

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 13424 of 2000

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

Sd/-

and

HONOURABLE MR.JUSTICE G.R.UDHWANI

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

KALUPUR COMMERCIAL CO.OP. BANK LTD.....Petitioner(s)

Versus

UNION OF INDIA & 2....Respondent(s)

Appearance:

MR B S SOPARKAR, ADVOCATE for the Petitioner(s) No. 1

MR SN SOPARKAR, ADVOCATE for the Petitioner(s) No. 1

MR NITIN K MEHTA, ADVOCATE for the Respondent(s) No. 1 - 2

MR SUNIT S SHAH, ADVOCATE for the Respondent(s) No. 3

RULE SERVED BY DS for the Respondent(s) No. 3.1

CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**

and

HONOURABLE MR.JUSTICE G.R.UDHWANI

Date : 21/07/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of this petition, the petitioner has challenged letter/order dated 14/18-12-2000 together with notice of the same date, which is at annexure-A to the petition, and has prayed to prohibit the respondent or any other persons with whom the petitioner's monies might be lying either under fixed deposit receipts or call money or otherwise, to make payment to the Income Tax Department in respect of the dues of Shri Om Prakash Agrawal and the members of his group.

2. The petitioner is a cooperative bank registered under the Cooperative Societies Act, 1961. One Adarsh Cooperative Bank Ltd. was incorporated under the provisions of the Gujarat Cooperative Societies Act, 1961, on 5.8.1974. The name of said bank was changed to Vikram Cooperative Bank Ltd. Management of the said bank was in the hands of one Shri Om Prakash Agrawal in the year 1980-81. The Income-Tax Department conducted series of search operations on the said bank during the period from 8th to 10th November 1981 in connection with certain transactions of Shri Om Prakash Agrawal. Serious irregularities were found during the investigation and some prohibitions were imposed. The Board of Director of the said bank has superseded by the District Registrar of Cooperative Societies, Ahmedabad, and an Administrator was appointed for running the affairs of the bank. Initially, a representative of the Cooperative Department was appointed as Administrator, however, later on the petitioner joined as a Co-administrator of the bank on 8.10.1993.

2.1 The petitioner found that it was possible to revive the said Bank. Therefore, a scheme of amalgamation was proposed, after detailed discussion. Ultimately, an amalgamation scheme was framed under the provisions of the Gujarat Cooperative Societies Act and the said bank was amalgamated with the petitioner bank from 30.9.1991. It appears that at the time when raid was carried out, the Income Tax Department seized large number of documents including fixed deposit receipts which Shri Om Prakash Agrawal or the member of his group had pledged with the aforesaid bank against loan/advances given to them. From time to time, the Income Tax Department issued prohibitory orders restraining aforesaid bank from permitting encashment of a large number of fixed deposit receipts. However, a letter dated 16.4.1986 was addressed by said Vikram Cooperative Bank to the Income Tax Department asking to clarify the issue since there was no communication from quite some time. On 8.7.1986, Vikram Cooperative Bank received a letter from the Income Tax Department, wherein no issue was raised against adjustment of the amount in respect of the fixed deposit receipts against the outstanding amount due by Shri Om Prakash Agrawal and the members of the group.

2.2 On 30.7.88 a reminder was addressed by Vikram Cooperative Bank to the Income-tax Department. However, said Vikram Cooperative Bank was informed by the Income-tax Department that the case of Shri Agarawal is pending before the Settlement Commission and, therefore, a letter dated 13-12-1988 was addressed by Vikram Cooperative Bank to the Secretary, Settlement Commission, for return of the fixed

deposit receipts so that necessary adjustment entries can be passed in the books of accounts of Vikram Cooperative Bank as overdue amount payable by said Shri Agarwal and the members of his group amounted to more than Rs. 2.31 crores. On 27-6-89, a reminder was issued to the Settlement Commission requesting it to return the fixed deposit receipts of Shri Agarwal amounting to Rs.72.95 lacs so as to enable Vikram Cooperative Bank to adjust the same against the dues of the Group of Shri Agarwal. On 19-9-89 Vikram Cooperative Bank received a letter from the Settlement Commission informing Vikram Cooperative Bank that assessments in question have not yet been finalized and that the matter is under consideration. On 12-8-91 the Assisting Commissioner of Income Tax (Investigation Circle 501). Ahmedabad (hereinafter/ referred to as 'the Assessing Officer') addressed a letter to Vikram Cooperative Bank informing it that a sum of Rs.36.31.815/- is outstanding against Shri Agarwal as regards the tax dues and that Shri Agarwal is entitled to receive Rs.2 lacs being the amount of fixed deposit receipts pledged on 12-7-80 and that Vikram Cooperative Bank should pay the said amount of fixed deposit receipts under section 226(3) of the Income-taxes Act, 1961 ('the Act' for short). Together with the Said letter notice u/s. 226(3) of the Act was sent informing Vikram Cooperative Bank that a sum of Rs.36.31,185/- is due by said Shri Agarwal to the Income-tax Department On 14-8-91, another letter was written by the Assessing Officer informing Vikram Cooperative Bank that the Income-tax Department was in possession of the fixed deposit receipt and if the same is required the Assessing Officer was prepared to hand it over to Vikram Cooperative Bank and he enclosed the photo copy of the front page of the fixed deposit receipt. On

28-8-91 this letter was replied to by Vikram Cooperative Bank to the Assessing Officer pointing out that Vikram Cooperative Bank has obtained decree against said Shri Agarwal and his group aggregating Rs.221.90 lacs. Vikram Cooperative Bank, therefore, requested the Income tax Department to lift the prohibitory order so that appropriation of the deposit amount can be made against the amount due to Vikram Cooperative Bank. On 5-9-91 the Assessing Officer addressed a letter asking for certain details which were supplied to by the petitioner bank vide letter dated 19-10-91. On 16-12-91 the Assessing Officer addressed another letter which was replied to by the petitioner on 11-1-92. The matter rested there for quite some time.

2.3 On 2-2-93 the Assessing Officer addressed a letter to the petitioner calling upon it to pay the amount under six fixed deposit receipts totaling in the sum of Rs.8 lacs and enclosing thereto some of the fixed deposit receipts as also letters of authority addressed by said persons authorizing Vikram Cooperative Bank to pay over the amount under the fixed deposit 'receipts to the Income-tax Department It may be noted that some of the fixed deposit receipts were initially payable to Vikram Cooperative Bank as they had been pledged to Vikram Cooperative Bank. Apparently, these were fixed deposit receipts which were seized by the Income-tax Department at the time of raid proceedings in the year 1982. After making unauthorized and illegal corrections on the back side of the fixed deposit receipts the same were presented by the Assessing Officer before the petitioner for the purpose of encashment of the fixed deposit receipts. This letter was

replied to by the petitioner vide letter dated 23-6-95.

2.4 In the meantime, the petitioner thought it appropriate to take legal advice on the question as to whether there is any prohibition in law restraining the petitioner from exercising its statutory rights of set off of the amount of the fixed deposit receipts against the dues recoverable by it from the said Shri Agarwal and the members of his Group. The petitioner. Therefore, obtained opinion of its counsel on 12-8-93, whereby the counsel opined that the petitioner was and is entitled to appropriate the amount of fixed deposit receipts against the outstanding dues of Shri Agarwal and the member of his Group. Based on that opinion the board of directors of the petitioner bank passed a resolution to adjust a sum of Rs.93,14,649.18 then payable to said Shri Agarwal and the members of his Group under the fixed deposit receipts pledged by them against the amount recoverable by the petitioner in respect of the finance and facilities given to said Shri Agarwal and the members of his Group.

2.5 On 26-10-93 the Assessing Officer sent his Inspector to look into the records of the petitioner bank to determine the amount payable to said Shri Agrawal by the petitioner. On 29-10-93 the petitioner addressed a letter, wherein complete details were given about the fact that no amount is payable by the petitioner to said Shri Agrawal and adjustments have already been made as prescribed under the laws. Thereupon, on 29-10-93, the Assessing Officer has issued a notice calling

upon the petitioner to produce all the relevant correspondence, files regarding fixed deposit receipts by said Shri Agrawal and the members of his Group relevant register wherein such transactions are recorded, etc. This letter was replied to by the petitioner on 1-11-93. Another letter dated 5-1-94 was also addressed by the petitioner to the Income-tax Department clarifying the situation. The Assessing Officer gave reply dated 18-1-94 disputing the petitioner's right to adjust the amount against its dues recoverable from said Shri Agrawal and the members of his Group and referred to the orders of the Board of Nominee, the Cooperative Tribunal as also of this Hon'ble Court. On 21.1.1994 respondent no.2 issued a notice under Rule 83 of the 2nd Schedule to the Act was also attached to the said notice. This was replied to by the petitioner vide letter dated 1-2-94 addressed to the Assessing Officer and by letter dated 3-2-94 addressed to respondent no.2. Thereupon on 28-2-94, the Tax Recovery Officer addressed a letter calling upon the petitioner to pay Rs.93,14,650/- with interest. It may be interesting to note that said Rs.93,14,650/- figures for the first time in the correspondence with the Income-tax Department because of the fact that the department came to know from the petitioner that in all adjustments of that amount has taken place. Prior to this at no point of time the Income-tax Department had called upon the petitioner to pay Rs.1,22,86,006. This letter was replied to by the petitioner on 9-3-94 and requested the respondent no.2 to cancel the said certificate. The petitioner also asked for personal hearing in the matter. As the said letter was not received by the person concerned, the same was sent by registered post.

2.6 The petitioner did not hear anything from them. However, on 9-3-94 the Tax Recovery Officer addressed a letter to the Ahmedabad District Cooperative Bank as also the Gujarat state Cooperative Bank Ltd. with whom the petitioner has placed huge amount as deposits, fixed deposits, current account, etc. attaching the said balances and also calling upon them to make the payment of the entire balance or to the extent of the dues to the T.R.O. The said letter further indicated that if the said amount is not remitted to the T.R.O. action will be taken against them in accordance with the provisions of the 2nd Schedule to the Act, Civil Procedure Code and Criminal Procedure Code. Thereupon, the petitioner filed a writ petition being SCA 2642/92 before this Hon'ble Court challenging inter alia the letter/order dated 28-2-92 and further for prohibiting the respondents from calling upon the petitioner and/or any other persons with whom the petitioner/s moneys might be lying to make payment to the Income-tax Department in respect of the dues of Shri Om Prakash Agarwal and the members of his Group. The said petition was placed for admission before this Hon'ble Court (Coram: M.B.Shah I H.L.Gokhale. JJ.) and the Hon'ble Court was pleased to issue notice to respondent no.2 and granted ad interim relief in terms of para 7(B) of the petition which reads as under:

"7(B) Pending the hearing and final disposal of this petition to restrain the respondents from calling upon the petitioner and/or any other person with whom the petitioner has placed money either in fixed deposit receipts or call money or otherwise to pay to the Income

Tax Department amount of Rs.93,14,650 with interest in respect of the dues of Shri Om Prakash Agarwal or the members of his Group."

2.7 Thereupon the petition came up for further hearing before this Hon'ble Court (Coram: M.B.Shah & H.L.Gokhale, JJ.) and at the time of said hearing the learned counsel for the respondents made a statement that prohibitory orders as also other impugned orders are being withdrawn. In view of the same, the petition did not survive and was withdrawn. On 12-4-94, respondent no.2 issued a notice purporting to be u/s. 226(3) of the Act calling upon the petitioner to pay Rs.1,22,86,006/- with interest allegedly on the ground that the said amount is due by the petitioner to said Shri Om Prakash Agarwal. The petitioner is not liable to pay even a single rupee to said Shri Om Prakash Agarwal nor does the petitioner owe any amount to the said Om Prakash Agarwal. On the contrary, the petitioner has to receive huge amount from Shri Om Prakash for which appropriate proceedings are initiated in appropriate court. In view of this, the petitioner filed an affidavit, as contemplated u/s. 266(1)(vi) of the Act objecting to the said notice on the ground that it is not due to the said Om Prakash and that it does not hold any money in the account of said Om Prakash and, therefore, it is not liable to pay any amount to the respondents.

2.8 However, on 5-5-94, respondent no.2 issued a letter disputing the petitioner's right to make adjustments and called upon the petitioner to make the payment. On 10-5-94, the petitioner addressed a letter requesting for adjournment of

proceedings by four weeks. However, on 17-5-94, respondent no.2 issued a letter together with notice of demand under rule 2 of the Second Schedule to the Act calling upon the petitioner to pay Rs.1,22,85,806/- within a period of 15 days from the date of the receipt of the notice. The petitioner objected to the said notice vide letter dated 18-5-94. In view of this, the petitioner had no option but to file a writ petition before this Hon'ble Court being SCA No.7490/94. The petition was admitted and interim order was granted. Ultimately, the petition came up for hearing before this Hon'ble Court (Coram: B.C.Patel and M.C.Patel, JJ.) who vide its order dated 13-7-99 quashed the said order with a direction to decide the matter afresh.

2.9 On 11-9-2000, respondent no.2 issued notice. The same was replied to by the petitioner vide letter dated 21-9-2000 wherein complete details were filed. In particular, it was pointed out that the respondent has no right to call upon the petitioner to make any payment of tax liability of Om Prakash Agarwal. It was also pointed out that there was no valid attachment order from the Income-tax Department and the respondent was called upon to furnish a copy of the order, if any, in this behalf. This letter was replied to by respondent no.2 vide his letter dated 31-10-2000 reiterating the earlier contention. According to him, the Department was holding FDRs and, therefore, there was no need for a separate attachment order. This letter was replied to by the petitioner on 3-11-2000 pointing out that according to the decision of this Honourable Court in the case of Bhagwandas Narayandas 19 ITR 194, that FDRs could not be attached. In any case, the

petitioner called upon the respondent to give particulars and copies of attachment orders and/or extension orders, if any. The petitioner also requested to fix the hearing only after supplying the said information.

3. Mr.Soparkar, learned counsel for the petitioner submitted that in view of the provisions of the Gujarat Cooperative Societies Act and the Contract Act, the respondents have committed an error while issuing the impugned notice. He submitted that after the order dated 13.7.1999 passed by this Court, notice was issued by the respondent and the petitioner gave reply pointing out the factual data and particularly stating that there was no attachment order. After letter dated 3.11.2000, respondent no.2 has not issued notice to the petitioner and straightaway impugned order is passed. Therefore, it is submitted that the impugned order is passed without following the principles of natural justice. He submitted that life of order of attachment passed under Section 132 (8A) of the Act was 60 days at the relevant point of time and was further enforceable subject to the satisfaction of the authorities contemplated therein. However, no such extension is served upon the Vikram Cooperative Bank. He further submitted that the attachment order also cannot be passed after a period of two years from the expiry of initial period of six months. He further submitted that even if there is attachment order, it would not prohibit the person from recovering the dues by setting it off against the amount recoverable by him. Therefore, the action of the respondents in seeking to recover the amount with interest from the petitioner is patently bad and illegal. He further submitted that so far as the amount sought to be recovered from the petitioner is concerned, the same pertains to the amount deposited by Shri Om Prakash

Agrawal and the members of his group. Under the provisions of the Contract Act as also under the provisions of the Gujarat Cooperative Societies Act, the petitioner is entitled to set off of the said amount payable by it against the amount recoverable by it. The said statutory right is not abrogated under the provisions of the Act. He submitted that the action of the respondents in declaring the petitioner bank as defaulter and calling upon it and thereafter the petitioner's debtor to pay the amount of Rs.1,22,86,006 with interest is bad, illegal and contrary to law. Said demand is raised against the petitioner on the ground that the Income Tax Department has to recover the said sum from Shri Om Prakash Agarwal and the members of his group, however, the petitioner has no concern with the said dispute. Under the provisions of the Gujarat Cooperative Societies Act and the Contract Act, the petitioner is entitled to set off of the said amount payable by it against the amount recoverable by it. Therefore, the action of the respondent seems to be proposing that it has an overriding right to recover the amount from any person notwithstanding the statutory rights that may be available to it/him.

3.1 He further submitted that action of the respondents in declaring the petitioner bank as a defaulter is patently bad and illegal. When initially demand was raised, at that time the amount recoverable by the fixed deposit receipts under attachment also was in the sum of Rs.36,35,285. Thereafter, six deposit receipts were given in the sum of Rs.8 lakhs of which deposit worth Rs.5 lakhs was pledged with the petitioner bank and therefore the bank was entitled to refuse the said payment. The fact that pledged deposit receipts came into possession of the Income Tax Department itself shows that

they were illegally taken away by the Department at the time when the raid operations took place, but an illegal possession of deposit receipts cannot give any right in the deposit receipts and no claim can be made on that basis. So far as the other two deposits were concerned. deposit holders had given letters to the bank authorizing the bank to set off that amount against the dues of the associated concerns. Therefore also the bank was not bound to make any such payment. Thereafter also the bank has pointed out from time to time that all the deposits in the name of or belonging to or in connection with the said Shri Agarwal and the members of his group were subject to pledge to the bank or were given to the bank with letters of authority to set off against dues. Under the circumstances. the petitioner was not bound to make any payment. The petitioner submits that some copies of the fixed deposit receipts have been submitted to the bank by the respondents to suggest that monies are payable under the said fixed deposit receipts to the Department The corrections on the reverse of the fixed deposit receipts show that deposits though initially payable to the bank, have now been made payable to the Department The petitioner submits that the concerned officer of the Department is, therefore, liable for committing-criminal offence in tampering with the document which was pledged with the bank.

3.2 Mr.Soparkar further submitted that admittedly not a single rupee is payable by the petitioner bank to the Income Tax Department in respect of its own tax dues. The proceedings are being taken against the petitioner in respect of the tax dues of said Shri Agarwal and the members of his

group. The proceedings are being taken against the petitioner bank u/s. 226(3) of the Act. Once the petitioner had disposed its liability to pay and once the petitioner had pointed out that it does not hold any money for or on account of said Shri Agarwal and the members of his group then, u./s. 226(3)(vi) of the Act itself nothing requires the petitioner bank to pay any sum or part thereof. In view of this the proceedings should have been terminated. Instead, the respondents have proceeded further in the matter. Mr.Soparkar, therefore, prays to allow present petition.

4. On the other hand, Mr.Mehta, learned advocate appearing for the respondent submitted that by virtue of provisions of Section 226 (3) (x) of the Income Tax Act, the petitioner has been treated to be deemed assessee in default for the amount due from Shri Om Prakash Agrawal. He further submitted that none of the FDRs seized from the premises of the assessee were found to be pledged or hypothecated. He further submitted that immediately after the search action on 9.11.1982, an order under Section 132 (3) was issued and served upon the Vikram Cooperative Bank restraining to remove or deal with the FDRs and other term deposits of the bank and this order has never been rescinded. He further submitted that action of the petitioner appropriating the amount of the FDRs against the so-called outstanding dues of the assessee is illegal and in violation of the provisions of Section 132 (3) of the Act. He further submitted that notice under Section 226 (3) of the Act was also issued to the petitioner on 12.8.1991. He further submitted that notice issued on 28.2.1994 was in respect of entire demand including demand raised by the Settlement Commissioner and interest

thereon. He further submitted that as per the Section 226 (3) of the Act, no opportunity is required to be given to the person to whom notice is issued inspite of that all the objection raised by the petitioner were considered in the order dated 18.12.2000. He further submitted that Shri Om Prakash Agrawal was the debtor of the bank, however, the issue is whether the bank had first lien over the FDRs or not. Since there was no lien mark on the FDRs, it cannot be said that the bank had first lien over it. He further submitted that so far as prohibitory orders are concerned, the attachment under Section 226 (3) does not need support of any prohibitory order. He, therefore, submitted that the petitioner could not have adjusted FDR amounts against the debt of Shri Om Prakash Agrawal. He further submitted that Shri Om Prakash Agrawal himself had filed an affidavit before the Settlement Commission, Bombay dated 26.2.1990, wherein he has stated that the FDRs are owned by him. He further submitted that the petitioner has been treated as deemed to be an assessee in default under the provisions of Section 226 (3) (x) of the Income Tax Act. He, therefore, prayed that present petition may be dismissed.

5. We have heard Mr.Soparkar, learned counsel for the petitioner and Mr.Mehta, learned advocate for the respondent. We have also gone through the provisions of law. Section 226 of the Income Tax Act reads as under:-

“226. [(1) Where no certificate has been drawn up under [section 222](#), the Assessing Officer may recover the tax by any one or more of the modes provided in this section.
(1A) Where a certificate has been drawn up under [section 222](#), the Tax Recovery Officer may, without prejudice to

the modes of recovery specified in that section, recover the tax by any one or more of the modes provided in this section.]

(2) If any assessee is in receipt of any income chargeable under the head "Salaries", the [Assessing] Officer [or Tax Recovery Officer] may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs :

Provided *that any part of the salary exempt from attachment in execution of a decree of a civil court under [section 60](#) of the Code of Civil Procedure, 1908 (5 of 1908), shall be exempt from any requisition made under this sub-section.*

(3) (i) The [Assessing] Officer [or Tax Recovery Officer] may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the [Assessing] Officer [or Tax Recovery Officer] either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the assessee at his last address known to the ¹⁵[Assessing] Officer ¹⁶[or Tax Recovery Officer], and in the case of a joint account to all the joint holders at their last addresses known to the ¹⁵[Assessing] Officer ¹⁶[or Tax Recovery Officer].

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section

shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the [Assessing] Officer [or Tax Recovery Officer] to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(vii) The [Assessing] Officer [or Tax Recovery Officer] may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The [Assessing] Officer [or Tax Recovery Officer] shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(ix) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the [Assessing] Officer [or Tax Recovery Officer] to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section

is sent fails to make payment in pursuance thereof to the [Assessing] Officer [or Tax Recovery Officer], he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realization of the amount as if it were an arrear of tax due from him, in the manner provided in [sections 222](#) to [225](#) and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under [section 222](#).

(4) The [Assessing] Officer [or Tax Recovery Officer] may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

[(5) The [Assessing] Officer [or Tax Recovery Officer] may, if so authorized by the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] by general or special order, recover any arrears of tax due from an assessee by distraint and sale of his movable property in the manner laid down in the Third Schedule.]”

6. We may also consider the decision of the Apex Court in the case of **Syndicate Bank v. Vijay Kumar and Others** reported in **(1992) 2 SCC 330**, wherein it is observed as under:-

“15. Now the next question is whether the FDRs which are with the Bank and on which the Bank claims a general lien can be attached. So far as the attachment is concerned, the banker's lien cannot by itself be a bar for such attachment. In para 89 of Vol. 3 of Halsbury's Laws of England, 4th Edn. the law is stated as under:

"For the purpose of satisfying a High Court or county Court judgment for the payment of money, any sum standing to a person's credit in a deposit account in a bank is deemed to be a sum due or accruing due to that person, and to be attachable accordingly, notwithstanding that any condition, applying to the account requiring that, before

withdrawal, notice be given, or personal application be made, or a deposit book or a receipt for money deposited be produced, has not been satisfied."

From this it follows that if a deposit is payable at a future date or after the lapse of a specified time it is still liable to attachment. What is attached is the money in the deposit account. The banker as a garnished, when an attachment notice is served, has to appear before the Court and obtain suitable directions for safeguarding its interest. This also becomes clear from the perusal of O. 21, R. 46(a) of the Civil Procedure Code. The Court, in such a situation has to take into account the banker's lien over the securities or deposits regarding which garnishee notice is issued.

16. We have already held that the appellant-Bank has a general lien over those two FDRs. The High Court having held that the two FDRs can be attached gave a further direction dismissing the objection of the Bank that the Bank should deposit an amount of Rs. 35,000/-. As rightly contended by the learned counsel for the appellant-Bank, the Bank in the instant case has the liberty to adjust from the proceeds of the two FDRs towards the dues to the Bank and if there is any balance left that will only be the amount which would belong to the depositor namely the judgment-debtor in this case and only such amount, if any, can be attached in discharge of a decree. It is also submitted that the liability of the judgment-debtor to the appellant-Bank was far in excess of the amounts covered by the two FDRs and therefore nothing is due from the Bank to the judgment-debtor. This is a matter for verification. However, in the view taken by us above namely that the Bank has a general lien over the two FDRs we set aside the order of the High Court directing the appellant-Bank to deposit an amount of Rs. 35,000/-. The High Court shall, however, consider the objections raised by the Bank, namely that no amounts are due to the judgment-debtor, in the light of the above principles laid down by us and then decide whether there is any amount left for being attached by the decreeholder in execution of his decree. With the above directions the appeal is accordingly allowed. In the circumstances of the case, there will be no order as to costs."

7. Taking into consideration the above observations of the Supreme Court and provisions of Section 226 of the Act, in our view, the date on which the notice was issued, admittedly in view of the correspondence which has come on record, and complete documentary evidence clearly established that petitioner was creditor and FDR lien was with the petitioner bank. The Department has seized FDR receipt, which was not proper. Therefore, the bank was a creditor and notice under Section 226 of the Act and recovery pursuant thereto is misconceived and not proper. Therefore, order at Annexure-E against the petitioner is misconceived and ought not to have been issued under Section 226 (3). Assuming even if there are some FDRs in the name of Shri Om Prakash Agrawal, i.e. also encashed. Therefore, the order is required to be quashed and set aside. Accordingly, order dated 14/18-12-2000 together with notice of the same date, which is at annexure-A to the petition, is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

Sd/-

(K.S.JHAVERI, J.)

Sd/-

(G.R.UDHWANI, J.)

*malek