Before Ajay Kumar Mittal and Manjari Nehru Kaul, JJ.

KULBIR SINGH DHALIWAL AND OTHERS—*Petitioners*

versus

UNION TERRITORY, CHANDIGARH AND OTHERS—*Respondents*

CWP No.12188 of 2018

May 06, 2019

(I) ***Constitution of India, 1950—Art.226 & 254—Civil Procedure Code, 1908—S.20— Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002—S.3 and 35—Transfer of Property Act, 1882—S.41 and 100—Maharashtra Protection of Interest of Depositors (in Financial Establishments) (MPID) Act, 1999—S. 4 and 5— Recovery of Debts and Bankruptcy Act, 1993—S. 31-B—Petitioners, auction purchasers of a plot/house, challenged refusal by respondents/Chandigarh Administration to register the sale certificate.***

The property in question mortgaged with the bank as a secured asset for availing a loan—Borrower defaulted in payment and his loan account classified as NPA—Proceedings initiated under the SARFAESI Act—Petitioners purchased property in auction and sale certificate issued—Chandigarh Administration authorities refused to register the sale certificate as property already stood attached under the MPID Act—High Court concluded that SARFAESI Act being a Central Legislation, its provisions would prevail over the provisions of MPID Act, which is a State Act—Reliance placed on Art.254 of the Constitution.

Held that burden of the song of the arguments advanced by the petitioners is that the discharge of liability of a secured debt would take precedence over the liability of a crown debt or any other debt.

(Para 7)

Further held that first question, which arises for consideration is whether the Notification dated 22.06.2015 issued under the MPID Act, which is a State Legislation, could override the provisions of SARFAESI Act, which is a Central Act and under the provisions of the said Act, the property in question was auctioned.

(Para 8)

Further held that a bare reading of Article 254 of the

Constitution of India leaves no manner of doubt that parliamentary supremacy in matters under List III of the Seventh Schedule of the Constitution has to be maintained. In case of a conflict between Centre and a State on a subject matter, which could have been legislated upon by both, without a doubt the Central Legislation would hold supremacy. Uniform application of law across the country is undoubtedly the basic feature of Indian jurisprudence and in case there is a conflict between a Central and a State Legislation and the State Legislation being repugnant to the Central Legislation, the former would be inoperative.

(Para 10)

(II) ***Further, the Court held that the right to recovery of a secured debt would take precedence over the right to recovery of any other debt, including a crown debt in terms of S. 31-B of the Recovery of Debts and Bankruptcy Act, 1993, which starts with a non-obstante clause.***

Held that Supreme Court, time and again in its various pronouncements, has reiterated that the right of a secured creditor to recover its debts, will always be a prior right, even over the right of recovery of a crown debt or any other debt.

(Para 14)

Further held that a reading of Section 31-B of Recovery of Debts and Bankruptcy Act, 1993 reproduced above, which starts with a non-obstante clause, makes it amply clear that the right of a secured creditor to realise a secured debt shall have priority over all debts and government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority.

(Para 17)

(III) ***On the question of jurisdiction, relying on S.20 CPC and Art. 226(2), High Court concluded that it had the jurisdiction to hear the matter, because part of the cause of action had accrued within its territorial jurisdiction.***

Held that as far as the question of territorial jurisdiction of this Court to entertain the instant petition is concerned, we have given our anxious consideration to the same and are of the considered opinion that this Court would have jurisdiction to hear the instant writ petition. Section 20 of Civil Procedure Code which deals with the issue of jurisdiction of a Court lays down in no uncertain terms that a Court within the jurisdiction of which the cause of action wholly or in part

arises or where the defendant resides or carries on business shall have the jurisdiction to try a matter.

(Para 19)

Further held that Clause (2) of Article 226 of the Constitution of India provides that the power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(Para 20)

Further held that suffice it to say, a writ petition is entertainable in a High Court within the jurisdiction of which even a part of the cause of action may have arisen. The property in question is located at Chandigarh, auction of the property was held in Chandigarh and importantly, the branch of Punjab National Bank from which the loan was raised by the petitioners was also located at Chandigarh. Thus, there is no doubt that this Court has the jurisdiction to hear and decide the instant lis because not only the cause of action has arisen within the jurisdiction of this Court but as already noticed above, the property in question is also located within the territorial jurisdiction of this Court.

(Para 21)

Gaurav Chopra, Advocate with
Loveleen Dhaliwal, Advocate
for the petitioners
in CWP No.12188 of 2018 and
for respondents No.4 to 6
in CWP No.12543 of 2018.

Sanjeev Singh, Advocate with
Nikita Garg, Advocate
for the petitioner in CWP No.12543 of 2018 and
for respondent No.3
in CWP No.12188 of 2018.

Deepali Puri, Advocate and
V.K.Sachdeva, Advocate
for respondent No.1 in CWP No.12188 of 2018

MANJARI NEHRU KAUL, J.

(1) This order shall dispose of the abovesaid two writ petitions as the issue involved in both the writ petitions is the same. The brief facts of the case are being extracted from CWP No.12188 of 2018.

(2) The instant writ petition has been filed under Articles 226/227 of the Constitution of India inter alia for quashing the order dated 14.03.2018 (Annexure P-12) passed by the Sub Registrar, UT, Chandigarh- respondent No.2 and order dated 16.04.2018 (Annexure P-16) passed by the Deputy Commissioner-cum-Registrar, UT, Chandigarh-respondent No.1.

(3) From the record, it is apparent that the earlier owner of the property in question i.e. M/s Rahul Sales Ltd., through its Directors, Late Onkar Anand, Rahul Anand and Renu Anand had availed of a loan facility in the amount of Rs.13.15 crores from respondent No.3 – Punjab National Bank against security by way of equitable mortgage of House No.1037, Plot No.3, Street No.E, Sector 27-B, Chandigarh on 17.12.2013. The respondent-bank had got the details of the secured asset registered with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India on 31.03.2014. The said loan account subsequently became irregular as the borrowers could not maintain financial discipline and hence, the same was classified as Non Performing Asset. Thereafter, the respondent-bank initiated recovery proceedings under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), which culminated in taking over of the possession of the secured asset. It is not disputed that a public notice dated 16.09.2016 (Annexure P-6) was published in the newspaper for the sale of the property in question. Since no bidder came forward in the said auction, a second public auction was fixed for 03.05.2017 at a reserve price of Rs.11.50 crores vide notice dated 01.04.2017 (Annexure P-7) in which the petitioners emerged as the highest bidders. After deposit of the entire bid amount of Rs.13.92 crores against the reserve price of Rs.11.50 crores, physical possession of the property was handed over to the petitioners by respondent No.3-bank along with the Sale Certificate under Rule 9(6) of the Security Interest (Enforcement) Rules 2002. It may be emphasised here that there was no mention at all in the public notice regarding any dues or encumbrances, which may have stood against the said property.

(4) On 06.03.2018 when the petitioners and the Authorised Officer of the secured creditor approached respondent No.2 i.e. Sub

Registrar, UT, Chandigarh for registration of the Sale Certificate under The Registration Act, 1908, (for short '1908 Act') he refused to register the same vide order dated 14.03.2018 (Annexure P-12) holding that the property in question already stood attached by the Government of Maharashtra under Sections 4 (1) and 5(1) of Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for brevity 'MPID Act') vide Notification dated 22.06.2015. On refusal of registration of the Sale Certificate, the petitioners impugned the order dated 14.03.2018 (Annexure P-12) by preferring an appeal under Section 72 of 1908 Act before the Deputy Commissioner-cum-Registrar-respondent No.1, who dismissed the same vide order dated 16.04.2018(Annexure P-16). It was in the above factual backdrop that the instant writ petition came to be filed before this Court.

(5) Learned counsel for the petitioners contended that the orders dated 14.03.2018 (Annexure P-12) and 16.04.2018 (Annexure P-16) passed by respondents No.2 and 1 respectively refusing to register the Sale Certificate dated 31.07.2017 (Annexure P-9) in favour of the petitioners/auction purchasers were not only illegal and arbitrary but also more specifically violated the provisions of 1908 Act as well as the SARFAESI Act. Learned counsel further urged that the embargo sought to be enforced by respondent No.4- Sr. Inspector of Police, Economic Offences Wing, Mumbai and respondent No.5- Govt. of Maharashtra against the property in question by issuance of an attachment order was liable to be set aside as the provisions of the SARFAESI Act would have precedence over other laws when recovery of a secured debt is sought. Learned counsel for the petitioners urged that their rights could not be curtailed because of attachment under the MPID Act since they had made full and final payment of the bid amount. The petitioners also drew our attention to the fact that the attachment of property in question vide impugned Notification dated 22.06.2015 had still not become absolute (as per the provisions of MPID Act) as the designated Court had yet to pass an order under Section 7(6) of MPID Act. Learned counsel for the petitioners submitted that as per provisions of Section 35 of the SARFAESI Act, the Act would override any other law for the time being in force. Further, the sale of the property in question in favour of the petitioners by respondent No.3-bank was protected by the provisions of Section 41 and of Section 100 of the Transfer of Property Act, 1882. Still further, it was contended that the letter dated 31.08.2015 (Annexure P-13) issued by respondent No.4-Sr. Inspector of Police, Economic Offences Wing, Mumbai was not available on the file of the property maintained

by the Estate Office, UT, Chandigarh even on 07.03.2018 during the inspection of file by petitioner No.2 along with her counsel as well as counsels of respondent-bank and it was because of the foregoing lapse, the bank or the petitioners could not have known of the alleged attachment despite due diligence on the date of the auction i.e. 03.05.2017. He also urged that the right of recovery of a debt by a secured creditor would take precedence over the right of recovery of a crown debt or any other debt. Finally, he prayed that respondents No.4 and 5 be restrained from interfering in the registration of the Sale Certificate in favour of the petitioners with a further prayer that a direction be issued to respondent No.2 (Sub Registrar, UT, Chandigarh) to register the Sale Certificate in respect of the property in dispute.

(6) Heard learned counsel for the parties and perused the material available on record with their assistance. It may be mentioned that there was no representation on behalf of Govt. of Maharashtra (respondent No.5 in CWP No.12188 of 2018 and respondent No.1 in CWP No.12543 of 2018 and) and Economic Offences Wing (respondent No.4 in CWP No.12188 of 2018) even though they had been duly served.

(7) The burden of the song of the arguments advanced by the petitioners is that the discharge of liability of a secured debt would take precedence over the liability of a crown debt or any other debt.

(8) The first question, which arises for consideration is whether the Notification dated 22.06.2015 issued under the MPID Act, which is a State Legislation, could override the provisions of SARFAESI Act, which is a Central Act and under the provisions of the said Act, the property in question was auctioned.

(9) It would be relevant to refer to the provisions of Article 254 of the Constitution of India. Article 254 of the Constitution of India explicitly lays down that in case of repugnancy or inconsistency between Central Legislation and State Legislation, the former would prevail. For facility of reference, Article 254 is reproduced as under:

> **"254 Inconsistency between laws made by Parliament and laws made by the Legislatures of States –**
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> (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to

> the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
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> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, in that State:
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> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

(10) A bare reading of Article 254 of the Constitution of India leaves no manner of doubt that parliamentary supremacy in matters under List III of the Seventh Schedule of the Constitution has to be maintained. In case of a conflict between Centre and a State on a subject matter, which could have been legislated upon by both, without a doubt the Central Legislation would hold supremacy. Uniform application of law across the country is undoubtedly the basic feature of Indian jurisprudence and in case there is a conflict between a Central and a State Legislation and the State Legislation being repugnant to the Central Legislation, the former would be inoperative.

(11) The Apex Court in its judgment titled as ***UCO Bank and anr.*** versus ***Dipak Debbarma and ors.***[1] has held that in case of repugnancy or inconsistency between the provisions of Central and State enactment, the Central law would prevail. It will be apposite to reproduce the relevant extract from the said judgment as under:

> 7. Repugnancy or inconsistency between the provisions of Central and State enactments can occur in two situations. The first, in case of a Central and a State Act on any field of entry mentioned in List III of the Seventh Schedule

[1] 2017 (2) SCC 585

(Concurrent List). To such a situation of repugnancy or inconsistency, the provisions of Article 254 of the Constitution would apply. If there is such an inconsistency, Article 254(1) makes it very clear that the central law will prevail subject, however, to the provisions of Article 254(2) and further subject to proviso to Article 254(2). The above position would be clear from the opinion rendered by a three Judges Bench of this Court in ***M/s Hoechst Pharmaceuticals Ltd. and Ors.*** versus ***State of Bihar and Ors., (1983) 4 SCC 45.*** Para 67 of the aforesaid opinion which may be usefully noticed is in the following terms:

> "67. Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down 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. To the general rule laid down in clause (1), clause (2) engrafts an exception viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by

> itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together: See ***Zaverbhai Amaidas*** versus ***State of Bombay, (1955) 1 SCR 799; M. Karunanidhi*** versus ***Union of India, (1979) 3 SCR 254 and T. Barai*** versus ***Henry Ah Hoe, (1983) 1 SCC 177.***"
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> 8. The above view has been reiterated in ***State of W.B.*** versus ***Kesoram Industries Ltd. and Ors.(2004) 10 SCC 201.*** There are several other pronouncements of this Court on the aforesaid issue. The same, however, would not require any mention as any such reference would be only a multiplication of discussions on what appears to be a settled issue. In the present case, however, the question before this Court is not one of repugnancy between a Central and a State law relatable to an Entry in List III (Concurrent List). No further attention to the above aspect of the matter would, therefore, be required."

(12) Thus, in the light of the settled law, the proceedings under the SARFAESI Act would, without a doubt, hold primacy over the MPID Act.

(13) Coming to the next question as to whether the recovery of a secured debt would take precedence over a crown debt, the issue is no longer res integra.

(14) The Supreme Court, time and again in its various pronouncements, has reiterated that the right of a secured creditor to recover its debts, will always be a prior right, even over the right of recovery of a crown debt or any other debt. We are fortified in our view by the judgments of the Supreme Court in ***Dena Bank*** versus ***Bhikhabhai Prabhudas Parekh***[2], ***Union of India*** versus ***SICOM Ltd.***[3]

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[2] 2000(5) SCC 694

[3] 2009(2) SCC 121

and ***M/s Rana Girders Ltd.*** versus ***Union of India***[4]. The relevant extract from M/s Rana Girders Ltd.'s case is reproduced as under:

> "18. Insofar as dues of the Government in the form of tax or excise etc. are concerned, the Court in ***SICOM Ltd.'s case*** (supra) was of the opinion that rights of the Crown to recover the dues would prevail over the right of the subject. The Crown debt means the debts due to the State or the King. Such creditors, however, must be held to mean unsecured creditors. The principle of Crown debt pertains to the common law principle. When Parliament or the State Legislature makes an enactment, the same would prevail over the common law and thus the common law principles which existed on the date of coming into force of the Constitution of India, must yield to a statutory provision. A debt, which is secured or which by reason of the provisions of a statute becomes the first charge over the property must be held to prevail over the Crown debt which is an unsecured one. On this reasoning, the debt payable to the secured creditor like the Financial Corporation was prioritised vis-a- vis the Central Excise Dues.
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> 19. For this principle, the Court referred to its earlier judgment in ***Dena Bank*** versus ***Bhikhabhai Prabhudas Parekh & Co.'s*** case (supra) explaining the doctrine of priority to Crown Debts, thus:(SICOM Ltd.'s case)
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> "13 ... 7. What is the common law doctrine of priority or precedence of Crown debts? Halsbury, dealing with general rights of the Crown in relation to property, states that where the Crown's right and that of a subject meet at one and the same time, that of the Crown is in general preferred, the rule being detur digniori (Laws of England, 4th Edn.,Vol.8, para 1076, at p.666).Herbert Broom states:
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> > **"Quando jus domini regis et subditi concurrunt jus regis praeferri debat** – Where the title of the king and the title of a subject concur, the king's title must be preferred. In this case detur digniori is the rule. ..... where the titles of the king and of a subject concur, the king takes the whole. .... where the king's title and that of a subject concur, or are in conflict, the king's title is

[4] 2013(10) SCC 746

to be preferred."(Legal maxims; 10th Edn.,pp.35-36).

This Common law doctrine of priority of State's debts has been recognised by the High Courts of India as applicable in British India before 1950 and hence the doctrine has been treated as "law in force" within the meaning of Article 372(1) of the Constitution." (Dena Bank's case, SCC p.701, para 7)

It was, furthermore, observed : (Dena Bank's case, 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 for recovery of its debts over a mortgagee or pledgee of goods or a secured creditor. It is only in cases where the Crown's right and that of the subject meet at one and the same time that the Crown is in general preferred. Where the right of the subject is complete and perfect before that of the king commences, the rule does not apply, for there is no point of time at which the two rights are at conflict, nor can there be a question which of the two ought to prevail in a case where one, that of the subject, has prevailed already. In ***Giles*** *versus* ***Grover, (1832) 9 Bing 128:131 ER 563*** it has been held that the Crown has no precedence over a pledgee of goods. ***In Bank of Bihar*** *versus* ***State of Bihar, (1972) 3 SCC 196*** the principle has been recognised by this Court holding that the rights of the pawnee who has parted with money in favour of the pawnor on the security of the goods cannot be extinguished even by lawful seizure of goods by making money available to other creditors of the pawnor without the claim of the pawnee being first fully satisfied. Rashbehary Ghose states in Law of Mortgage (TLL,7th Edn.,p.386) – "it seems a government debt in India is not entitled to precedence over a prior secured debt."

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21.xxx

22.xxx

23. We may notice that in the first instance it was mentioned not only in the public notice but there is a specific clause inserted in the sale deed/agreement as well, to the effect that the properties in question are being sold free from all encumbrances. At the same time, there is also a stipulation that "all the statutory liabilities arising out of the land shall be borne by the purchaser in the sale deed" and "all the statutory liabilities arising out of the said properties shall be borne by the vendee and the vendor shall not be held responsible in the agreement of sale." As per the High Court, these statutory liabilities would include excise dues. We find that the High Court has missed the true intent and purport of this clause. The expressions in the sale deed as well as in the agreement for purchase of plant and machinery talk of statutory liabilities "arising out of the land" or statutory liabilities "arising out of the said properties" (i.e. the machinery). Thus, it is only that statutory liability which arises out of the land and building or out of plant and machinery which is to be discharged by the purchaser. Excise dues are not the statutory liabilities which arise out of the land and building or the plant and machinery. Statutory liabilities arising out of the land and building could be in the form of the property tax or other types of cess relating to property etc. Likewise, statutory liability arising out of the plant and machinery could be the sales tax etc. payable on the said machinery. As far as dues of the Central Excise are concerned, they were not related to the said plant and machinery or the land and building and thus did not arise out of those properties. Dues of the Excise Department became payable on the manufacturing of excisable items by the erstwhile owner, therefore, these statutory dues are in respect of those items produced and not the plant and machinery which was used for the purposes of manufacture. This fine distinction is not taken note of at all by the High Court."

(15) From the above, it is evident that debt which is secured

under the provisions of a Statute becomes the first charge over the property in question and has to give way to a crown debt, which is in the nature of an unsecured debt.

(16) This Court too has held a similar view in its judgment rendered in ***Deepak Kumar*** versus ***State of Punjab and others (CWP No.8249 of 2018)*** decided on 20.11.2018 The relevant observations recorded by this Court read thus:

> "7. Section 31-B of the Act as amended w.e.f. 01.09.2016 (sic.) reads as under:
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> 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.
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> 8. A perusal of the above provision leaves no manner of doubt that the rights of a secured creditor to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall have to 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.
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> 9. Hence, it clearly emerges that the revenues, taxes, cesses and rates due to the Central Government, State Government or a Local Authority shall not have precedence or preference over the dues recoverable by a secured creditor by sale of secured asset. Moreover, it is an admitted fact herein that the respondent-bank had auctioned the property in question under the Act being a secured asset, duly mortgaged in their favour by the previous owner, to secure the credit facilities allowed by the respondent-bank."

(17) Further, a reading of Section 31-B of Recovery of Debts and Bankruptcy Act, 1993 reproduced above, which starts with a non-obstante clause, makes it amply clear that the right of a secured creditor to realise a secured debt shall have priority over all debts and government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority.

(18) It cannot be over emphasised that the property in question was auctioned by the respondent-PNB Housing Finance Ltd. to recover its secured debts and the attachment order issued by Government of Maharashtra must yield to the rights of the respondent-bank. Therefore, the auction proceedings must be taken to their logical end and we see no reason why the registration of the Sale Certificate be refused to the auction purchasers i.e. the petitioners.

(19) As far as the question of territorial jurisdiction of this Court to entertain the instant petition is concerned, we have given our anxious consideration to the same and are of the considered opinion that this Court would have jurisdiction to hear the instant writ petition. Section 20 of Civil Procedure Code which deals with the issue of jurisdiction of a Court lays down in no uncertain terms that a Court within the jurisdiction of which the cause of action wholly or in part arises or where the defendant resides or carries on business shall have the jurisdiction to try a matter. It reads thus:

> 20. **Other suits to be instituted where defendants reside or cause of action arises-** Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-
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> (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
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> (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
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> (c) the cause of action, wholly or in part, arises.
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> Explanation - A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

(20) Further Clause (2) of Article 226 of the Constitution of India

provides that the power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(21) Suffice it to say, a writ petition is entertainable in a High Court within the jurisdiction of which even a part of the cause of action may have arisen. The property in question is located at Chandigarh, auction of the property was held in Chandigarh and importantly, the branch of Punjab National Bank from which the loan was raised by the petitioners was also located at Chandigarh. Thus, there is no doubt that this Court has the jurisdiction to hear and decide the instant lis because not only the cause of action has arisen within the jurisdiction of this Court but as already noticed above, the property in question is also located within the territorial jurisdiction of this Court.

(22) The Apex Court dealt at length on the issue of territorial jurisdiction of a Court to entertain writ petition in ***Nawal Kishore Sharma*** versus ***Union of India and ors.***[5]. The relevant observations recorded in the judgment are reproduced as under:

> "10. The interpretation given by this Court in the aforesaid decisions resulted in undue hardship and inconvenience to the citizens to invoke writ jurisdiction. As a result, Clause 1(A) was inserted in Article 226 by the Constitution (15th) Amendment Act, 1963 and subsequently renumbered as Clause (2) by the Constitution (42nd) Amendment Act, 1976. The amended Clause (2) now reads as under:-
>
> > **"226. Power of the High Courts to issue certain writs** – (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

[5] 2014 (9) SCC 329

(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) xxxxx

(4) xxxxx"

11. On a plain reading of the amended provisions in Clause (2), it is clear that now High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction. Cause of action for the purpose of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed.

12. *xxxxx*

13. In the case of ***State of Rajasthan and Others*** versus ***M/s Swaika Properties and Another, (1985) 3 SCC 217***, the fact was that the respondent- Company having its registered office in Calcutta owned certain land on the outskirts of Jaipur City was served with notice for acquisition of land under Rajasthan Urban Improvement Act, 1959. Notice was duly served on the Company at its registered office at Calcutta. The Company, first appeared before the Special Court and finally the Calcutta High Court by filing a writ petition challenging the notification of acquisition. The matter ultimately came before this Court to answer a question as to whether the service of notice under Section 52(2)of the Act at the registered office of the Respondent in Calcutta was an integral part of cause of action and was it sufficient to invest the Calcutta High Court with a

jurisdiction to entertain the petition challenging the impugned notification. Answering the question this Court held:-

7. xxxxx

8. The expression "cause of action" is tersely defined in Mulla's Code of Civil Procedure:

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court."

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2)of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1)of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) if the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the

Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.

14. xxxx

15. ***In Kusum Ingots & Alloys Ltd.*** versus ***Union of India and Another, (2004) 6 SCC 254***, this Court elaborately discussed Clause (2) of Article 226 of the Constitution, particularly the meaning of the word 'cause of action' with reference to Section 20(c) and Section 141 of the Code of Civil Procedure and observed:-

> "9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20 (c) of the Code of Civil Procedure and clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.
>
> 10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter."

Their Lordships further observed as under:-

> "29. In view of clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh has, thus, no application.
>
> 30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may

> not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens."

16. In the case of **Union of India and others** versus **Adani Exports Ltd. and another, (2002) 1 SCC 567**, this Court held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part of it arose within its jurisdiction. Each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts are such which have a nexus or relevance with the lis i.e. involved in the case. This Court observed:

> "17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no [pic] bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

(23) As a sequel to the above discussion, we have no hesitation in allowing both the writ petitions. The orders dated 14.03.2018 (Annexure P-12) and 16.04.2018 (Annexure P-16) passed by respondents No.2 and 1 respectively impugned in both the writ petitions, are hereby quashed. Respondent No.2 is directed to register the Sale Certificate in respect of House No.1037, Plot No.3, Street No.E, Sector 27-B, Chandigarh issued in pursuance to the auction held on 03.05.2017 in accordance with law.

P.S. Bajwa