

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 4TH DAY OF OCTOBER 2024 / 12TH ASWINA, 1946

WA NO. 1559 OF 2023

AGAINST THE JUDGMENT DATED 30/06/2023 IN WP(C) NO.11422
OF 2021 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

M/S DHANLAXMI BANK LTD.
REGD. OFFICE - DHANLAXMI BUILDING, NAICKANAL,
TRISSUR - 680001. REPRESENTED BY ITS MANAGER
(LEGAL), PIN - 680001

BY ADV C.K.KARUNAKARAN

RESPONDENTS/RESPONDENTS:

- 1 SECURITIES AND EXCHANGE BOARD OF INDIA ,
HEAD OFFICE, PLOT NO.C4-A,
G BLOCK BANDRA-KURLA COMPLEX, BANDRA (EAST) ,
MUMBAI - 400 051, REP. BY ITS CHAIRMAN.
- 2 RECOVERY OFFICER AND DEPUTY GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA,
SOUTHERN REGIONAL OFFICE, 7TH FLOOR, 756-L,
OVERSEAS TOWERS, ANNA SALAI,
CHENNAI, TAMIL NADU, PIN - 600002
- 3 M/S. QUIKR REALTY LTD,
RAMON HOUSE,
BACKBAY RECLAMATION H.T.PAREKH MARG,
CHURCHGATE, MUMBAI - 400 020.



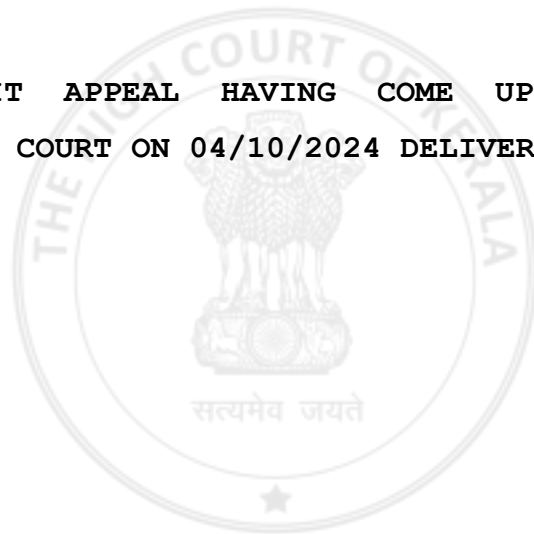
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4 G.UNNIKRISHNAN NAIR,
MULASSERIL, CHATHANNOOPUZHA,
CHORAKKODU P.O. ,

ADOOR,
PATHANAMTHITTA - 691 551.

BY ADVS.
Adv. K. M. JAMALUDHEEN
RAJU JOSEPH (SR.) (R-191)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
07/08/024, THE COURT ON 04/10/2024 DELIVERED THE FOLLOWING:



HIGH COURT OF KERALA
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**JUDGMENT****A.Muhamed Mustaque, J.**

This appeal filed by Dhanlaxmi Bank raises an important question of law. The question of law is about the overriding effect of Section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 over the provisions of Section 11, 11-A, 11-B and Section 28-A(3) of the Securities Exchange Board of India Act (SEBI Act), 1992.

2. The appellant/bank claims that on the introduction of Chapter IV A in the SARFAESI Act, with effect from 24/01/2020, the secured creditor, who had registered secured interest with the Central Registry will have priority right over all other debts and all revenues, taxes and other rates payable to Central Government or State Government or local authority. This is a primary question to be decided. There are two more questions to be answered in this appeal regarding the registration of secured assets with the Central Registry and also defining what are the priority rights of the secured creditor under Section 26E of the SARFAESI Act. This contention arises in the context of a claim made by the SEBI that the amount due to SEBI recoverable under Section 11-B of the SEBI Act does not come under Section 26E of the SARFAESI Act.

3. The learned Single Judge considered a writ petition filed by the Dhanlaxmi Bank, the appellant herein, challenging the action of the SEBI to sell a secured asset, which was mortgaged with the appellant/bank under proceedings initiated under Section 11-B of the SEBI Act and dismissed the writ petition. The Learned Single Judge interpreted Section 26E of the SARFAESI Act and took the view that the amount recoverable by SEBI is not in the contemplation of Section 26E of the SARFAESI Act. The Learned Single Judge also opined that Section 26E of the SARFAESI Act cannot have any overriding effect on recovery proceedings under Section 28-A(3) of the SEBI Act. Accordingly, upheld sale notice. The sale has now been concluded as well.

4. We find the following points require to be considered:

(i) Whether the appellant/bank had valid registration of secured assets with the Central Registry or not.

(ii) Whether the amount recoverable by SEBI is covered by Section 26E of the SARFAESI Act, 2002 or not?

(iii) Whether the provisions of the SARFAESI Act which confer priority rights to secured creditors under Section 26E, have an overriding effect on the provisions of recovery under Section 28-A(3) of the SEBI Act?

We are not narrating details of the facts of the case as it has been

already dealt with by the learned Single Judge in the impugned judgment.

POINT No.1

5. There is no dispute that the appellant/bank registered secured assets with the Central Registry (CERSAI) on 28/09/2012. The case of SEBI is that the mortgage was created on 14/02/2011 and registration was done only on 28/09/2012.

6. Learned Senior Counsel appearing for the SEBI Sri. Raju Joseph points out that Rule 5 then existed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011. Rule 5 stipulates a time limit for registration and condonation of delay. Under sub-rule 5(1) of Rule 5, the particulars of every transaction shall be filed with the Central Registry within thirty days from the date of such transaction. It is further pointed out to sub-rule (2) to contend that if the particulars of the transaction are not registered within the further period of thirty days, the registration granted, if any is invalid as there is no provision to condone the delay beyond the period stipulated under Rule 5(2).

7. It is to be noted that this Rule has been omitted from 24/01/2020. The Central Registry admittedly granted registration

as per Ext.P2. This Court cannot review the registration granted in 2012 at this time. If the statutory authority has accorded registration, it is to be assumed that such registration was granted in compliance with statutory provisions. We note the delay of more than one and a half years in registering the same. However, having noted the provision, we find that the delay itself is not a ground to reject the registration request.

8. It is pointed out by the learned counsel for the appellant Sri. C.K. Karunakaran that the Central Registry permitted registration of legacy security interest by an order till 30/06/2013 for filling up particulars of subsequent transactions. As we noted, the registration of secured interest with the Central Registry cannot be even questioned in collateral proceedings, as the action of registration itself cannot be termed as void or null. Thus, we hold that the appellant/ bank had valid registration.

POINT No.2

9. Section 26E was brought into the SARFAESI Act by way of an amendment in the year 2016. However, this provision was notified only with effect from 24/01/2020. It is appropriate to refer to Section 26E of the SARFAESI Act, which reads thus:

**“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.”

10. Sri. C.K. Karunakaran, learned counsel appearing for the appellant/Bank argued that the SARFAESI Act was enacted following the recommendation of the Narasimham Committee to enable secured creditors to proceed against defaulting borrowers without the intervention of courts. Therefore, statutory provisions under the SARFAESI Act should be construed in such a way to uphold the claims of secured creditors. It is further submitted that the very incorporation of Section 26C giving deemed public notice on the registration of secured interest by the secured creditor itself would signify that Parliament intended to give precedence to all claims of secured creditors in terms of Section 26E over all other claims.

11. Learned Senior Counsel for the SEBI pointing out to the class of amount referred to in Section 26E of the SARFAESI Act

submits that the amount recoverable under the SEBI Act under Section 28-A is not contemplated or referred to in Section 26E.

12. Arguments raised by the learned Senior Counsel for the SEBI is that 'all other debts and all other revenues' referred to in Section 26E of the SARFAESI Act will have to be read conjunctively to mean that secured creditors will have priority over all debts due to and revenues to the government. His arguments proceed as though Section 26E of the SARFAESI Act refers to public revenue due to the government. The learned Single Judge also accepted this argument and took the view that recovery measures initiated by the SEBI are not for realising any amount due to it and SEBI is only discharging its statutory duty to compel the company to pay the amount due to the investors. It was noted that Section 26E of the SARFAESI Act does not cover the amount recoverable by the SEBI and dismissed the challenge made by the appellant/bank.

13. The SARFAESI Act was enacted in the year 2002. Chapter IVA was inserted by an Amendment Act of 2016 (44 of 2016) dated 16/08/2016. Chapter IVA refers to registration by secured creditors and other creditors and it mandates all secured creditors to file particulars of transactions of creation,

modification or satisfaction of any secured interest with the Central Registry. It further says under Section 26C that such registration shall be deemed to constitute a public notice. The interpretation of Section 26E of the SARFAESI Act is the bone of contention in this case. Section 26E of the SARFAESI Act acknowledges priority to secured creditors to recover debts over all other debts and all revenues, taxes and other rates payable to the Central Government or State Government or local authority.

14. To understand the legal conundrum above, it is necessary to understand the scope of recovery by the SEBI under the SEBI Act. The SEBI Act was enacted by the Parliament in the year 1992 with one of the objectives to protect the interests of investors in securities. It contemplates the constitution of SEBI, a body to regulate the securities market and protect investors. The Board has the power to investigate and adjudicate. It also has the power to impose a penalty. Section 11 of Chapter IV of the SEBI Act refers to the functions of the Board. Section 11-B refers to disgorgement order to recover the amount. Section 28-A refers to mode of recovery of amount under Section 11-B and penalties. Section 11(5) inserted by an Amendment Act of the year 2018 states about crediting the amount disgorged according to the direction issued

under Section 11-B of the SEBI Act with Investor Protection and Education Fund established by the Board. SEBI has the power to direct any person to disgorge any amount equivalent to the wrongful gain made or loss caused by the contravening provisions of the SEBI Act (See Explanation under Section 11-B).

15. In this case, SEBI passed an order under Section 11-B to recover the amount due from the secured debtor to the appellant/bank. It is in that process secured assets were sought to be attached and sold in public auction to protect the interest of investors and to refund the money due to them.

16. Section 26E of the SARFAESI Act confers priority to secured creditors based on registration. That means, any debts, revenues, taxes or similar payments to the Central Government or State Government after the registration of secured interest cannot have precedence merely based on the claim being raised by the State. On this proposition of law, there is no doubt for either side. The question is whether any other debts referred in Section 26E of the SARFAESI Act includes the amount recoverable by SEBI or not. The use of ‘and’ in Section 26E of the SARFAESI Act between “all other debts” and “all other revenues” in conjunction with revenues, taxes, cesses payable to the State Government or the

Central Government created a conundrum in this case, to contend that recovery of any other debts under the statutory provisions of SEBI Act is not hit by non-obstante clause referred in Section 26E. The court will have to look at the meaning assigned under the statutory provisions to understand its scope and amplitude. Financial institutions are the backbone of the economy and financial system. To acknowledge the primacy of financial institutions, Section 26E of the SARFAESI Act was inserted to remove all hurdles in recovering the amount advanced to the borrower. The recovery scheme under the SARFAESI Act is to recover the debt without resorting to formal adjudicatory mechanism with an aim to streamline the economic health of the nation. This realisation stemmed from the fact that prolonged litigation had hindered economic growth and progress. The intention behind Section 26E of the SARFAESI Act is to give precedence to secured creditors over all other debts including revenues, taxes etc. due to the Government. The word 'and' occurring in Section 26E in between 'all other debts and all other revenues' cannot be read conjunctively to mean that it covers only such debts due to the Central Government or State Government or local authority. If it is interpreted narrowly, the very purpose of

incorporation of Section 26E will be defeated as it may create hurdles in the way of secured creditors recovering the amount due to them from any other borrower or under any other provisions of law. The court will have to interpret the text of the statutory provision in the context in which it is made. To understand the context, the court must pose self-generated questions, such as, What prompted the Parliament to incorporate Section 26E by way of an amendment in the year 2016 ?, Was Parliament aware of the challenges faced by the financial institutions, if so, what was it?, What did Parliament intend to achieve with this amendment? These are some questions that arise in the context of the amendment. The Parliament was conscious that to strengthen financial institutions, the recovery of the loan must be expedited and all hurdles in the way shall be removed. It might have come to the notice of the Union Government that many parallel claims have been raised by the individuals and entities including claims based on public dues that have placed obstacles for financial institutions in recovering, following the provisions of the SARFAESI Act. To overcome these issues faced by the financial institutions, the Parliament amended SARFAESI Act by incorporating Section 26E. If the Parliament had the intention to

exclude all debts, revenues and tax payable to the Central Government or State Government or local authority alone, incorporation of Section 26E may not have much significance. The intention is very clear from Section 26E, by classifying all types of debts and revenues or tax etc. is to yield priority claims of the financial institution. That means Section 26E of the SARFAESI has two parts, the first part refers to all debts, and private dues of all nature and second part refers to all dues of public nature. The confusion created by using 'and' instead of 'or' allowed to read statutory provisions as all debts, revenues, tax etc. conjunctively. In Stroud's Judicial Dictionary, 7th Edn. it is stated on page 128 that "“And” has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of OR. Sometimes, however, even in such a connection, it is, by force of a context, read as “or”". Similarly, in Maxwell on Interpretation of Statutes, 11th Edn. Page 229, it has been accepted that “to carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other”. The issue in this case illustrates how conjunction and disjunction in the English language in a compound sentence can create a unique problem for an

adjudicator. The English language is capacious and it may require juristical skill to interpret a statutory provision in a context of law to understand the language. The court in such a situation should emphasize contextual interpretation, posing and answering questions to grasp the legislative intent. The Apex Court in **Union of India & Others v. Alok Kumar & Others [(2010) 5 SCC 349]** in paragraph 61 observed as follows:

“61.It will be useful to apply the rule of contextual interpretation to the provisions of Rule 9. It would not be permissible to import any meaning or make additions to the plain and simple language of Rule 9(2) in relation to "other authority." The rule of contextual interpretation requires that the court should examine every word of the statute in its context, while keeping in mind the Preamble of the statute, other provisions thereof, pari materia statutes, if any, and the mischief intended to be remedied. Context often provides a key to the meaning of the word and the sense it carries.”

17. The learned Senior Counsel for the SEBI placing reliance on the judgment of the Full Bench of the Bombay High Court in **Jalgaon Janta Sahakari Bank Ltd. v. Joint Commissioner of Sales (2022 KHC OnLine 5615)** would submit that dues of the Central/State Government were alone in contemplation of

Parliament while Section 26E was incorporated. On perusal of the judgment, we find that the ratio has no application in the matter. The Bombay High Court considered competing claims of banks and dues to the government. The Bombay High Court had no occasion to consider similar claims raised by the SEBI in this matter.

18. The law is very clear on all debts of any creditor and also the revenue claims of the Central Government or any other Government will have no precedence if such debts or claims have arisen or came into existence after the registration of secured assets by the secured creditor with the Central Registry. Thus, it means, any debt recoverable under any statutory provisions or under any contract will be subject to priority rights of the secured creditor.

19. The question that will have to be considered is what is the meaning of 'debt' as referred to under Section 26E. Debt as defined in the Black's Dictionary in Eighth edition is as follows:

- “1. Liability on a claim; a specific sum of money due by agreement or otherwise.
2. The aggregate of all existing claims against a person, entity, or state”

20. The Apex Court in **Union of India v. Raman Iron**



Foundry (AIR 1974 SC 1265) defined ‘debt’ as follows:

“The word ‘debt’ is applicable to a sum of money which has been promised at a future day as to a sum now due and payable.”

21. SEBI Act has no provision defining ‘debt’. On the other hand, the SARFAESI Act defines ‘debt’ with reference to the meaning assigned under the Recovery of Debt due to Banks and Financial Institutions Act, 1993 and also gives a wider meaning to ‘debt’ in Section 2(ha). It is appropriate to refer to Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act), which reads thus:

““Debt” means any liability (inclusive of interest) which is claimed as due from any person for a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956),] by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a

decree or order of any civil Court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, 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];]"

22. Section 2(g) of RDB Act gives a wider meaning to the word 'debt'. There is nothing wrong in relying on Section 2(g) in the absence of any other reference in the SARFAESI Act defining 'debt' since the Parliament itself acknowledges Section 2(g) as the governing law to define 'debt' even in the context of SARFAESI Act. The simple understanding of the 'debt' is money payable by one person to another person. That means, an obligation is cast on a person to pay an amount to another under a contract or under the law. No recovery is possible under Section 11-B of the SEBI Act, if there is no liability on a person or entity to another (investor). If the provisions under Section 11-B are invoked for recovery from one person to another on establishing that the person who is liable had contravened provisions



of the SEBI Act, the very process of disgorgement initiated by SEBI from a person who had made wrongful gain is to restore to the investor or person who has sustained loss. The word ‘disgorgement’ referred to in Section 11-B is used in the context of preventing unjust enrichment and to restore to the person who has been affected by such action. The word ‘disgorge’ is defined in Chamber’s Twentieth Century Dictionary as “ to discharge from the throat: to vomit: to throw out with violence: to give up”. This is nothing but a refund of the amount due to such persons who have been wronged. Therefore, we have no hesitation in holding that all debts referred to in Section 26E of the SARFAESI Act would also include the amount recoverable by SEBI invoking Section 11-B of the SEBI Act.

23. The learned Single Judge placed reliance on the judgment of the Telangana High Court in **State Bank of India v. Midfiled Industries Limited and Ors. (MANU/TL/1299/2023)**. It is appropriate to refer to paragraph 8.1 of the above judgment to understand the issue considered by the Hon’ble Telangana High Court:

“He would submit that from careful reading of Section 26-E of the Act, 2002, it is clear that the priority to the secured creditor is available when there

are debts due revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority. Section 26E does not extend to the power exercisable by the SEBI under the Act, 1992. Further, having regard to the specific provision in Section 28-A of the Act, 1992, SEBI has the priority to recover the amounts due from the defaulter company. The provisions of the Act, 1992 are primarily intended to safeguard the interests of the investors, more particularly the small investors and, therefore, the same shall prevail over the recovery of the amounts to secured creditor due in a commercial transaction.”

24. In answering the issue, the Telangana High Court held as follows:

“22. From the Scheme of Act, 1992, particularly provision in Sections 11, 11-A and 11-B it is clearly discernible that it is the primary responsibility of the SEBI to protect and safeguard the interest of the investors, more particularly small investors and take such measures and issue such orders as required in that regard. In the case on hand, SVPCL was required to refund monies and pay interest to subscribers and due date was

10.11.2007. The application money was refunded on 27.10.2008. The payment of interest liability was not discharged. As a statutory authority entrusted to safeguard the interest of small investors, SEBI has stepped in to put the law in operation to compel the company to pay the arrears of interest amount to the investors. The whole exercise undertaken by SEBI is to protect the small investors and to ensure the interest amount is paid by the defaulting company. It is in the larger public interest.

23. The issue can be looked into from another angle. No amount is due to the SEBI. SEBI is not receiving any revenue, tax, cess etc payable to itself. In W.P. No. 29648 of 2021, it is only discharging statutory duty to compel the company to pay the interest amounts due to the investors for delayed payment of application monies, delayed payment of interest and penal interest for such delay. Section 28-A (3) vests power in the Recovery Officer of SEBI to recover the amounts due from defaulting company to be paid to investors. SEBI exercises regulatory powers to ensure small investors are not being cheated and put to hardship by erring companies.”

25. We cannot agree with the reasoning of the Telangana High Court. SEBI is not acting as a post office. It adjudges a cause on the premise that there has been unjust enrichment. It is based on such adjudication and decision made thereon, recovery is initiated. That means, in that process, SEBI enters a finding as to the persons who are liable and the person to whom the amount is payable. Under Section 11 of the SEBI Act, functions of the Board have been enumerated. Section 11-B confers SEBI to levy penalty and issue directions to disgorge any amount. Section 11-C confers power of investigation. Under Chapter VI A, Section 15 A to J(b) confers power to SEBI to adjudicate and impose penalty. The power under Section 11-B to disgorge an amount can be exercised only on entering satisfaction as to the wrongful gain made or loss contravening provisions of SEBI Act and regulations. Combined reading of these provisions makes it clear that SEBI is conferred with the power to conduct enquiry, investigation and order disgorgement when SEBI is satisfied of wrongful gain or loss caused by contravening provisions. It is clear that SEBI adjudicates on the debt of the person liable. Thus, a debt is ordered to be recovered. The amount recovered by the SEBI is a debt owed by a person to another. Thus, we hold that the amount sought to be recovered by the SEBI is a debt within the meaning of Section 26E of the SARFAESI Act.



POINT No.3

26. The SEBI Act was enacted in the year 1992. Section 28-A of the SEBI Act refers to the recovery of amounts. It is stipulated in Section 28-A(3) as follows:

“(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11-B, shall have precedence over any other claim against such person.”

27. The question to be considered is whether priority conferred under the SARFAESI Act - Section 26E will prevail over Section 28-A(3) of the SEBI Act or not.

28. Section 26E was incorporated in 2016 and came into force in the year 2020. Section 37 of SARFAESI Act provides as follows:

37. Application of other laws not barred

The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act,

1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.”

29. Learned Senior Counsel appearing for the SEBI referring to Section 37 of the SARFAESI Act submits that SEBI enactment is a special enactment and therefore notwithstanding incorporation of Section 26E of the SARFAESI Act provisions of special enactment would prevail. According to the learned counsel, the statutory provision under Section 37 of the SARFAESI Act really intends SEBI Act not being affected by the enactment of the SARFAESI Act. Therefore, subsequent incorporation of Section 26E in the SARFAESI Act will have no impact on Section 37 as SARFAESI Act operates to protect the provisions of SEBI Act. Learned Senior Counsel for SEBI further pointing out Section 35 of SARFAESI Act would argue that the statutory enactments referred in Section 37 of SARFAESI Act stand excluded from the operation of Section 35. It is pertinent to note Section 35 refers to non-obstante clause to acknowledge the

supremacy of SARFAESI Act wherever inconsistency is drawn or concluded with reference to any provisions contained in any other law.

30. On the other hand, learned Senior Counsel appearing for the appellant would submit that Section 26E of the SARFAESI Act operates on its own and wherever it operates repugnant to any other provisions under any other enactment referred under Section 37 of the SARFAESI Act, the primacy of Section 26E will prevail as it was brought later to the statutory provisions by way of an amendment. It is submitted that when two non- obstante clauses are pitted against each other the latter enactment would prevail as it is assumed that the Parliament was aware of the existence of a non-obstante clause in the earlier enactment.

31. The SARFAESI Act is a special enactment. Its scope and operation will have to be analysed with any other competing legislation providing for the recovery of any debt due from a debtor/borrower to a secured creditor under the SARFAESI Act. SEBI Act is also a special enactment. When there exists a competing legislation in regard to recovery, the court will have to analyse the nature and purport of each of such legislation. The court will have to analyse competing enactments as special or general law by analysing

how provisions of each enactment are juxtaposed in a contextual relationship in its operation or an application. Sometimes special enactment would operate as a general law, when it is compared to any other law, particularly, if their objectives are derived from those enactments. The objectives of the SARFAESI Act as well as SEBI Act are distinct and different and do not meet each other for any of the objectives on which these enactments have been made. Therefore, both enactments remain special enactments. General enactment means provisions would apply in varying circumstances on different occasions embracing a wide range of situations. On the other hand, special enactment is very limited in its operation and applicability would depend upon special objectives to be secured under the enactment. SARFAESI Act as well as SEBI Act are special laws for the simple reason that they have a specific object to be secured. Therefore, it cannot be said that SARFAESI Act is a general law and SEBI Act is a special law.

32. In the competing special enactments, if such enactment provides non-obstante clause, the latter enactment would prevail. The Apex Court in **Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation Of Maharashtra Ltd. and Another [(1993) 2 SCC 144]** considered inconsistency between two special



laws and held that the non obstante clause in subsequent enactment will prevail over the non obstante clause in the former enactment. In **Allahabad Bank v. Canara Bank and Another [(2000) 4 SCC 406]**, the Apex Court again held that if the Companies Act and RDB Act can be treated as special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it an overriding effect. The Apex Court in **Indra Kumar Patodia and Another v. Reliance Industries Limited and Others [(2012) 13 SCC 1]** also considered the point whether a non obstante clause would override the entire provisions of statutory provisions or the provisions of statutory provisions which remain competing to each other and held that non obstante clause will not exclude the whole Act, but refers to the provisions of the statute alone. The Apex Court again in **Vishal N. Kalsaria v. Bank Of India and Others [(2016) 3 SCC 762]** in the context of SARFAESI Act referred to non obstante clauses and taken the view that such non obstante clauses can be applied irrespective of the laws operating in the same field.

33. We have no hesitation in holding that Section 26E of SARFAESI Act brought in by way of an amendment in the year 2016 being a latter provision, that will prevail over Section 28-A(3) of SEBI Act, which was incorporated in the year 2014.

**CONCLUSION**

34. The secured assets in this case have been sold pending litigation and money recovered has been deposited in an escrow account. We hold that the appellant is entitled to the amount deposited as against the claim of SEBI. SEBI's claim admittedly arose only after the registration of secured assets.

35. Thus, we pass the following orders:

Appeal succeeds. The impugned judgment is set aside. We hold that the appellant has a priority claim in respect to the amount lying in the escrow account. The amount lying in the escrow account shall be released to the appellant within one month.

HIGH COURT OF KERALA
CERTIFIED COPY

Sd/-

A. MUHAMED MUSTAQUE
ACTING CHIEF JUSTICE

Sd/-

S. MANU
JUDGE

SV

