



W.P.No.10585 of 2018 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2025

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CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.Nos. 10585 and 24124 of 2018;
3090 and 10094 of 2020

W.P.No.10585 of 2018:

Union Bank of India
rep by the Chief Manager
Industrial Finance Branch

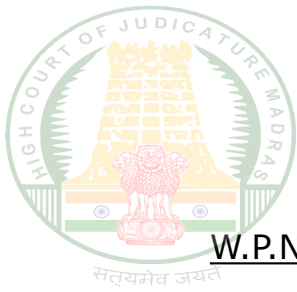
Union Bank Bhavan, 1st floor
139, Broadway
Chennai-600 108.

.. Petitioner

VS

1. The Assistant Commissioner
Employees' Provident Fund Organisation
Ministry of Labour and Employment
Regional Office, 37, Royapettah High Road
Chennai-600 014 and 5 others

.. Respondents



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W.P.No.24124 of 2018:

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Indian Bank
Rep. by its Chief Manager
cum Authorized Officer
Vellore Main Road Branch
46-51, TKM Complex Katpadi Road
Vellore-632 004.

.. Petitioner

Vs

1. The Assistant Provident Commissioner
and Recovery Officer,
Employees Provident Fund Organisation
S-1, TNHB Phase-II, Sathuvachari
Vellore-632 009 and 4 others

.. Respondents

W.P.No.3090 of 2020:

State Bank of India
Stressed Assets Recovery Branch
377/1, Dr.Nanjappa Road
Rep. by the Chief Manager
Coimbatore - 641 018.

.. Petitioner

Vs

1. The Regional PF Commissioner-II
and Recovery Officer
Employees Provident Fund Organisation
Ministry of Labour and Employment
Government of India
Regional Office, Bhavishya Nidhi Bhavan
Dr.Balasundaram Road, Coimbatore
and 8 others.

.. Respondents

W.P.No.10094 of 2020:



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State Bank of India
Stressed Assets Management Branch
No.1112, 1st Floor, Rajaj Plaza
Aviashi Road, Coimbatore-641 037
Rep. by its Chief Manager.

.. Petitioner

Vs

1. The Regional PF Commissioner-II
and Recovery Officer
Employee Provident Fund Organisation
Regional Office, Bhavishya Nidhi Bhawan
PB.P.3875 Dr.Balasundaram Road
Coimbatore and 5 others.

.. Respondents

For Petitioner in W.P.No.10585 of 2018: Mr.Srinath Sridevan
Senior Counsel
for Mr.Bhagavath Krishnan

For Petitioner in W.P.No.24124 of 2018: Mr.Jayesh B.Dolia
Senior Counsel
for M/s.Aiyar and Dolia

For Petitioner in W.P.No.3090 of 2020: Mr.R.Imayavaramban
for M/s.Ramalingam and
Associates

For Petitioner in W.P.No.10094 of 2020: Mr.M.L.Ganesh

For EPFO in all cases: Mr.P.S.Raman, Senior Counsel
for Mr.Vishnu Ramu
Standing Counsel

For R3 in W.P.No.10094 of 2020 Mr.C.Mohan,
and R3 & R4 in for M/s.King and Partridge
W.P.No.3090 of 2020:

For R4 to R6 in Mr.V.Chandrasekaran



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W.P.No.10094 of 2020; SCGSC
R7 to R9 in

W.P.No.3090 of 2020;
R3 to R5 in

W.P.No.24124 of 2018;
and R4 to R6 in

W.P.No.10585 of 2018:

For R2 in Mr.S.Gopalakrishnan,
W.P.No.10585 of 2018: Official Liquidator

COMMON ORDER

(Order of the court was made by the Hon'ble Chief Justice)

These writ petitions have been placed before us on a reference made by a learned Single Judge, vide order dated 27.1.2021, to decide the following questions of law:

- (i) Whether the words 'all other debts' in Section 31-B of the Recovery of Debts and Bankruptcy Act, 1993 [RDB Act] and Section 26-E of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act] would not encompass provident fund dues recoverable under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [EPF Act]?



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(ii) Whether the overriding effect on other laws in

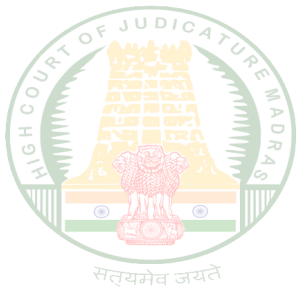
Section 11(2) of the EPF Act continues to operate against the secured assets of secured creditors despite Section 31-B of the RDB Act and Section 26-E of the SARFAESI Act?

(iii) Whether Section 31-B of the RDB Act and Section

26-E of the SARFAESI Act, which have come into force with effect from 01.09.2016, would prevail over Section 11(2) of the EPF Act?

(iv) In the event of arriving at the conclusion that

special enactments, which relate to different fields of legislation, cannot be held to be repugnant to each other, whether the rule of harmonious construction of statutes could be invoked to attune the rigour of the non-obstante clauses in Section 31-B of the RDB Act read with Section 26-E of the SARFAESI Act, and Section 11(2) of the EPF Act so as to entitle the secured creditors under the SARFAESI Act as well as the authorities under the EPF Act to simultaneously exercise first charge over



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the secured assets of the defaulter establishment for their respective dues akin to *pari passu* arrangement?

(v) If so, when either the authorities under the EPF Act or the secured creditors under the SARFAESI Act bring the secured assets of a defaulter establishment for sale, what would be the manner in which the ratio of apportionment of the sale proceeds has to be determined between them towards recovery of their respective dues?

2.1. A thumbnail sketch of the facts that led to the reference, as has been narrated by the learned Single Judge, is as under:

2.2. The petitioners in all these cases are banks, who are secured creditors under the provisions of the SARFAESI Act. The secured assets belonging to the borrowers of the petitioners, in respect of which security interest is claimed, have been attached by the authorities under the EPF Act under Section 8-F of the EPF Act claiming first charge in terms of Section 11(2) of the EPF Act for



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recovery of provident fund dues and, in support of their stand, reliance is placed by the authorities under the EPF Act on the decisions of the Supreme Court in (i) *Maharashtra State Co-operative Bank Ltd v. Assistant Provident Fund Commissioner*¹; and (ii) *Employees Provident Fund Commissioner v. Official Liquidator of ESSKAY Pharmaceuticals Ltd*².

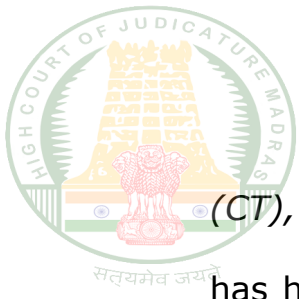
2.3. The plea of the petitioners is that the amendments made by way of introduction of Section 31-B of the RDB Act and Section 26-E of the SARFAESI Act have changed the legal position and in support of the plea that when there is conflict of non-obstante clauses in two special enactments, it is the later enactment which must prevail, reliance is placed on the decision in the case of *Solidaire India Ltd v. Fairgrowth Financial Services Ltd*³.

2.4. It is also asserted by the petitioners that, after taking cognizance of the statutory amendments with effect from 01.09.2016, a Full Bench of this Court in *Assistant Commissioner*

¹ (2009) 10 SCC 123

² (2011) 10 SCC 727

³ (2001) 3 SCC 71



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(CT), *Anna Salai-III Assessment Circle v. Indian Overseas Bank*⁴,

has held that a secured creditor would have priority of charge over the secured assets with regard to taxes and other dues and that it would govern the rights of the parties in respect of even a *lis* pending. However, it is stated that an appeal against that order has been preferred before the Supreme Court in SLP (Civil) Diary No. 20471 of 2017 and, by an interim order dated 16.03.2018, status quo was directed to be maintained by the parties.

2.5. The learned Single Judge, in the order of reference, also referred to an order passed by another learned Single Judge in *UCO Bank v. Recovery Officer, Employees Provident Fund Organisation*⁵, which rejected identical contention raised by the secured creditor. However, it was submitted on behalf of the petitioners herein that such view is not in consonance with the binding decisions passed by this Court, as relied upon by learned counsel for the petitioners.

2.6. The case of the authorities under the EPF Act, as recorded by the learned Single Judge in the order of reference, is

⁴ (2016) 6 CTC 769

⁵ Order dated 27.11.2019 in W.P.No.21976 of 2019



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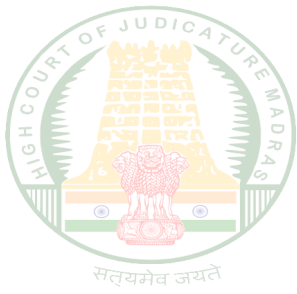
that the words "all other debts" mentioned in Section 31-B of the RDB Act and Section 26-E of the SARFAESI Act do not include provident fund dues under the EPF Act.

2.7. In such backdrop, the order of reference has been passed by the learned Single Judge.

3. The Hon'ble Supreme Court in *Jalgaon District Central Coop. Bank Ltd v State of Maharashtra and others*⁶, after analyzing the various provisions of the law, as referred to in the instant cases, held thus:

"27. Undisputedly, SARFAESI Act is the latter act and if the question was solely of the non-obstante clause giving it overriding effect from any law for the time being in force, the SARFAESI Act would prevail. However, in the EPF&MP Act, Section 11(2) creates a statutory first charge on the assets of the establishment for any amount due from an employer, be it the employers' or employees' contribution, which would include any interest or damages also as has been held in Maharashtra State Co-operative Bank Limited v. Assistant Provident Fund Commissioner, (2009) 10 SCC 123. In that circumstance,

⁶ 2025 INSC 1335



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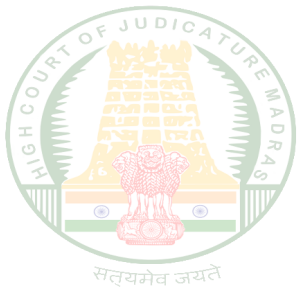


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the effect of the non obstante clause giving precedence over any other law for the time being in force pales into insignificance, as held in Central Bank of India v State of Kerala, (2009) 4 SCC 94. There being a clear first charge created under the EPF&MP Act, it overrides the priority under Section 35 and Section 13 as also that conferred under Section 26-E since a priority cannot be equated with a first charge and cannot be given prevalence over the first charge statutorily created.

28. On the above reasoning, we find that the workmen's dues which also has not been quantified as of now cannot have any priority over the claim raised by the secured creditor, the Bank, which is conferred a priority under Section 26-E of the SARFAESI Act. However, from the proceeds of the sale of the assets, the first charge would be for the dues under the EPF&MP Act which includes not only the contribution payable but also the interest, penalty and damages if any imposed. **Hence, the sale proceeds have to be first applied in satisfaction of the dues under the EPF&MP Act and then in satisfaction of the secured debt of the appellant-bank.**

29. On the above reasoning, we cannot but partly set aside the impugned judgment and the directions therein. **The appellant-bank would be entitled to proceed with the auction, if not already proceeded with and from the proceeds received in auction, first the**



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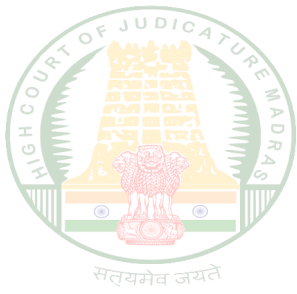
dues under the EPF&MP Act will have to be satisfied and then the debts due to the appellant Bank. We would only leave liberty to the workmen to approach the appropriate authority under the MRTU & PULP Act by an application to determine the dues, which shall be considered *de hors* the order rejecting the same on the ground of delay and *de hors* the delay caused as such. Such determination would be necessitated if there is any amount remaining after satisfaction of the provident fund dues and that of the secured creditor.”

[emphasis supplied]

4. As the issues arising for consideration in these batch of petitions stand answered by the decision of the Supreme Court in the case of *Jalgaon District Central Coop. Bank Ltd v State of Maharashtra and others* (supra), without further discussion, the questions of law are answered *in seriatim* as below:

(a) *In re Question (i)*: The words 'all other debts' in Section 31-B of the RDB Act and Section 26-E of the SARFAESI Act would not encompass provident fund dues recoverable under the EPF Act.

(b) *In re Question (ii)*: The overriding effect on



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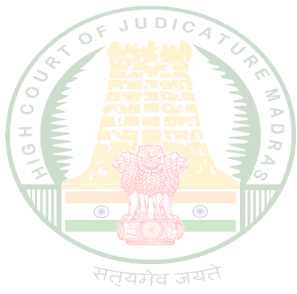


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other laws in Section 11(2) of the EPF Act continues to operate against the secured assets of secured creditors despite Section 31-B of the RDB Act and Section 26-E of the SARFAESI Act.

(c) In re Question (iii): Section 31-B of the RDB Act and Section 26-E of the SARFAESI Act, would not prevail over Section 11(2) of the EPF Act.

In view of the authoritative pronouncement of the Supreme Court in the case of *Jalgaon District Central Coop. Bank Ltd v State of Maharashtra and others* (supra), as Section 11(2) of the EPF Act creates a statutory first charge on the assets of the establishment for any amount due from an employer, be it the employers' or employees' contribution, which would include any interest or damages also, it overrides the priority conferred under Section



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26-E of the SARFAESI Act and Section 31-B of
the RDB Act.

(d)In re Questions (iv) and (v): In view of our
answer to Questions (i), (ii) and (iii), neither
secured creditors under the SARFAESI Act nor
under the RDB Act are entitled to any
apportionment.

As held in *Jalgaon District Central Coop. Bank
Ltd v State of Maharashtra and others* (supra),
the sale proceeds have to be first applied
towards satisfaction of the dues under the EPF
Act and the remaining amount may then be
applied towards satisfaction of the secured debt
of the secured creditors or dues under the RDB
Act.

5. The Registry is directed to list these cases before the



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appropriate Bench as per roster for decision.

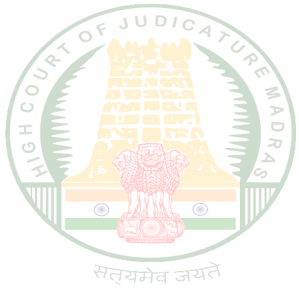
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(MANINDRA MOHAN SHRIVASTAVA, CJ)

(G.ARUL MURUGAN,J)

26.11.2025

Index : Yes
Neutral Citation : Yes
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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

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