***HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

+WRIT PETITION No.21029 of 2017

Between:

Canara Bank, a Banking Company (a Publi Sector Bank)
Constituted under the Banking Companies (Acquisiion and Transfer of Undertakings) Act – Act V of 1970) hving its Head Office at Bangalore and branches amongst other places at 3-5-4/3, Bagh Amir, Vivekanand Nagar, Kukatpally, Hyderabad-500072 rep. by its Chief Manager Shri Surya Narayanan Mohanty, S/o. Rama Chandra Mohanty, aged 54 years.

… Petitioner

And

$ The State of Andhra Pradesh, Department of Home

(General). Rep. by its Principal Secretary

A.P. Secretariat, Hyderabad and 3 others.

…. Respondents

JUDGMENT PRONOUNCED ON **18.06.2024**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? - Yes -

2. Whether the copies of judgment may be marked to Law Reporters/Journals - Yes -

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - Yes -

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DR.JUSTICE K. MANMADHA RAO

* **THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

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A.P. Secretariat, Hyderabad and 3 others.

…. Respondents

! **Counsel for the Petitioner** : Sri K. Harinarayana

Counsel for Respondents: Smt. Y.L.Siva Kalpana Reddy, SC for CBCID

G.P for Home

<Gist :

>Head Note:

? Cases referred:

1. 2003 (1) ALD 6387
2. 2002(1) ALD (Crl.) 189 (AP)
3. Law Finder Doc.Id#1147429
4. Law Finder Doc Id#1163033
5. 2006(52) R.C.R.(Civil) 553
6. AIR 2003 SC 21320
7. Appeal(Civil) 7337 of 2004 dated 15.9.2005
8. MANU/SC/0445/2012
9. WP No.23312 of 2020 dated 8.12.2020
10. (2008) 8 SCC 148

11. (2006) 8 SCC 677
12. (2013) 10 SCC 677
13. (2014) 8 SCC 768

APHC010090512017

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3310]
(Special Original Jurisdiction)

TUESDAY ,THE EIGHTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 21029/2017

Between:

Canara Bank, **...PETITIONER**

AND

The State Of Andhra Pradesh and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1. HARINARAYANA K

Counsel for the Respondent(S):

1. GP FOR HOME (AP)
2. Y L SIVAKALPANA REDDY(SC CUM SPL PP,CID)

The Court made the following:

ORDER :

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

"……to issue order or orders or writ more particularly in the nature of writ of mandamus declaring the action of the Respondent No.1 in attaching the prosperities at Sl. No.23, 24, 25, 26, 31 and 44 of Annexure to the G.O.Ms.No.13 Home (General) dated 17.02.2016 under The Andhra Pradesh Protection of Depositors of Financial Establishments Act 1999 (Act 17/1999) belonging to Respondents No 2 and 3

mortgaged in favour of the petitioner bank as arbitrary, illegal, subject to the first charge of the petitioner bank being the mortgagee violative of Article 14 and 19(1)(g) of the Constitution of India violation of constitutional guarantee under Article 300A of the Constitution of India contrary to the provisions of Section 35 of the SARFAESI Act 2002 and permit the petitioner to proceed against the above referred properties under the provisions of SARFAESI Act 2002 for the recovery of debt in the interest of justice"

2. The grievance of the petitioner is thatM/s.Sarawathi Educational Society availed Term Loan-I facility of Rs.480.00 lakhs under loan account No. 0661773006588 from the Kurnool Branch of the Petitioner Bank on the security of the following properties:

EMT of Institutional Buildings at Sy No 152/2 & 156/B Laxmipuram Road, Near RaagaMayuri Green lands, innedevarapaduVillage &Panchayath, Kurnool Mandal, Kurnool Dt. Admeasuring 3.50 acres under sale to M/s Saraswathi Educational Society consisting of G +3 with total plinth area of 32,851.25 sft valued Rs 4.49,50,000/- as per valuation report dt 14.01.2016

EMT of Institutional Building at Sy No 729/2 (Kallur) L P No 341/80 ward No 87/140 beside Govt Degree College for Men, Sreelaxmi Nagar, Sivaji Nagar, Kurnool admeasuring 20.67 cents under sale to M/s Saraswathi Educational Society consisting of G+2 with total plinth area of 5608.50 sft valued Rs 1,83,20,000/- as per valuation report dt 14.01.2016

EMT of land and building situated at Sy No 568, 569/A, 570 & 749A, ward No 78, Kallurpanchayath bearing D No 78/128 under sale to M/s Saraswathi Educational Society admeasuring 2640 sft valued Rs 1,22,60,000/- as per valuation report dt 14.01.2016.

It is further stated that the M/s.Keshav Reddy Educational Society availed Term Loan facility of Rs. 300.00 Lakhs under loan account No. 0659773007973 from the Ananthapuram Branch of the Petitioner Bank on the security of the following properties:

EMT of Institutional Buildings at Sy No 152/2 & 156/B Laxmipuram Road, Near RaagaMayuri Green lands, DinnedevarapaduVillage &Panchayath, Kurnool Mandal, Kurnool Dt. Admeasuring 3.50 acres under sale to M/s

Saraswathi Educational Society consisting of G +3 with total plinth area of 32,851.25 sft valued Rs 4.49,50,000/- as per valuation report dt 14.01.2016.

EMT of Institutional Building at Sy No 729/2 (Kallur) L P No 341/80 ward No 87/140 beside Govt Degree College for Men, Sreelaxmi Nagar, Sivaji Nagar, Kurnool admeasuring 20.67 cents under sale to M/s Saraswathi Educational Society consisting of G+2 with total plinth area of 5608.50 sft valued Rs 1,83,20,000/- as per valuation report dt 14.01.2016.

EMT of land and building situated at Sy No 568, 569/A, 570 & 749A, ward No 78, Kallurpanchayath bearing D No 78/128 under sale to M/s Saraswathi Educational Society admeasuring 2640 sft valued Rs 1,22,60,000/- as per valuation report dt 14.01.2016

EMT of vacant land at Sy No 146, Keshava Reddy school behind (formarly) vavilala school, Near RaagaMayuri Green Lands, Dinnedevarapadu Village admeasuring acres 2.0 standing in the name of M/s Sri Saraswathi Educational Society valued Rs 2,97,50,000/- as per valuation report dt 14.01.2016.

EMT of land admeasuring 0.98 cents and building (G+1) with total plinth area of 21955 Sqft at Sy No 152/1 pyki behind vavilala (formarly) near Raagamayuri Green lands, Dinnedevarapadu village, Kurnool standing in the name of M/s Sri Saraswathi Educational Society valued Rs 49,50,000/- as per valuation report dt 14.01.2016.

The M/s Saraswthi Educational Society is represented by Smt. K.Manjula, Vice President, Sri N.Keshava Reddy, Secretary and Treasurer, Smt. C.Sridevi, Treasurer, Smt I. MadhaviLatha, Joint Secretary, Ms. N.Yashoda, Executive Member, Mr. N.Bharat Reddy, Member and Smt N. Siva Bharathi, President. M/s. Keshav Reddy Educational Trust is represented by Shri N.Seshava Reddy, Secretary and Treasurer, Smt. C.Sridevi, Executive Member, Smt. I.MadhaviLatha, Executive Member, Smt. N.SivaBharathi, President and Ms. N.Yashoda, Treasurer.The loan facilities availed by Respondent No. 2 and 3 became non-performing asset in view of the default committed in maintaining the account in its true perspective and the demand notice in case of M/s Keshavareddy Educational Trust was published in Hindu and Sakshinews papers on 28.06.2015 making a demand for a sum of Rs.

4,22,23,480.90(constitutes Rs.70,87,698.23/- in account No. 0659773007973 and Rs.3,51,35,782.67 in account 2486256010111) as on 29/05/2015 together with interest at the rate of 19.0% per annum from 29/05/015 till the date of full and final payment.

It is further stated that the sale notice was also published in Eenadu, Sakshi and The Hindu news papers fixing the date of sale on 29.02.2016, but the sale was not successful for want of bidders. Similarly, tin case of M/s Sri Saraswathi Educational Society, the demand notice was issued on 18.05.2015 making a demand for a sum of Rs. 13,11,35,432.11 as on 30/04/2015 together with interest at the rate of 19.20% per annum from 01/05/2015 till the date of full and final payment, but the same was returned. Accordingly, paper publication was done in Hans India and Sakshinews papers on 31.05.2015. Possession notice was also published in Hans India, Sakshi and Andhra Jyothi on 06.08.2015. Sale notice was published in Sakshi and Hindu news papers on 01.03.2016 fixing the e-auction on 06.04.2016, but the sale was unsuccessful for want of bidders. In view of the above release notice was published in Eenadu and Hindu on 03.07.2016 and the auction was fixed again on 10.08.2016.

It is further stated that the Respondent No.1 issued G.O.Ms.No.13, dated 17.02.2016 confirming the attachment of all the properties including the properties which are mortgaged in favour of the bank. Once the proceedings are initiated under SARFAESI Act 2002, the question of Respondent No.1 proceeding against the security interest of the mortgaged property shall not

arise. In the event, the Respondent No.1 intends to proceed against the some properties which are subject matter of the SARFAESI proceedings initiated under Section13(2) of the SARFAESI Act 2002, after the possession is taken over by the petitioner bank under section13(4) of the SARFAESI Act. The Respondent No.1 also can invoke the jurisdiction of the Hon'ble Debts Recovery Tribunal under Section 17 of the SARFAESI Act 2002. The action of the Respondent No.1 in proceeding against the secured assets is without jurisdiction to the extent of properties which are mortgaged in favour of the bank. The Respondent No.1 is proceeding with the attachment and sale of the properties belonging to Respondent No. 2 and 3. If the secured assets are auctioned and the sale proceedings are appropriated by the Respondent No.1 in exercise of the power under The Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (Act 17/1999), the very purpose of providing the loan facilities on the security of the properties mortgaged with the bank will be defeated and the public interest shall be put to jeopardy. Hence, the present writ petition.

3. Counter affidavit has been filed by 1st respondent and denied all the allegations made in the petition. It is contended that as per Sec.3 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (Act No.17 of 1999), the Government have the power to pass orders of attachment of properties to safeguard the interests of the depositors. Hence, the G.O.Ms. No. 13 of 2016 passed by the 1st respondent is justifiable. It is further contended that, the petitioner bank filed the present petition to release

the mortgaged property i.e., 6 properties mentioned as Sl.No.23, 24, 25, 26, 31 and 44 in Annexure-1 of G.O.Ms.No.13 from the order of attachment dated: 17.02.2016 enabling the bank to take necessary steps for recovery of the outstanding loan amount of Rs.17,33,58,913.01/- together with interest from Keshava Reddy Group Societies/Institutions and Keshava Reddy @ Keshava Reddy and their Guarantors/mortgages. The accused Nagireddy Keshava Reddy @ Keshava Reddy raised mortgage loans by depositing the title deed of the properties already purchased from the funds deposited by the depositors. The object of the act is to protect the interest of the depositors. The petitioner has no right over the properties, which are already attached under G.O.Ms.No. 13. Moreover, The CID filed a Criminal appeal petition vide Crl.A.No. 343/2020, dated 23.5.2020 on the file of this Court, which is pertaining to the properties in Sl. Nos. 23, 24, 25, 26, 31 and 44. Nevertheless, the petitioner Bank is at liberty to pursue alternative remedies to proceed against the security interest for the recovery of the debt in respect of the properties mortgaged in favour of the petitioner bank. It is further stated that, Sec.6(4) of the APPDFE Act, 1999 states that the Special Court shall on application by the competent authority pass such orders or issue such directions as may be necessary for the equitable distribution among the depositors of the money realized from out of the property attached. Further, the Writ Petitioner instead of raising his claim over the attached properties before the special court approached this Hon'ble Court challenging the G.O.Ms. No.13 of 2016 in the writ petition, which is liable to be dismissed in

the interest of justice or otherwise, there is grave prejudice caused to the depositors.

4. Reply affidavit has been filed by the petitioner to the counter affidavit filed by the 1st respondent. While denying all the contents made in the counter affidavit filed by the 1st respondent, the petitioner contended that, according to the Respondent No. 1, when they moved an application to make the interim attachment made over all the properties (which includes the mortgaged properties in favour of the petitioner Bank) as detailed in the subject G.O.Ms.No. 13 to make the interim attachment order made by them as "absolute" (in terms Section 3 of AP PROTECTION OF DEPOSITORS OF FINANCIAL ESTABLISHMENT ACT 1999 (Andhra Pradesh Act 17 of 1999)- that the Hon'ble Principal District and Sessions Judge, at Kurnool in Crl.M.P. No.665/2016 vide its order dated 31-10-2018 partially allowed that application/petition (a) interim attachment made over S.No.2 to 10, 12, 14, 15, 17, 18 to 20 in Annexure I of G.O.Ms.No.3 are only made absolute. (b) In case of S.No.16,22, 27, 28, 30, 33, 35, 37, 38, 39, 40 and 42 (mortgaged properties in favour of SBI) are released to SBI and (C) the rest of the properties i.e., S.No. 1,11,13,23,24,25,26,29,31,32,34,36,41,43 and 44 in Annexure I and S.No.1,2,3and 4 in Annexure-II therein mentioned in G.O.Ms. No. 13 have not been made absolute by the Hon'ble Special Court. So it is clear that the Honourable designated court not accepted the contention of the Respondent No. 1 in respect of the properties mortgaged in favour of the petitioner Bank and the said interim attachment made over them by Respondent No. 1 was

not absolute (ie. item Nos. -23,24,25,26,31& 41 of Annexure-1 of the said GO issued by respondent No.1). Further as detailed above the subject mortgaged/charged properties in favour of the writ Petitioners-Bank are also purchased out of finance from the petitioner Bank and much earlier to the alleged collection of funds from the public by cheating/fraud. So filing of an appeal against the said order dated 31-10-2018 of the Hon'ble Special Court vide CRL.A. No. 343/2020 before this Honourable court make any difference in this regard since even on the above said facts and documents clearly establish the said mortgaged properties not created out of funds collected from public by accused and also these properties not created and/made out of fraudulent means and or by cheating. Under these circumstances it is prayed this Court may allow the writ petition.

5. The counter affidavit has been filed by the 4th respondent denying all the allegations made in the petition. While reiterating the contents made in the counter of the 1st respondent, it is contended that vide Crl.M.P.No.665/2016 to make the attachment order "absolute". The Hon'ble Court allowed the petition in respect of properties mentioned in G.O.Ms No.13 partly and passed the order, dated.31.10.2018 that Sl.No. 2 to 10, 12, 14, 15, 17, 18 to 20 in Annexure-I are hereby made absolute. Sl.No. 16, 22, 27, 28, 30, 33, 35, 37,38,39,40 and 42 are hereby released to SBI. The Hon'ble court cannot be made as absolute rest of the properties i.e., Sl.Nos.1, 11, 13, 23, 24, 25, 26, 29, 31, 32, 34, 36, 41, 43 and 44 in Annexure-I and Sl. Nos. 1, 2, 3, and 4 in Annexure-II therein mentioned in G.O. Ms. No.13 for various

reasons. It is further stated that, In this regard, an appeal petition vide Crl.A.No.343/2020, Dated.23.05.2020 was filed before the Hon'ble High Court of Andhra Pradesh seeking a relief to set aside the order dated 31.10.2018 passed in Crl.M.P.No.665/2016 on the file of PDJ Court, Kurnool partly dismissing the petition in respect of properties in SI.Nos.1, 11, 13, 23, 24, 25, 26, 29, 31, 32, 34, 36, 41, 43 and 44 in Annexure-I and SI.Nos.1, 2, 3, and 4 in Annexure-II therein mentioned in G.O.Ms No.13. It is further stated that, the Government has examined the matter carefully in the light of the Act and passed an ad-interim order Under Section 3 of the Andhra Pradesh Protection of Depositors of Financial Establishments. Act, 1999 (Act No.17 of 1999) for attachment of the movable and immovable properties standing in the names pertains to Nagireddy Keshava Reddy @ Keshav Reddy, his wife, his family members, his educational societies and also trust by way of issuance of G.O.Ms.No.13 Home (General) Department, dated 17.02.2016. It is also stated that, as per Sec.3 of the Andhra Pradesh Protection c Depositors of Financial Establishments Act, 1999 (Act No.17 of 1999) the Government has the power to pass orders of attachment of properties to safeguard the interests of the depositors. Hence, the G.O.M.S No.13 of 2016 passed by the 1st respondent is justifiable. It is further stated that, the petitioner bank filed the present petition to release the mortgaged property i.e. 6 properties mentioned as Sl.No.23, 24, 25, 26, 31 and 44 in Annexure-I of G.O.M.S. No.13 from the order of attachment dt.17.02.2016 enabling the bank to take necessary steps for recovery of the outstanding loan amount of

Rs.17,33,58,913.01/- together with interest from Keshava Reddy Group Societies/Institutions and Keshava Reddy @ Keshal Reddy and their Guarantors/mortgages. The Petitioner Bank is not a depositor and it is a money lender. The accused Nagireddy Keshava Reddy @ Keshava Reddy raised mortgage loans by depositing the title deed of the properties already purchased from the funds deposited by the depositors. The object of the act is to protect the interest of the depositors. It is further stated that the petitioner has no right over the properties which are already attached under G.O.Ms.No.13. Moreover, The CID filed a Criminal appeal petition vide Crl.A.No. 343/2020, dated.23.05.2020 on the file of the Hon'ble High Court of AP which is pertaining to the properties in Sl.Nos.23, 24, 25, 26, 31 and 44. Nevertheless, the petitioner Bank is at liberty to pursue alternative remedies to proceed against the security interest for the recovery of the debt in respect of the properties mortgaged in favour of the petitioner bank. It is further stated that, Sec.6(4) of the APPDFE Act, 1999 states that the Special Court shall on application by the competent authority seeking to issue such directions as may be necessary for the equitable distribution among the depositors of the money realized from out of the property attached. It is mainly stated that, the Writ Petitioner instead of raising his claim over the attached properties before the special court approached this Hon'ble Court challenging the G.O.M.S No.13 in the writ petition, which is liable to be dismissed in the interest of justice or otherwise, there is grave prejudice caused to the depositors.

6. Reply affidavit has been filed by the petitioner Bank to the counter affidavit filed by the 4th respondent. The petitioner bank while denying all the contents made in the counter affidavit of the 4th respondent, reiterated the contents made in the petition. It is stated that the contention that after careful examination of the matter the subject interim order under section 3 of Act 17 of 1999 was passed as per the powers conferred etc., are absolutely false and not tenable and the respondent No. 1 is put to strict proof of the same. When the police during investigation approached the petitioner Bank the above information/detailed brought to their notice and required documents by them were also furnished to the investigating Agency. Though such information clearly discloses that there is no nexus between the assets purchased out of public funds by fraudulent means, which are the subject matter of this writ petition, and assets mortgaged to the writ petitioner created out of financed granted by the Bank that too much earlier to the said collection of deposits/funds from the public, still the respondent No.1, arbitrarily, illegally and unauthorizedly made interim attachment over the subject properties in question and thus the powers given under the said Act 17 of 1999 were not exercised diligently and properly. It is further stated that the contentions that the accused NagireddyKeshava Reddy @ Keshava Reddy raised mortgage loans by depositing the title deed of the properties already purchased from the funds deposited by the depositors and the petitioner has no right over the properties, which are already attached under G.O.Ms.No.13 and the writ petitioner has to raise its claim before the special correct are not incorrect and

not tenable and false and denied and the respondent no. 4 is put to strict proof the same. As detailed above, these assets purchased out of the banks' finance much earlier to the alleged collection of funds from the public and offence/crime committed by the accused. Further in terms of section 26(e) read with section 35 of SARFASI Act 2002 as detailed above, the charge/mortgage in favour of the writ petitioner bank overrides the interim attachment order made under section 3 of the Act 19 of 1999 and the in fact SARFASI Act 2002 overrides/supersedes the said State Act 19 of 1999. Further if the respondent No. 1 and/4 has got any grievance they have to approach the concerned Debt Recovery Tribunal in terms of section of 7 of the said central Act and make their claim. Further the properties are located in different areas and to avoid multiple cases/litigations, invoking the adjudication of this Honourable High court is appropriate and apt especially now as the appeal petition CRI A No.343/2020 is also pending before this Honourable High court. Under the above circumstances, it is prayed this Court the writ petition may be allowed as prayed for.

7. Heard Sri K. Harinarayana, learned counsel appearing for the petitioner; learned Assistant Government Pleader for Home and Smt. Y.L.SivaKalpana Reddy, learned Standing Counsel for CID appearing for the respondents.

8. On hearing, learned counsel for the petitioner while reiterating the contents made in the petition and in the reply affidavits, contended that the decision of the respondent No.1 in proceeding against the properties of

respondents No.2 and 3 to the extent mortgaged with the petitioner bank is contrary to Section 35 of SARFAESI Act 2002,. The provisions of this Act to override other laws and that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. He further contended that the petitioner bank has first charge over the properties which are mortgaged in favour of the bank and hence the petitioner do have the authority to proceed against the security interest for the recovery of the debt. He further submits that, any action of the Respondent No.1 to proceed against the Security Interest under The Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (Act 17/1999) will infringe the fundamental rights guaranteed to the petitioner under Article 14 and 19(1)(g) of the Constitution of India and also constitutional guarantee under Article 300-A of the Constitution of India. Learned counsel further submits that the SARFAESI Act 2002 has overriding affect over The Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (Act 17/1999) and hence the right of the petitioner to proceed against the security interest under the SARFAESI Act 2002 shall prevail. He further submitted that unless and until all further proceedings initiated by the Respondent No.1 in proceedings No.G.O.Ms.No.13 Home (General) Department, dated 17.02.2016 in respect of the properties mortgaged in favour of the bank under The Andhra Pradesh Protection of Depositors of Financial Establishments Act,

1999 (Act 17/1999) is stayed, the purpose of filing this writ petition will be defeated, leading to miscarriage of justice.

9. To support his contentions, learned counsel for the petitioner has relied upon a catena of decisions reported in (i) **A.S Prasad vs A.P. State Financial Corporation**[1], wherein the Andhra Pradesh High Court held that:

> I express my inability to accept the submission made by learned Counsel for the petitioner for the reason that the A.P. Protection of Depositors of Financial Establishment Act, 1999 is obviously an enactment made in exercise of the legislative power conferred on the State Legislature referable to some entry either in List II or List III of VII Schedule of the Constitution. The question as to under which entry the said enactment is made is not examined as no arguments in this behalf are submitted by the learned Counsel for the petitioner but he proceeded on the assumption that the said enactment is validly made by the State Legislature of Andhra Pradesh. But the fact remains that the 1st respondent came into existence under the provisions of the SFC Act, an enactment passed by the Parliament in exercise of the power conferred on it under Article 246(1) of the Constitution with reference to the legislative field indicated in Entry 43 of List-I of VII Schedule of the Constitution. The legislative field is exclusively assigned to the Parliament by the Constitution, therefore irrespective of the source of the legislative authority under which the State enactment is made, the said law made by the State Legislature is required to give way to the mandate of the law made by the Parliament in exercise of the power conferred on it under Article 246(1) of the Constitution because within the field assigned to it, the law made by the Parliament is supreme and overrides any other law made by the State Legislatures if there is anything repugnant or inconsistent in such law made by the State Legislature.

(ii) In **Apple Credit Corporation Limited, Secunderabad v. State of A.P and others**[2]**,** wherein the High Court of Judicature of Andhra Pradesh at Hyderabad held that :

> 16. Here in this case, a case has been registered against the 2nd respondent under Sections 3 and 5 of the A.P. Protection of Depositors of Financial Establishment Act, 1999, which is a State Enactment. There has been no provision envisaged under the Act for confiscation of the properties. The Act inter alia provides for attachment of the properties of the Financial Establishments when there is infraction of d any of the provisions of the said Act. In this case, the applicability of the said Act is quite doubtful, in view of the fact that t the petitioner herein is the company having nt been duly incorporated under the provisions d of the Companies Act. That apart, the e

[1] 2003(1) ALD 6387 AP
[2] 2002(1) ALD (Crl.) 189 (AP)

petitioner is not seeking permission to sell away the vehicles once for all and to e appropriate the sale proceeds towards d realisation of the loans due to him. On the other hand, he seeks permission for sale of the vehicles and to deposit the sale proceeds s into the Court till the disposal of the case, which would eventually for the benefit of at the successful party. I, therefore, see no embargo whatsoever either under the A.P. of Protection of Depositors of Financial es Establishments Act, 1999 or under the of provisions of the Motor Vehicles Act or 10 under the terms of the Hire Purchase Agreement. The request of the petitioner d therefore, appears to be genuine and can de be considered.

(iii) In **Indian Overseas Bank versus The State of Tamil Nadu and others**[3], wherein the Madras High Court held that :

"……6. In support of the contention, the Learned Counsel for the Petitioner placed reliance on the judgment of this Court in the case of Indian Bank v. The Chief Judicial Magistrate and Others, (2006) 4 LW 535. Wherein, this Court has been pleased to lay down as under:

31. It may so that under the Code of Criminal Procedure, the criminal court has got jurisdiction and powers to attach any property in status quo for the purpose of completing investigation and to adduce evidence at the time of trial. It is equally so that the Government is also well within their powers to pass an enactment, Pondicherry Protection of Interests of Depositors in Financial Establishment Act, 2004, Act 1 of 2005, to protect the interests of the gullible depositors and to order attachment of the property under such enactment. However, in view of the clear language of Section 35 of the SARFAESI Act, the proceedings initiated by the bank in respect of the property in question under the SARFAESI Act will have the overriding effect against the impugned orders of attachment in sofar as they are related to the property in question. The orders of attachment passed by the Chief Judicial Magistrate and the Government of Pondicherry are inconsistent with the proceedings initiated under the SARFAES Act. Act 1 of 2005 came into force on 24.03.2005 whereas the proceedings under SARFAESI AC were initiated much earlier and completed on 24.03.2005. Therefore, I am of the considered view that the said property is to be excluded from the impugned orders of attachment Accordingly, the attachment in respect of the said property is lifted. To this limited extent, the impugned orders of attachment passed by the Chief Judicial Magistrate and the Government of Pondicherry insofar as it related to the said property are set aside. Needless to mention, it a open to the depositors or their association and/or the competent authority appointed by the Government of Pondicherry under the Act passed to protect the interests of the depositors to file appeal, if they so desire, under section 17 of the SARFAESI Act."

(iv) In **Kotak Mahindra Bank Ltd., ARD, 6th Floor, Vinay Bhawya Complex, Kalina, Santacruz(East) Mumbai versus Union of India and Catholic Syrian Bank Ltd.**,[4], wherein the Madras High Court held that :

[3] Law Finder Doc.Id # 1147429

On the basis of the above said submission made by the learned senior counsel for the petitioner and first respondent and considering the fact that the petitioner and third respondent are the Banking Companies as per the Banking Regulation Act, 1949, which have been specifically exempted from the purview of financial establishment under Act 1 of 2005, the writ petition is disposed of with direction to the first respondent to lift the attachment made in respect of Serial Nos.13 and 14 in Schedule I of G.O.Ms.No.12 dated 18.02.2006, in so far as it relates to the said items of properties alone to enable the petitioner to take suitable action for recovery under the concerned Act in respect of due from the second respondent to the third respondent. It is made clear that in such an event, the first respondent would be entitled to the residuary amount in respect of said items, viz., Serial Nos.13 and 14 and to proceed with attachment and further auction in respect of other properties as per Act 1 of 2005.

(v) In **Indian Bank versus Chief Judicial Magistrate, Pondicherry and others**[5], wherein Madras High Court held that:

It is seen from the materials placed on record that while Pondicherry Nidhi Limited was a registered financial establishment under the provisions of the Reserve Bank of India Act, M/s.PNLNidhi Limited is an unregistered financial establishment. Both the financial establishments are carrying on their business activities in the very same address, viz.189, Mission Street, Pondicherry. M/s. V. Kannan and V. Bhaskaran and their close relatives/associates are major shareholders of PNL Nidhi Limited. It is also pertinent to note that the said persons are also major shareholders/Directors of New Horizon Sugar Mills Limited and Arunachalam Sugar Mills Limited and as such they are persons interested in the management and affairs of the said companies and the financial establishment. Though these companies and the financial establishment are separate legal entities, as contended by the learned counsel for the parties concerned, and, therefore, the properties standing in the names of the respective companies and the individuals are distinct and independent from each other, but real beneficiaries behind the corporate mask are one and the same persons. It is also pleaded in the counter-affidavits filed by the Government of Pondicherry that M/s. V. Kannan and V. Baskaran, who are said to be the major shareholders and Directors of Pondicherry Nidhi Limited/PNL Nidhi Limited as well as Directors of New Horizon Sugar Mills Limited and Arunachala Sugar Mills Limited, have misappropriated huge sums of money deposited by the general public in PNL Nidhi Limited and diverted the said amount to their own trade and business of the said sugar mill companies. In such circumstances, when the very object and purpost of Act 1 of 2005 is to protect the interests of the depositors of the financial establishment and particularly when Sec.4(2) empowers the Government to order attachment of properties not only standing in the name of the financial establishment, but also the personal assets of the persons in charge of the management and affairs of the financial establishment, I find no illegality in the impugned notification dated 18-02-2006. However, in view of my discussions and findings in the Civil Revision Petition and the connected writ petitions, the impugned order of attachment passed vide G.O. Ms. No.12 dated 18-02-2006 is interfered with only to the limited extent in so far as it related to the properties against which proceedings under SARFAESI Act has already been initiated. Therefore, the attachment in respect those properties alone are lifted and in other respects, the impugned notification stands legally valid. Accordingly, the writ

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[4] Law Finder Doc Id # 1163033
[5] 2006(52) R.C.R(Civil) 553

petitions challenging the validity of Act 1 of 2005 and the impugned G.O. Ms. No.12 dated 18-02-2006 are dismissed.

(vi) In**HarbanslalSahnia and another vs. Indian Oil Corpn. Ltd., and others**[6], wherein the Court held that :

So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 11. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

(vii) In **Mrs.Sanjana M. Wig vs Hindustan Petro Corporation Ltd.**[7]**,** wherein the Hon'ble Supreme Court held that **:**

It may be true that in a given case when an action of the party is de'hors the terms and conditions contained in an agreement as also beyond the scope and ambit of domestic forum created therefor, the writ petition may be held to be maintainable; but indisputably therefor such a case has to be made out. It may also be true, as has been held by this Court in Amritsar Gas Service (supra) and E. Venkatakrishna (supra), that the arbitrator may not have the requisite jurisdiction to direct restoration of distributorship having regard to the provisions contained in Section 14 of the Specific Relief Act, 1963; but while entertaining a writ petition even in such a case, the court may not loose sight of the fact that if a serious disputed question of fact is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent.

But in a case of this nature, while exercising a plenary jurisdiction, we must take the supervening circumstances into consideration. The parties admittedly invoked the arbitration agreement before the arbitrator. They entered into a settlement. Pursuant

[6] AIR 2003 SC 21320
[7] Appeal (Civil) 7337 of 2004 dated 15.09.2005

to or in furtherance of the said settlement, the Appellant herein was to pay a sum of Rs.4,64,586/- unto the Respondent in five installments with interest. The Appellant herein for violation of the terms of contract presumably prayed for award of damages but no reference thereto has been made in the award. In any event such claim of damages could have been made before the Arbitrator on the ground of alleged breach of contract.

We are further of opinion that in this matter no case has been made out for grant of a relief of restoration of the dealership. The contract stood terminated on the death of the Appellant's partner. No case of novation of contract has been made out. It is also not the case of the parties that any other or further agreement between the parties came into being. The arrangement was an ad hoc one. The Appellant did not derive any legal right to continue the business for an indefinite period. Moreover, she allegedly violated the terms of the contract.

(viii) In a case of **State of Kerala and ors. Vs. Mar AppraemKuri Company Ltd. And ors.,**[8]**,**wherein the Hon'ble Supreme Court held that **:**

Under clause (1) of Article 254, a general rule is laid down to say that the Union law shall prevail where the State law is repugnant to it. The question of repugnancy arises only with respect to the subjects enumerated in the Concurrent List as both the Parliament and the State Legislatures have concurrent powers to legislate over the subject-matter in that List. In such cases, at times, conflict arises. Clause (1) of Article 254 states that if a State law, relating to a concurrent subject, is "repugnant" to a Union law, relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. Thus, Article 254(1) also gives supremacy to the law made by Parliament, which Parliament is competent to enact. In case of repugnancy, the State Legislation would be void only to the extent of repugnancy. If there is no repugnancy between the two laws, there is no question of application of Article 254(1) and both the Acts would prevail. Thus, Article 254 is attracted only when Legislations covering the same matter in List III made by the Centre and by the State operate on that subject; both of them (Parliament and the State Legislatures) being competent to enact laws with respect to the subject in List III. In the present case, Entry 7 of List III in the Seventh Schedule deals with the subject of "Contracts". It also covers special contracts. Chitties are special contracts. Thus, the Parliament and the State Legislatures are competent to enact a law with respect to such contracts. The question of repugnancy between the Parliamentary Legislation and State Legislation arises in two ways. First, where the Legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two Legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the Parliamentary Legislation will predominate, in the first, by virtue of non-obstante clause in Article 246(1); in the second, by reason of Article 254(1). Article 254(2) deals with a situation where the State Legislation having been reserved and having obtained President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State Legislation.

[8] MANU/SC/0445/2012

(ix) In a case of **Pridhvi Asset Reconstruction and Securitization Company Limited vs. State of A.P. rep by its Principal Secretary, Department of Revenue, Commercial Tax Department and 4 others**[9], wherein this Court held that :

> In order to examine and adjudicate the issues in the present writ petition, it would be highly apposite and appropriate to refer to the provisions of Section 26E of the Act and Section 31B of the Bankruptcy Act. Section 26E of the Act, which deals with the priority to secured creditors and which came into force w.e.f. 24-01-2020 by way of a Gazette Notification, reads as under:-
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> Section 26 E : 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.
>
> Explanation:- For the purpose of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code,1016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of the Code."
>
> Section 31B of the Bankruptcy Act reads as under:-
>
> 31 B. Priority to secured creditors. - Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realize 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.
>
> Explanation. - For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code
>
> 10. A reading of the above provisions of law makes it abundantly clear that the said provisions are analogous though under two different legislations. Section 26E of the Act, which came into force w.e.f 24-01- 2020 begins with 'non obstante' clause and stipulates that after registration of the 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 or State Governments or local authority. Section.31B of the Bankruptcy Act is also to the same effect. When the language of the provisions of law is very lucid and clear, no other interpretation is possible.

[9] WP No.23312 of 2020, dated 08.12.2020

11. In the instant case, the 3rd respondent created mortgage over the subject property by way of a registered deed in favour of Andhra Bank as long back as on 16-03-2013 and as the account of the loanee became NPA on 31-07-2016, the Bank authorities initiated action under the provisions of the Act by issuing notices under Section 13(2) and (4) of the Act. It is absolutely not in controversy that the petitioner herein clearly falls under the definition of "secured creditor"

as defined under Section 2(zd) of the Act, since the petitioner herein is an Asset Reconstruction Company in whose favour Andhra Bank assigned the debt by way of registered document on 26-09-2017. In fact, the material available on record further reveals that on 18-11- 8 AVSS,J& KSR,J W.P.23312_2020 2020 i.e., immediately after the sale notice came to be issued by the 2nd respondent, the petitioner herein brought to the notice of the Office of the 2nd respondent about the existence of the security interest in favour of the petitioner herein. In fact, when the provisions of Section 26E of the Act and 31B of the Bankruptcy Act fell for consideration of this court in W.P.No.43841 of 2018, when the registering authority failed to register the sale certificate, a Division Bench of this court, while holding that the secured creditor would have the priority of the charge over the mortgaged property, allowed the said writ petition directing the registering authority to register the sale certificate. In the said judgment, the Division Bench also held that the revenue has no priority of charge over the mortgaged property in question. Having regard to the language employed in Section 26E of the Act and 31B of the Bankruptcy Act, the contention of the learned Government Pleader that mortgage in favour of the petitioner herein should yield to crown debt coupled with charge cannot be sustained in the eye of law.

10. Learned counsel for the petitioner has also placed reliance on the judgment dated 31.10.2016 passed in Crl.M.P.No.665 of 2016 and 1304 of 2016 of the Principal Sessions Judge, Kurnool, wherein it was held that :

"On perusal of the contents of the above said G.O, it is evident that properties are listed Item Wise which belong to Kurnool, Nandyal and other districts. It is relevant to mention here that this court has territorial jurisdiction over the properties situated within the limits of Kurnool District and interim attachment of the properties, which was ordered in the above said G.O which are within the territorial jurisdiction of this Court, can only be made absolute, but not the other items of properties which are outside the territorial limits of jurisdiction of this court.

11. It is the contention of the petitioner that, admittedly it is for the prosecution to prove that Accused No.1 has purchased the properties with the amounts collected from the parents of the students in Kesav Reddy Institutions, which can be proved by the prosecution only after full-fledged trial.

12. It is pertinent to mention here that Crl.M.P.No. 1304/2016 was filed by the State Bank of India for releasing some of the properties mentioned in the said G.O from attachment, on the ground that those properties were mortgaged by Keshava Reddy in their banks and huge amounts were taken from them towards loan and they have first charge over the said properties and therefore prayed to release the said properties from attachment.

13. On perusal of Annexure-1 of the above said G.O., it is evident that the names of some Educational Institutions which are represented by Keshava Reddy, also find plate column of Vendee. But for the reasons best known to the prosecution, the said Educational Institutions are neither made as parties in the petition in Crl.M.P.No.665/2016 nor requested this Court to issue notices to the said Educational Institutions. It is the prime duty of this Court to follow the principles of natural justice before passing any order for making interim attachment of the properties as absolute. Therefore, the immovable properties which are on the name of the educational institutions shown at Sl.Nos. 1, 11, 16, 21, 22, 23 to 26, 27, 28, 30, 31, 32, 33, 35, 37, 38 to 43 and 44 in Annexure-I of the said G.O, cannot be attached or the ad-interim attachment of the said properties made by the Government in the above said G.O, cannot be made as absolute, as the said educational

institutions were not given any opportunity of challenging the petition in Crl.M.P.No.665/2016.

14. *Per contra*, learned Standing Counsel appearing for the respondents reiterated the contents made in the counter affidavits. She submits that the question of whether which the Non-Obstante overriding clauses of the special Acts to be given effect to fell for consideration before the Hon'ble Supreme Court reported in **Bank of India vs. Ketan Parekh &Ors**[10]. She submits that the Hon'ble Supreme Court was comparing the effect of the non obstante overriding clause contained therein in the Special Courts Act, 1992 and Section 34 of the Bankruptcy Act, 1993. The Hon'ble Court observed that where both the enactments have a non-obstante clause then one has to see the subject and the dominant purpose for which the special enactment was made. She submits that the fields of legislation in connection with the enactments are as under :

> Depositors Act, 1999 is relatable to Entries 1, 30, and 32 of List II, touching upon the business of unincorporated trading, money lending, and public order. The SARFAESI Act is relatable to Entry 45 in List I of Schedule VII of the Constitution of India (Banking).

15. Learned Standing Counsel also submits that the dominant purpose of the Depositors Act, of 1999 is to secure the payment of monies otherwise due to the depositors who defaulted on the account of fraudulent schemes of the accused therein by way of realizing monies by auctioning the properties of the accused under attachment. The dominant purpose of the SARFAESI Act

[10](2008) 8 SCC 148

is to expedite the recovery of the debts due to the banks and financial institutions. Thus, the objectives and purpose of each of the Acts are distinct and there is no overlapping of the same much less any conflict between the said enactments, to adjudge on the primacy of the said Acts, as far as protection of depositors is concerned. She further submits that, after passing of the absolute orders, some of the individuals interested persons over the property, made absolute orders passed in Crl.MP. No.665 of 2016, approached this Hon'ble court by way of filing the Criminal Appeals under Sec 11 of the AP Depositors Act vide CRL.A.No.243 of 2021, and this Hon'ble court set aside the Crl.MP.No.665 of 2016 and remanded the matter directing the Special Court to decide the claim of the appellants in the Crl. M.P.NO.665 of 2016.

16. Learned Standing Counsel further submits that, the writ petitioner, who filed the writ petition challenging the G.O.Ms.No.13 in the year 2017, and not approached the Special court raising his claim, and further similarly situated Banks, SBI approached the Special court raising a claim of first charge over the mortgaged properties was decided by the court below but the Writ petitioner not vigilant about his rights seeking the indulgence of this Hon'ble court, when the alternative remedy is available before the Special court to raise his claim under Sec 7 (3) of the AP.

17. To support her contentions, learned Standing Counsel has relied upon a common order of this Court dated 11.03.2024 passed in WP No.4043 of 2017 and batch. She also relied upon a decision of Hon’ble Supreme Court

reported in **Bank of India**'s case(supra), wherein it was held that, *Non obstante clause occurring in the former special Act as well as in the subsequent Act which was comparatively general in nature – Applicability of the former Act – Subsidiary rules – Generalibusspecialiaderogant.*

(ii) In another case reported in **Jay Engineering Works Ltd. Versus Industry Facilitation Council and another**[11] :

> Act, 1985-Ss. 15, 22(1) (as amended in 1994) and 32(1) - Impact on of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, Ss. 6(2) a sick company) and 10 Proceedings for rehabilitation of On a reference made under S. 15 of the 1985 Act, the appellant Company declared a sick unit Proceedings for rehabilitation initiated, whereupon rehabilitation scheme sanctioned In the meanwhile, proceedings initiated against the appellant by the respondent industry supplying products to the appellant, claiming before Industry Facilitation Council in terms of provisions of the 1993 Act Plea of the appellant before the Council that as it had been declared a sick company, the matter should not proceed further, not accepted Council adjudicating award in favour of the respondent which was put in execution Writ petition filed by the appellant dismissed - Letters patent appeal preferred thereagainst also dismissed - High Court in the impugned judgment proceeded on the premise that the 1993 Act could prevail over the 1985 Act - Held, the 1993 Act was enacted to provide for and regulate payment of interest on delayed payments to small-scale industries - A situation for framing a scheme for revival of a sick company was not envisaged by the said Act Further, execution of award of the Council would attract the provisions of S. 22 of the 1985 Act which bars any proceedings inter alia for execution, distress, etc. against any of the properties of the industrial company and no suit for recovery of money or for the enforcement of any security shall lie or proceed further except with the consent of the Board - The adjudicatory process of making an award under the 1993 Act may not come within the purview of the 1985 Act - But once the awarded amount is sought to be executed, the 1985 Act shall come into effect - Held, once the awarded amount has been included in the scheme, S. 22 of the 1985 Act would apply - Further held, if the liabilities of the appellant are covered by the scheme framed under S. 22 of the 1985 Act, the High Court erred in concluding that provisions thereof are not attracted only…."

(iii) In another case reported in **Soma Suresh Kumar versus Government of Andhra Pradesh and others**[12]**,** wherein the Apex Court held that:

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[11] (2006) 8 Supreme Court Cases 677

Statute Law – PariMateria Provisions – Andhra Act, held is in pari material with Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1977; Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act 1999 and Pondicherry Protection of Interests of Depositors in Financial establishments Act 2004 – A.P. Protection of depositors of Financial Establishments Act 1999 (17 of 1999) – Sec 2(c) , 3, 5 to 9 - validity, upheld … . We notice in New Horizon Sugar Mills Ltd.'s case (supra), this Court held that the objects of the Tamil Nadu Act, Maharashtra Act and the Pondicherry Act are the same and/or of similar nature. In our view, the object and purpose as well as the provisions of the Andhra Act are parimateria with that of Tamil Nadu, Maharashtra and Pondicherry Acts, the constitutional validity of those legislation has already been upheld. We also fully concur with the views expressed by this Court in those Judgments and uphold the constitutional validity of the Andhra Act.

(iv) In a case of **SubrataChattoraj versus Union of India and others**[13]Wherein the Apex Court held that :

CBI Investigation directed – Monitoring Team for monitoring progress of Investigation – Option of such Monitoring Team kept open, but not resorted to immediately. Public Accountability, Vigilance and Prevention of Corruption – Scams – Saradha Chit Fund Scam – Fraudulent/Illegal multi-State Investment scam involving Rs.10,000 crores, affecting lakhs of depositors (especially weaker/poorer sections) – Type an nature of fraud as revealed from reports.

18. Learned Standing Counsel while relying upon the above decisions, has also placed an order of a learned Division Bench of this Court dated 01.10.2020 passed in WP N.5630 of 2020, wherein this Court has disposed of the said writ petition directing the 2nd respondent therein to register the property in favour of the auction purchasers. Further, it was held that on the sale of subject property, if any amount is left over, after the entire loan of the borrower with interest and other charges are adjusted, it shall be made available to the Deputy Commissioner, Income Tax for its adjustment to the tax dues by the 3rdrespondent therein. Therefore, in view of the above,

[12] (2013) 10 Supreme Court Cases 677
[13] (2014) 8 Supreme Court Cases 768

learned Standing Counsel requests this Court the present writ petition may be dismissed.

19. As seen from the impugned G.O.Ms.No.13, dated 17.02.2016, wherein it was mentioned as under:

> The Additional Director General of Police, Crime Investigation Department, has also stated that during the course of investigation, it is established that in the year 1983, Sri NagireddyKesavareddy had started his life as English Teacher and worked with different educational institutions for 10 years. In June 1993, he started a school in the name and style of Keshava Reddy School in a rented building at Sanjeeva Nagar, Nandyal town with 193 students. His school students got State ranks in public examinations. At that time, he hatched a plan and introduced a new scheme with an offer to the parents that if they deposit lump-sum amount for one student at the time of joining in his school, he will provide free education, lodging, boarding, books and uniform etc. and after completion of education 1.e., 10th class or otherwise leaving the school in any manner, he will return the deposited amount to the parent of the student. He collected a deposit amount of Rs.1 lakh initially and he increased the deposit amount up to Rs.3 to 5 lakhs. Many parents were attracted to this scheme and started joining their children. As it proved to be more profitable for Keshava Reddy, he started expanding his establishment by opening schools at various places. He also expanded his education business and established 11 associated educational societies viz. (1) Sri Mahanandeshwara Educational Society, (2) Sri Venkateshwara Educational Society, (3) N.Keshava Reddy Educational Society, (4) Sri Surya Educational Society, (5) Sri KanakaDurga Educational Society Keshava Reddy Educational Society, Swamy Educational So Shava Reddy Educational Society) Bharath Reddy Educational Society, (10) kheshava Reddy Educational Trust and (11) Saraswathi Educational Society. Likewise, around 50 schools were established Andhra Pradesh and Telangana states.
>
> Later, he came to know that collection of deposits without RBI permission is violation of Andhra Pradesh Protection of Depositors of Financial Establishments Act. 1999. Subsequently, the Chairman started taking back all the deposit receipts from the parents of the children and in replacement, he gave Promissory Notes, with an intention to escape from the clutches of the Law. As he started expanding his schools at various places, the cost has increased and the money spent was not remunerative.

Thus, for the past 2 years, the Chairman has not refunded the deposited money to the parents.

The Additional Director General of Police, Crime Investigation Department, has informed that during the searches conducted by CID, certain immovable properties purchased out of the money of the depositors, during the activities of the Educational institutions, were identified and the properties are located in Andhra Pradesh (worth Rs..80,67,14,446/-)&Telangana (worth Rs.24,55,12,738/-), and proposed for attachment of said properties to protect the interests of the depositors

In the circumstances reported by the Additional Director General of Police, Crime Investigation Department, Government have examined the matter carefully and hereby issue an ad-interim order for attachment of properties under section 3 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act.1999, as mentioned in the Annexure-I&II, appended to this order in respect of Keshava Reddy Educational Institutions & its Societies, Kurnool and also authorizing the Additional Director General of Police, Crime Investigation Department, Andhra Pradesh, Hyderabad, as competent authority to file an affidavit in the respective Court to make the present orders absolute for attachment of properties.

20. It is to be noted that, recently, as per amendment of the twin legislations viz. (i) the SARFAESI Act, 2002 and (ii) the DRT Act, 1993(after amendment titled as the Recovery of Debts and Bankruptcy Act, 1993), the amended provisions give overriding effect over any other law and priority to the secured condition for the time being in force including the provisions of AP PROTECTION OF DEPOSITORS OF FINANCIAL ESTABLISHMENT ACT 1999 in so far as recovery of the loan by the secured creditors is concerned.

The amended provisions are extracted hereunder:

(i) Section 26E of the SARFAESI Act, 2002 :

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.
Explanation : For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.

(ii) Section 31B of the Recovery of Debts and Bankruptcy Act, 1993 :

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 other rates due to the Central Government, State Government or local authority.
Explanation : For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.

21. It is also to be noted that, as per **Section 2** of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, after the words "the date of the application", "and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;" is added which makes the said amendment or the 1993 Act applicable to all the debts which remains unpaid.

22. Thus, it is very clear from above that the secured creditor, get a priority over the rights of Central or State Government or any other Local Authority.

23. It is also to be noted that, the madras High Court in a case of **The Assistant Commissioner (CT) Vs. The Indian Overseas Bank**,(WP No. 2675 of 2011 (Full Bench) held that : —

> We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principle Act, Which reads as under:- —
> 31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realize 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.
> Explanation. – for the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.‖ —
> 3 There is, thus, no doubt that the rights of a secured creditor to realize secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with —notwithstanding‖ clause and has come into force from 01.09.2016‖
> —4 The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.‖ —
> 5 The aforesaid would, thus, answer question (a) in favour of the financial institution, which is a secured creditor having the benefit of the mortgaged property.“

24. In another judgment of “Dr. V. M. Ganesan vs. The Joint Director, Directorate of Enforcement” the Madras High Court has explained the grievances faced by the financial institutions while holding that:

> “For instance, if LIC Housing Finance Limited, which has advanced money to the petitioner in the first writ petition and which consequently has a right over the property, is able to satisfy the Adjudicating Authority that the money advanced by them for the purchase of the property cannot be taken to be the proceeds of crime, then, the Adjudicating Authority is obliged to record a finding to that effect and to allow the provisional order of attachment to lapse. Otherwise, a financial institution will be seriously prejudiced. I do not think that the Directorate of Enforcement or the Adjudicating Authority would expect

> every financial institution to check up whether the contribution made by the borrowers towards their share of the sale consideration was lawfully earned or represent the proceeds of crime. Today, if the Adjudicating Authority confirms the provisional order of attachment and the property vests with the Central Government, LIC Housing Finance Limited will also have to undergo dialysis, due to the illegal kidney trade that the petitioner in the writ petition is alleged to have indulged in. This cannot be purport of the Act."

25. The High Court of Madras in **"State Bank of India Vs. The Assistant Commissioner, Commercial Tax, Puraswalkam Assistant Circle and Ors."**, while upholding the Amendment Act, 2016 to Section 26E of the SARFAESI Act and reaffirming the view of the Full Bench of the same court in The Assistant Commissioner (CT), Anna Salai-III Assessment Circle (supra) lifted the attachment entry and held that —

> In other words, not only should the amendment apply to pending lis, but the declaration that the right of a secured creditor to realise the secured debts, would have priority over all debts, which would include, Government dues including revenues, taxes, etc., should hold good qua 2002 Act as well."

26. In the present case, it is observed that, the attached properties were purchased much prior to the period when the facility of loan sanctioned to the borrowers. The banks while rendering the facilities were boanfide parties. It is not the case of the respondent that the attached properties were purchased after the loan was obtained. The mortgaged of the properties were done as bonafide purposes. None of the bank is involved in the schedule offence.

27. This Court further observed that, in this case, the CBCID has also filed the copies of the sale deeds of the properties which shows the date of acquisition of all the properties. The petitioner Banks are having the mortgage

charge over the properties. It is to be noted that, in the present case, all the properties have been purchased by the Respondents and have been mortgaged with the petitioner Bank much prior to the date of alleged offence which shows that no proceeds of crime are involved in the abstention of these properties and hence the same cannot be attached by the CID because the same would result in hampering the interest of the petitioner Bank.Thus, in the present case, even though the Learned Adjudicating Authority had all the reasons to believe that the abovementioned were mortgaged to the petitioner Bank and that the petitioner Bank had prior charge over the subject matter; still the Learned Adjudicating Authority confirmed the provisional attachment order of the Respondent No. 1 and thus causing huge loss to the petitioner Bank.Thus, making the petitioner Bank the rightful owner of the said properties which are already in the possession of the petitioner Bank under the SARFAESI Act. The origin of the funds is not illegal or unlawful in any manner. The funds were only deposited in the accounts with the petitioner Bank against the drawings already availed or availed subsequently.

28. So, this Court finds that the petitioner Bank is liable to recover huge amounts in the above loan accounts and the bank being the mortgagee/transferee of the interest in the properties is entitled to recover its dues with the sale of the properties. It is even not the allegation of respondent no. 1 that the accused has acquired the mortgage properties with the proceeds of crime. Furthermore, the petitioner Bank has already filed the Suit for recovery and has also had taken the action under SARFAESI Act.

29. The property of the Bank cannot be attached or confiscated when there is no illegality or unlawfulness in the title of the Appellant and there is no charge of money laundering against the petitioner. The mortgage of property is the transfer under the transfer of property act as there is no dispute as regards the origin of funds or the title of the properties. As far as the bank is concerned, the bank had to recover its outstanding dues by taking over the possession of the mortgaged properties in case the Respondents are not able to pay back the credit facilities availed by the Respondents and by way of the SARFAESI provisions these properties are being taken in possession by the petitioner bank so that recovery can be made from the accounts which have become NPA. Moreover, normally, the Banks are innocent party. They are not involved in any criminal proceedings. If they are asked to await till the trial is over, the systems in these types of cases, the economy would collapse.

30. In view of the foregoing discussion, this Court is of the view that, it is very clear that the decision of the respondent No.1 in proceeding against the properties of respondents No.2 and 3 to the extent mortgaged with the petitioner bank is contrary to Section 35 of SARFAESI Act 2002. It is also observed that, the SARFAESI Act has overriding affect over the Andhra Pradesh Protection of Depositors of Financial Establishments Act 1999 (Act 17/1999) and hence the right of the petitioner to proceed against the security interest under the SARFAESI Act 2002 shall prevail.Therefore, it is observed that, once the Central Act has been given an overriding effect, then the State

Act, has to give way. In view of the overriding effect of SARFAESI Act, the impugned order cannot be sustained in law.

31. Having regard to the facts and circumstances of the case and for the reasons stated above, this Court is inclined to allow the present writ petition by setting aside the impugned G.O.

32. Accordingly, the Writ Petition is allowed. The impugned part of G.O. in respect of properties shown at Sl.Nos.23, 24, 25, 26, 31 & 44 of Annexure-I to the G.O.Ms.No.13 Home (General) dated 17.02.2016 under the Andhra Pradesh Protection of Depositors of financial Establishments Act 1999 (17/1999) belonging to respondents No.2 and 3 mortgaged in favour of petitioner bank, are hereby quashed. Further, the petitioner Bank is permitted to proceed further against the above referred properties under the provisions of SARFAESI Act 2002 for the recovery of debt.

33. There shall be no order as to costs.

34. As a sequel, interlocutory applications, if any pending, shall stand closed.

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DR. K. MANMADHA RAO, J.

Date : 18-06-2024

Note : L.R.Copy to be marked.

(b/o)Gvl

HON'BLE DR. JUSTICE K. MANMADHA RAO

WRIT PETITION No.21029 of 2017

Date : 18 .06.2024

Gvl