims of the State. Considering the law declared [Ed. : The reference appears to be to Dena Bank v. Bhikhabhai Prabhudas Parekh & Co., (2000) 5 SCC 694] by the Supreme Court in the matter of priority of State debts as already discussed and the provision of Section 35 of the Sarfaesi Act we are in respectful agreement with the view taken by the Madras High Court [UTI Bank Ltd. v. CCE, 2006 SCC OnLine Mad 1182 (FB)] .”

50. *In view of the above, we are of the firm opinion that the arguments of the learned counsel for the appellant, on Issue 2, hold merit. Evidently, prior to insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, there was no provision in the 1944 Act inter alia, providing for first charge on the property of the assessee or any person under the 1944 Act. Therefore, in the event like in the present case, where the land, building, plant, machinery, etc. have been mortgaged/hypothecated to a secured creditor, having regard to the provisions contained in Sections 2(1)(zc) to (zf) of the Sarfaesi Act, 2002, read with provisions contained in Section 13*

of the Sarfaesi Act, 2002, the Secured Creditor will have a first charge on the secured assets. Moreover, Section 35 of the Sarfaesi Act, 2002 inter alia, provides that the provisions of the Sarfaesi Act, shall have overriding effect on all other laws. It is further pertinent to note that even the provisions contained in Section 11-E of the Central Excise Act, 1944 are subject to the provisions contained in the Sarfaesi Act, 2002.

53. Further, the contention that in the present case, the confiscation proceedings were initiated almost 8-9 years prior to the charge being created in respect of the very same properties in favour of the bank is also inconsequential. The fact that the charge has been created after some time period has lapsed post the initiation of the confiscation proceedings, will not provide legitimacy to a confiscation order that is not rooted in any valid and existing statutory provision.”

(emphasis added)

15. The Supreme Court in the case of **Kotak Mahindra Bank Limited** (Supra) has very recently and aptly dealt with the issue of repugnancy between priority of dues under SARFAESI Act, 2002 and Micro, Small and Medium Enterprises Development Act, 2006 as both the statutes contain non-obstante clause. The court held that the subsequent legislation with an overriding effect will prevail over the prior statute.

“29. In sharp contrast to this, Section 26-E of the SARFAESI Act which has been inserted vide Amendment in 2016, it provides that notwithstanding anything inconsistent therewith contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in “priority” over all other debts and all revenue taxes and cesses and other rates payable to the Central Government or the State Government or local authority. However, the priority to secured creditors in payment of debt as per Section 26-E of the SARFAESI Act shall be subject to the provisions of IBC. Therefore, such dues vis-à-vis dues under the MSMED Act, as per the decree or order passed by the Facilitation Council, debts due to the secured creditor shall have a priority in view of Section 26-E of the SARFAESI Act which is later enactment in point of time than the MSMED Act.

30. At this stage, it is required to be noted that Section 26-E of the SARFAESI Act which is inserted in 2016 is also having a non obstante clause. Even as per the submission on behalf of Respondent 1, two enactments have competing non obstante provision and nothing repugnant, then the non obstante clause of the subsequent statute would prevail over the earlier enactments. As per the settled position of law, if the legislature confers the

later enactment with a non obstante clause, it means the legislature wanted the subsequent/later enactment to prevail. Thus, a “priority” conferred/provided under Section 26-E of the SARFAESI Act would prevail over the recovery mechanism of the MSMED Act. The aforesaid is to be considered along with the fact that under the provisions of the MSMED Act, more particularly Sections 15 to 23, no “priority” is provided with respect to the dues under the MSMED Act, like Section 26-E of the SARFAESI Act.

33. Even otherwise the Naib Tahsildar was not at all justified in not taking possession of the secured assets/properties as per order dated 24-9-2014 passed by the District Magistrate under Section 14 of the SARFAESI Act. The order passed by the Naib Tahsildar refusing to take possession of the secured assets/properties despite the order passed under Section 14 of the SARFAESI Act on the ground that recovery certificates issued by Respondent 1 for recovery of the orders passed by the Facilitation Council are pending, is wholly without jurisdiction. While exercising power under Section 14 of the SARFAESI Act, even the District Magistrate has no jurisdiction and/or District Magistrate and/or even the Chief Metropolitan Magistrate has no jurisdiction to adjudicate the dispute between secured creditor and debtor.

34. Under Section 14 of the SARFAESI Act, the District Magistrate or the Chief Metropolitan Magistrate as the case may be is required to assist the secured creditor in getting the possession of the secured assets. Under Section 14 of the SARFAESI Act, neither the District Magistrate nor the Metropolitan Magistrate would have any jurisdiction to adjudicate and/or decide the dispute even between the secured creditor and the debtor. If any person is aggrieved by the steps under Section 13(4)/order passed under Section 14, then the aggrieved person has to approach the Debts Recovery Tribunal by way of appeal/application under Section 17 of the SARFAESI Act.

35. Therefore, the order passed by the Naib Tahsildar refusing to take the possession pursuant to the order passed by the District Magistrate under Section 14 of the SARFAESI Act was wholly without jurisdiction and therefore also the same was liable to be set aside.”

(emphasis added)

16. One may also look into the judgment of the Supreme Court in **Vinod Realities Private Limited v. State of Gujarat** in special civil application no. 7807 of 2011 and in **Dena Bank v. Bhikhabhai Prabhu Dass Parikh and another** reported in (2000) 5 SCC 694, the judgment of Gujarat High Court in **Madhaviben Jitendrabhai Rupareliya v. State of Gujarat** reported in AIR 2024 Guj 175 and in **M/s Mahadevan Cotton Industries v. Department of Central Tax** reported in (0) AIJEL-HC 245523, the judgment of Bombay High Court in **Krishna Lifestyle Technologies**

limited v. Union of India reported in 2008 SCC Online Bombay 137 wherein the courts have consistently vouchsafed that priority of charge of secured creditors on the mortgaged assets will always precede over the other dues even if it is a crown/Government debt.

CONCLUSION

17. Upon a perusal of the judgments cited above, the first principle that emerges is that a secured creditor shall always have precedence over an unsecured creditor. Secondly, in cases where two enactments refer to secured creditors having charge over the property, the later enactment would prevail. The Supreme Court judgment in **Kotak Mahindra Bank limited** (Supra) has categorically come to the finding that when two enactments have competing non obstante provision and there is nothing repugnant, then the non obstante clause of the subsequent statute would prevail over the earlier enactments. In light of the above ratio, it is crystal clear that the priority conferred under Section 26-E of the SARFAESI Act that came into existence in 2016 would prevail over an unsecured creditor even though the unsecured creditor is the Government.

18. Section 26E of the SARFAESI Act and Section 31B of RDB Act explicitly elucidates the issue involved in this case. If there is a wrangle between secured creditor and unsecured creditor, the former will have a priority of first charge over the latter for recovery against the delinquent.

19. Undoubtedly, the issue involved in this case is no longer *res integra* and has been repeatedly accentuated in a catena of judgments of Supreme Court and various High Courts as in **SICOM Limited** (Supra), **Punjab National Bank** (Supra), **Kotak Mahindra Bank limited** (Supra) wherein the law is patently transparent that even the debt which is due to the government comes subsequent to the recovery of dues of a secured creditor. The said enactment is intended not only to facilitate loan recovery procedures of the financial institutions but also to impede the conversion of their resources into Non-Performing Assets. Ergo, the secured creditors will always have priority over the unsecured creditors.

20. In view of the above judgments, the impugned attachment order dated February 9, 2015 passed by respondent no.4 for recovery of dues of State Government is quashed and set aside.

October 14, 2025
Kuldeep

(Shekhar B. Saraf, J.)

I agree

(Praveen Kumar Giri, J.)