MAHARASHTRA STATE CO-OPERATIVE BANK LTD. A

v.

THE ASSISTANT PROVIDENT FUND COMMISSIONER AND ORS.

(Civil Appeal No. 6893 of 2009)

OCTOBER 8, 2009 B

[B.N. AGRAWAL, G.S. SINGHVI AND AFTAB ALAM, JJ.]

Employees' Provident Funds and Miscellaneous Provisions Act, 1952: C

S.11 – Provident funds dues payable by employer – Held: Would be first charge on assets of establishment – Such dues shall be paid in priority to all other debts – Priority clause enshrined in s.11 operate against statutory as well as non-statutory and secured as well as unsecured debts including a mortgage or pledge – On facts, held, sugar bags pledged by Sugar Mills in favour of appellant-bank as security for repayment of loan together with interest – Deeds of pledge executed did not have effect of transferring of ownership of sugar bags to bank – Sugar bags could be attached and sold for realization of provident fund dues of the workers – Constitution of India, 1950 – Articles 38, 43. D E

Legislative intent behind enactment of the 1952 Act – Explained. F

Purposive interpretation – The 1952 Act is social welfare legislation – Courts to give purposive interpretation to the provisions contained therein in view of Directive Principles of State Policy – Interpretation of statutes. G

Contract: Pawn or pledge – Necessary ingredients – Discussed.

The question which arose for consideration in these

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A appeals was whether the sugar bags pledged by Sugar Mills in favour of the appellant-bank as security for repayment of the loan together with interest could be attached and sold for realization of the dues of provident funds etc. payable by the employer i.e., the management
B of the Sugar Mills under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Dismissing the appeals, the Court

HELD: 1. The framers of Indian Constitution were
C alive to the plight of the working class and particularly the unorganized labour employed in factories and other establishments. They were also conscious of the fact that the goals of justice – social, economic and political and equality of status and of opportunity proposed to be
D incorporated in the preamble to the Constitution would remain illusory for weaker sections of society unless the State takes affirmative legislative and administrative measures for ameliorating the conditions of those sections including the workers employed in factories etc.
E Therefore, specific provisions were incorporated in Part IV of the Constitution with the title "Directive Principles of State Policy" casting an obligation upon the State to apply these principles in making laws. Article 38 which has been renumbered as clause (1) thereof by the
F Constitution (Forty-fourth Amendment) Act, 1978 declares that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of national
G life. Clause (2) of Article 38 mandates the State to strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or

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engaged in different avocations. Article 43 casts a duty on the State to make efforts to secure by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and, in particular, social opportunities. [Para 16] [19-E-H; 20-A-D]

Recovery Officer and Assistant Provident Fund Commissioner v. Kerala Financial Corporation **(2002) 3 LLJ 643 Kerala;** *A.P. State Financial Corporation v. Official Liquidator* **(2000) SCC 291;** *Central Bank of India v. State of Kerala* **(2009) 4 SCC 94, referred to.**

2.1. With a view to ensure that the employers religiously comply with the mandate of provisions enacted for benefit of the workers, the legislature has not only provided for imposition of penalty and damages but also made comprehensive provisions for recovery of the dues by way of attachment and sale of movable or immovable property of the establishment or the employer, as the case may be. Section 11 of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 gives statutory priority to the payment of contributions over other debts. Sub-section (1) of Section 11 relates to priority qua an employer who is adjudged insolvent or being a company an order of winding up is made. It lays down that the amount due from the employer in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under Section 14B, accumulations required to be transferred under Section 15(2) or any charges payable by him under any other provision of the Act or the Scheme or the Insurance Scheme shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the

A **case may be. Sub-section (2) of Section 11 contains a non obstante clause and lays down that if any amount is due from the employer whether in respect of the employees' contribution deducted from the wages of the employee or the employer's contribution, the same shall be deemed**
B **to be the first charge on the assets of the establishment and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts. [Para 18] [27-G-H; 28-A-H; 29-A]**

Organo Chemical Industries v. Union of India **(1979) 4**
C **SCC 573:** *Builders Supply Corporation v. Union of India* **1965(2) SCR 289;** *State Bank of Bikaner and Jaipur v. National Iron and Steel Rolling Corporation* **(1995) 2 SCC 19;** *Dena Bank v. Bhikhabhai Prabhudas Parekh & Co.* **(2000) 5 SCC 694;** *State of M.P. v. State Bank of Indore* **(2002) 10**
D **SCC 441, referred to.**

2.2. The priority given to the dues of provident fund etc. in Section 11 is not hedged with any limitation or condition. Rather, a bare reading of the section makes it
E **clear that the amount due is required to be paid in priority to all other debts. Any doubt on the width and scope of Section 11 qua other debts is removed by the use of expression 'all other debts' in both the sub-sections. This would mean that the priority clause enshrined in Section**
F **11 will operate against statutory as well as non-statutory and secured as well as unsecured debts including a mortgage or pledge. Sub-section (2) was designedly inserted in the Act for ensuring that the provident fund dues of the workers are not defeated by prior claims of**
G **secured or unsecured creditors. This is the reason why the legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable under the Act would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything**
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contained in any other law for the time being in force. [Para 20] [31-B]

UCO Bank v. Official Liquidator, High Court Bombay and another **(1994) 5 SCC 1;** *Textile Labour Association and another v. Official Liquidator and another* **(2004) 9 SCC 741;** *Recovery Officer and Assistant Provident Fund Commissioner v. Kerala Financial Corporation* **(2002) 2 KLT 723, referred to.**

3. Section 11 gives statutory priority to the amount due from the employer vis-à-vis all other debts. Clause (a) of sub-section (1) of Section 11 is applicable to cases where an employer is adjudicated insolvent or, being a company, an order of its winding up is made. Clause (b) is applicable to cases where the amount is due from the employer in relation to exempted establishment in respect of any contribution to the provident fund or any insurance fund in so far it relates to exempted employees under the rules of provident fund or any insurance fund, any contribution payable by him towards the Pension Fund under Section 17(6), damages recoverable under Section 14B or any charges payable by him to the appropriate Government under the Act or under any of the conditions specified in Section 17. This sub-section then lays down that such amount shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up. Sub-section (2) lays down that any amount due from the employer whether in respect of the employees' contribution deducted from the wages of the employee or the employer's contribution shall be deemed to be the first charge on the assets of the establishment, and shall be paid in priority to all other debts. The expression "any amount due from an employer" appearing in sub-section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein

A including sub-section (1) of Section 11 and Sections 7A, 7Q, 14B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in B making contribution to the Fund. If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7Q. Likewise, default on the employer's part to pay any C contribution to the Fund can visit him with the consequence of levy of damages. Sub-section (2) was inserted in Section 11 by Amendment Act No.40 of 1973 with a view to ensure that payment of provident fund dues of the workers are not defeated by the prior claims of the secured and/or of the unsecured creditors. While D enacting sub-section (2), the legislature was conscious of the fact that in terms of existing Section 11 priority has been given to the amount due from an employer in relation to an establishment to which any scheme or fund is applicable including damages recoverable under E Section 14B and accumulations required to be transferred under Section 15(2). The legislature was also aware that in case of delay the employer is statutorily responsible to pay interest in terms of Section 17. Therefore, there is no plausible reason to give a F restricted meaning to the expression 'any amount due from the employer' and confine it to the amount determined under Section 7A or the contribution payable under Section 8. If interest payable by the employer under Section 7Q and damages leviable under Section 14 are G excluded from the ambit of expression "any amount due from an employer", every employer would conveniently refrain from paying contribution to the Fund and other dues and resist the efforts of the concerned authorities to recover the dues as arrears of land revenue by H contending that the movable or immovable property of

the establishment is subject to other debts. Any such interpretation would frustrate the object of introducing the deeming provision and non obstante clause in Section 11(2). [Para 47] [55-A-H; 56-A-H]

4. A careful reading of the deeds of pledge executed by the management of Sugar Mills show that even though the sugar bags which were available with the Sugar Mills at the relevant time were placed in the custody of the appellant-bank as security for repayment of loan together with interest, the former continued to be owner thereof. If the management of the Sugar Mills were to repay the dues of the appellant-bank within the time specified in the deeds of pledge, the latter was duty bound to lift its notional control over the sugar bags lying in the godowns of the Sugar Mills. In case of default, the appellant-bank could recover its dues by selling the sugar bags. The very fact that except giving the symbolic custody of the sugar bags to the appellant-bank by allowing it to put lock and key on the godowns, all steps for preserving the goods and getting the same insured were taken by the management of the Sugar Mills which also agreed to take the responsibility of any shortage, damage or shrinkage unmistakably shows that the Sugar Mills continued to be owner of the sugar bags. [Para 31] [42-H; 43-A-C; F-H]

5.1. The two ingredients of a pawn or a pledge are: (1) that it is essential to the contract of pawn that the property pledged should be actually or constructively delivered to the pawnee and (2) a pawnee has only a special property in the pledge but the general property therein remains in the pawner and wholly reverts to him on discharge of the debt. A pawn therefore is a security, where, by contract a deposit of goods is made as security for a debt. The right to property vests *in the pledgee only* so far as is necessary to secure the debt. In this sense a

pawn or pledge is an intermediate between a simple lien and a mortgage which wholly passes the property in the thing conveyed. [Para 33] [44-G-H; 45-A-B]

Lallan Prasad v. Rahmat Ali **(1967) 2 SCR 233, referred to.**

5.2. The deeds of pledge executed by the management of the Sugar Mills as security for repayment of loan etc. did not have the effect of transferring of the ownership of the sugar bags to the appellant-bank and the Recovery Officer did not commit any illegality by attaching the same and the High Court was fully justified in directing payment of a portion of the sale price to the Assistant Commissioner for being appropriated towards the provident fund dues of the workers. [Para 36] [49-D-E]

Karnataka Pawnbrokers' Association v. State of Karanataka **(1998) 7 SCC 707;** *Central Bank of India v. Siriguppa Sugars & Chemicals Ltd.* **(2007) 8 SCC 353;** *Bank of Bihar v. State of Bihar* **(1972) 3 SCC 196;** *Transcore v. Union of India* **(2008) 1 SCC 125, distinguished.**

Velchand Chhaganlal v. Mussan **14 Bom.L.R. 633, referred to.**

Black's Law Dictionary (Eighth edition); Mulla's Treatise on the Transfer of Property; Law Lexicon by P. Ramanatha Aiyar (Second edition); Law of Personal Property: Ray Andrews Brown Second edition 1936; Salmond's Jurisprudence, **referred to.**

Case Law Reference:

(2002) 3 LLJ 643	**referred to**	**Para 13**
(2000) SCC 291	**referred to**	**Para 13**
(1998) 7 SCC 707	**distinguished**	**Paras 14, 37**

(2007) 8 SCC 353	**distinguished**	**Paras 14, 38**
(1972) 3 SCC 196	**distinguished**	**Paras 35, 38**
(2008) 1 SCC 125	**distinguished**	**Paras 14, 45**
(2009) 4 SCC 94	**referred to**	**Para 15**
(1979) 4 SCC 573	**referred to**	**Para 19**
1965(2) SCR 289	**referred to**	**Para 21**
(1995) 2 SCC 19	**referred to**	**Para 22**
(2000) 5 SCC 694	**referred to**	**Para 23**
(2002) 10 SCC 441	**referred to**	**Para 24**
(2009) 4 SCC 94	**referred to**	**Para 25**
(1994) 5 SCC 1	**referred to**	**Para 26**
(2004) 9 SCC 741	**referred to**	**Para 28**
(2002) 2 KLT 723	**referred to**	**Para 29**
(1967) 2 SCR 233	**referred to**	**Para 34**
14 Bom.L.R. 633	**referred to**	**Para 41**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6893 of 2009.

From the Judgment & Order dated 29.6.2007 of the High Court of Bombay in Civil Application No. 1680 of 2007 @ Writ Petition No. 6824 of 2005

WITH

C.A. Nos. 6894 of 2009.

Ashok H. Desai Prashant Naik, Rakesh K. Sharma for the Appellant.

Malvika Trivedi, T. Mahipal, Kuldip Singh (NP), R.C. Kalra,

A A.P. Dhamija, J.P. Singh, Sanjeev Malhotra for the Respondents.

The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. Leave granted.

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2. Whether the sugar bags pledged by Kannad Sahakari Sakhar Karkhana Ltd. and Gangapur Sahakari Sakhar Karkhana Ltd. in favour of the appellant-bank as security for repayment of the loan together with interest could be attached C and sold for realization of the dues of provident funds etc. payable by the employer i.e., the management of the Sugar Mills under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act') is the question which arises for determination in these appeals filed against order D dated 29.6.2007 passed by the Division Bench of the Bombay High Court in Civil Application Nos.1680 and 1681 of 2007 in Writ Petition No.6824/2005 and order dated 19.7.2007 passed in Civil Application No.245/2007 in Letters Patent Appeal No.28/2004.

E 3. We shall first notice the facts from the record of the appeal arising out of S.L.P.(C) No.15243/2007.

4. During crushing season 2000-2001, the appellant advanced loan of Rs.4000 lacs to Kannad Sahakari Sakhar F Karkhana Limited (hereinafter described as 'the Sugar Mill'). For securing repayment of the loan and interest, the management of the Sugar Mill executed necessary documents including deed of pledge dated 5.3.2001, the relevant portions of which are extracted below:-

G "We, the undersigned, Kannad Sahakari Sakhar Karkhana Ltd., Tal. Kannad, Aurangabad, member of Maharashtra State Co-operative Bank Limited (Incorporating the Vidarbha Co-operative Bank Ltd.) hereinafter referred to as "the said Bank" agree to take a loan from the said Bank H on the pledge of stocks/goods/commodities on the

following terms and conditions. The credit limit will be Rs.400000000 and its period will be upto 31.10.2001.

1. The stocks/goods/commodities which we have at present placed in the custody of the said Bank as security or which we might so place from time to time will remain in the sole custody of the said Bank and whatever action the said Bank will take for indicating its custody shall be agreeable to us.

3. If it is necessary to hire a godown, we undertake to hire the godown in the name of the said Bank and to pay the rent from time to time.

4. We undertake to insure the stocks/goods/commodities for their full value with an Insurance Company approved by the said Bank and will get the policy issued in the name of the said Bank.

5. If for any reason the godown is required to be changed or repaired, we undertake to bear the expenses in that connection.

6. We undertake to repay the principal of the loan with interest and all expenses due by us by _____ as stipulated in para (2) hereof if the period, be extended by the said Bank before the expiry of the extended period.

7. The loan shall bear interest at ____ percent per annum. If the rent of the godown, the expenses in connection with insurance and other expenses if any not paid by us, the same shall be debited to our loan account and shall bear interest at the same rate. This interest shall be payable with half yearly rests on 30th June and 31st December or earlier immediately when the stocks/goods/commodities are relieved.

8. Over and above the aforesaid dues, if any other amount is due to the said Bank by us exclusively or in partnership

A with anybody else, we agree that the stocks/goods/ commodities kept in the custody of the said Bank will also be treated as security for such amount due by us.

10. We shall not in any way hold the said Bank responsible for the weight, quality, conditions or safety of the stocks/ B goods/commodities given into its custody. We shall hold ourselves responsible for any shortage, damage or shrinkage that may arise by any cause whatsoever.

13. If and when there is insecurity due to local riots or civil C commotion, etc. we undertake to insure the stocks/goods/ commodities against any damage or loss by such riots or civil commotion. If we fail to do so, the said Bank shall so insure the stocks/goods/commodities for and on our behalf and shall be entitled to debit the cost thereof to our D account.

15. Though by this Agreement, the date of repayment of the loan has been fixed as aforesaid, the said Bank shall treat the loan as demand we undertake to repay the same as soon as the said Bank shall make a demand or the E said Bank shall be at full liberty to recover all the dues payable by us.

16. In the event of breach of the aforesaid conditions and or if we fail to repay the loan within 24 hours, if so required F by the said Bank, it shall have the full right to recover its amount by sale of the stocks goods commodities by public auction or private treaty (though the said Bank is not bound so to sell the stocks/goods/commodities). On receipt of the Account of sale under the signature of the Manager, G Accountant or other officer of the said Bank duly authorized we shall acknowledge its correctness. If the proceeds of the sale do not fully meet the loan due by us interest or other expenses, we undertake to pay the balance so remaining with interest."

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5. On the same day i.e., 5.3.2001, the management of the Sugar Mill also executed promissory note for payment of Rs.40 crores with interest @ 15.50% with half yearly rests.

6. Though, the appellant has not given the details of the dues of provident fund payable by the employer, a reading of the document marked Ex. A (pages 119-122 of the SLP paper book) shows that the Assistant Provident Fund Commissioner, Aurangabad (for short 'the Assistant Commissioner') passed order dated 29.9.2003 under Section 7A of the Act whereby he held the employer liable to pay Rs.1,75,10,477/- towards EPF contributions, EPF administrative charges, EDLI contributions, EDLI Ins./administrative charges and directed it to pay the amount with interest @ 12% within 10 days. As the employer failed to comply with that order, the Assistant Provident Fund Commissioner and Recovery Officer, Employees' Provident Fund, Sub-Regional Office, Aurangabad (hereinafter referred to as 'the Recovery Officer') issued warrant of attachment dated 11.3.2004 under Section 8B of the Act for recovery of Rs.3,85,21,734/- which included 12% interest payable in accordance with Rule 5 of the Second Schedule (Part I) of the Income-tax Act, 1961 read with Section 8G of the Act. The warrant of attachment was executed by the Enforcement Officer on 26.3.2004 by preparing an inventory of the sugar bags lying in the godowns of the Sugar Mill and affixing paper seals on the same.

7. The appellant challenged the warrant of attachment and consequential action taken by the Enforcement Officer in Writ Petition No.6824/2005, mainly on the ground that in view of the deed of pledge executed by the management of the Sugar Mill, the sugar bags which were lying under its lock and key, could not have been attached for realization of the dues of provident fund etc. During the pendency of the writ petition, the Assistant Commissioner filed Civil Application No.2739/2006 for sale of the sugar bags. At the hearing of that application, learned

A counsel appearing for the appellant-bank referred to the orders passed in Writ Petition No.3413/2005 and connected cases for conducting joint auction of the attached goods i.e., sugar bags. After taking note of his submission, the Division Bench of the High Court passed order dated 1.12.2006, the relevant
B portions of which are as under:-

> "We accordingly allow this application and direct that the sugar bags attached by the petitioner as well as the Assistant Provident Fund Commissioner shall be jointly auctioned and the sale proceeds shall be deposited with
C the Registrar of this Court. The successful bidder will draw a Demand Draft or a Banker's Cheque in the name of the Registrar General of this Court.
>
> It is further ordered that the auction sale undertaken jointly,
D shall be completed within a period of three months by floating public tenders calling for bids and by accepting tender of the highest bidder.
>
> Once the amount is deposited with the Registrar of this Court, liberty to apply for withdrawal of the said amount."
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8. In compliance of the aforementioned order, the sugar bags lying in the godowns of the Sugar Mill were auctioned for a sum of Rs.9,24,08,254/-. Thereafter, the Assistant Commissioner filed Civil Application No.1680/2007 for
F permission to withdraw a sum of Rs.7,77,46,511/- towards the dues of provident fund etc. by asserting that in addition to Rs.1,75,10,477/- payable under Section 7A with interest @ 12%, the employer is liable to pay Rs.6,02,36,034/- in terms of order dated 27.3.2007 passed under Section 14B read with
G Section 7Q of the Act.

9. It appears that during the pendency of the litigation, the Assistant Commissioner passed another order whereby he attached the bank account and movable and immovable

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properties of the Sugar Mill along with 69,000 sugar bags. Therefore, the management of the Sugar Mill filed Civil Application No.1681/2007 with the prayer that attachment effected by the Assistant Commissioner may be vacated.

10. By the impugned order, the High Court disposed of both the applications and issued various directions including the following:-

"(a) Out of the amount of Rs.9,24,08,254/-, the amount of Rs.4,20,67,446/- (Principal amount Rs.1,75,10,477/- plus interest Rs.2,45,56,969/-) be paid to the Assistant Provident Fund Commissioner so as to appropriate towards the provident fund dues of the workers of the sugar factory.

(b) Out of the remaining amount, the amount of Rs.1,46,61,743/- shall be paid to the MSC Bank which MSC Bank shall appropriate towards the dues of the Sugar Factory.

(c) The remaining amount of Rs.3,56,79,065/- be deposited initially for a period of 1 year with the MSC Bank in the name of the Registrar General, High Court, Bombay for a period of 1 year. If within the period of 1 year, the appeal filed by the Petitioner with the Appellate Tribunal under the Provident Fund Act is not disposed of, then the Registrar General will re-deposit and/or renew the said amount on yearly basis with MSC Bank till final disposal of the said appeal.

(d) The information in respect of the number, pendency or disposal of the Appeal shall be given by the Sugar Factory to the Registrar General when the said Appeal is disposed of.

(e) In case the said appeal filed by the Sugar Factory is

A dismissed by the Appellate authority, then the amount of Rs.3,56,79,065/- will have to be transferred to the Assistant Provident Fund Commissioner and the Registrar General is hereby directed, accordingly, to transfer it.

B (f) In case the appeal is allowed and thereby the sugar factory becomes entitled to the amount of Rs.3,56,79,065/-, then the MSC Bank is at liberty to appropriate the said amount towards the dues of the Sugar Factory.

C (g) In view of the above directions and the disbursement of the amount, the order passed by the Assistant Provident Fund Commissioner attaching the assets, Bank Accounts and sugar bags etc. of the Sugar Factory is hereby quashed and set aside and the Sugar Factory is at liberty to deal with the said assets in accordance with their own D Resolution and decisions keeping in mind the directions."

11. We may now notice some facts from the record of the other appeal.

12. The appellant advanced Rs.2000 lacs to Gangapur E Sahakari Sakhar Karkhana Ltd. during crushing season 2002-03. For securing the payment of the loan, the management of the Sugar Mill executed three deeds on 2.1.2003, 6.2.2003 and 4.4.2003 and pledged the sugar bags lying in the godowns. Simultaneously, three promissory notes were executed for F payment of the amounts specified therein with interest at the rate of 13.5 per cent per annum with half yearly rests. The terms and conditions of these deeds are similar to deed of pledge dated 5.3.2001 executed by the management of Karnad Sahakari Sakhar Karkhana Ltd. On account of failure of the G employer to pay the dues of provident fund etc., the competent authority passed orders under Sections 7A, 7Q and 14B of the Act and held it liable to pay total sum of Rs.9,11,72,892/- towards the dues of provident fund, interest and damages. After some time, the Assistant Commissioner issued warrant of H attachment dated 15.9.2003 which was duly executed by the

Enforcement Officer on 22.9.2003.

13. The appellant challenged the warrant of attachment in Writ Petition No. 3656/2003, which was dismissed by the learned Single Judge of the High Court (Aurangabad Bench) vide his order dated 3.10.2003 by relying upon the judgments of the Kerala High Court in *Recovery Officer and Assistant Provident Fund Commissioner v. Kerala Financial Corporation* (2002) 3 LLJ 643 Kerala and of this Court in *A.P. State Financial Corporation v. Official Liquidator* (2000) 7 SCC 291. The letters patent appeal preferred by the appellant-bank was transferred to the Principal Seat of the High Court at Mumbai. During the pendency of the letters patent appeal, the Assistant Commissioner filed Civil Application No.21/2006 for sale of the sugar bags lying in the godown of the employer. By an order dated 18.7.2006, the High Court granted the prayer of the Assistant Commissioner and directed that the sale amount be deposited with the Registrar General. Thereafter, the Assistant Commissioner filed Civil Application No.245/2007 for permission to withdraw the amount lying deposited with the Registrar General of the High Court. The same was disposed of by the Division Bench vide order dated 19.7.2007, the operative portion of which reads as under:-

> "In view of the fact that this Court has taken a consistent view that the amounts recovered from sugar factories by disposing of sugar against recovery made by co-operative banks for the secured creditors can be appropriated towards payment of Provident Fund dues, we find no reason to take a different stand, and allow the application in terms of prayer clause (a), with no order as to costs."

14. Shri Ashok H. Desai, learned senior counsel appearing for the appellant assailed the impugned orders and argued that the sugar bags lying in the godowns of the Sugar Mills could not have been attached and sold at the instance of the Assistant Commissioner for realization of the dues of

A provident fund etc. because the same had already been pledged with the appellant-bank. Learned senior counsel relied upon the judgments of this Court in *Karnataka Pawnbrokers' Association v. State of Karanataka* (1998) 7 SCC 707, *Central Bank of India v. Siriguppa Sugars & Chemicals Ltd.* (2007) 8 B SCC 353, and argued that even though under Section 11(2) of the Act, the amount due from an employer is treated as first charge on the assets of the establishment, the same cannot have priority or precedence over the dues of the appellant-bank, the payment of which is secured by the deeds of pledge C executed by the management of the Sugar Mills. Shri Desai referred to various clauses of the deeds of pledge and submitted that for all practical purposes, the appellant-bank had become owner of the sugar bags and the Recovery Officer did not have the jurisdiction, power or authority to attach the same. D Learned senior counsel emphasized that the term "assets" used in Section 11(2) of the Act means unencumbered property of the establishment and argued that as the sugar bags pledged with the appellant-bank had become its property, the Recovery Officer was not entitled to attach the same for E realizing the dues of provident fund etc. In support of this argument, Shri Desai placed reliance on paragraphs 67 and 73 of the judgment of this Court in *Transcore v. Union of India* (2008) 1 SCC 125. Another argument of the learned senior counsel is that, at best, the amount determined under Section 7A can be treated as first charge on the assets of the F establishment but the interest payable under Section 7Q and damages levied under Section 14B cannot be recovered by invoking Section 11(2) of the Act.

15. Shri R.C. Kalra and Ms. Malvika Trivedi, learned G counsel for the respondents argued that notwithstanding execution of the deeds of pledge by the management of Sugar Mills in favour of the appellant-bank, the sugar bags continued to be the property of the Sugar Mills and the same could be sold for realization of the dues of provident fund. Learned H counsel submitted that the expression 'any amount due'

appearing in Section 11(2) includes the amount determined under Section 7A, interest payable on such amount in terms of Section 7Q and damages levied under Section 14B. Learned counsel then argued that by virtue of the deeming provision and *non obstante* clause contained in Section 11(2), any amount due from an employer in respect of the employees' contribution or employer's contribution is the first charge on the assets of the establishment and the same is required to be paid in priority qua all other debts. Ms. Malvika Trivedi pointed out that notice in the SLPs filed by the appellant was issued primarily in view of the assertions contained therein that similar issue is under consideration in S.L.P.(C) No.95 of 2005 – Central Bank of India v. State of Kerala and others and submitted that the appeals are liable to be dismissed in view of the judgment titled *Central Bank of India v. State of Kerala* (2009) 4 SCC 94.

16. We have considered the respective submissions. In pre-independence era, some of the big industrial employers introduced schemes of provident funds for welfare of their workers. However, the workers of small industrial establishments did not get similar benefits because employers of those establishments did not introduce voluntary schemes of provident funds. The framers of the Constitution were very much alive to the plight of the working class and particularly the unorganized labour employed in factories and other establishments. They were also conscious of the fact that the goals of justice – social, economic and political and equality of status and of opportunity proposed to be incorporated in the preamble to the Constitution will remain illusory for weaker sections of society unless the State takes affirmative legislative and administrative measures for ameliorating the conditions of those sections including the workers employed in factories etc. Therefore, specific provisions were incorporated in Part IV of the Constitution with the title "Directive Principles of State Policy" casting an obligation upon the State to apply these principles in making laws. Article 38 which has been renumbered as clause (1) thereof by the Constitution (Forty-

A fourth Amendment) Act, 1978 declares that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of national life. Clause (2) of Article 38 mandates B the State to strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different avocations. Article 43 casts a duty on the State to C make efforts to secure by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and, in particular, social D opportunities. The State is also required to make special endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

17. Soon after enforcement of the Constitution, the Government of India promulgated the Employees Provident E Funds Ordinance on 15.11.1951, which was replaced by the Act, which belongs to the family of legislations enacted by the Parliament in furtherance of the mandate of Articles 38 and 43 of the Constitution and is intended to give social security to the workers employed in the factories and other establishments. F The Act provides for institution of provident funds, pension fund and deposit–linked insurance fund in factories and other establishments. It requires the employers of the factories and specified establishments to deduct certain amount from the wages payable to the employees and also make contribution G to various funds, which are administered by the Central and Regional Provident Fund Commissioners. Section 2(aa) of the Act defines the term "authorized officer" to mean the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, H Regional Provident Fund Commissioner or such other officer

as may be authorised by the Central Government, by notification in the Official Gazette. The term "Fund" has been defined in Section 2(h) to mean the provident fund established under a Scheme. The term "Recovery Officer" has been defined in Section 2(kd) to mean any officer of the Central Government, State Government or the Board of Trustees constituted under Section 5A, who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a Recovery Officer under the Act. Section 5(1) lays down that the Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Funds Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply. This section further lays down that soon after framing of the Scheme, a Fund shall be established in accordance with the provisions of the Act and the Scheme. Section 6 speaks of the contribution required to be made by the employer and employees to the Fund. Section 6A(1) postulates framing of Employees' Pension Scheme for the purpose of providing superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies and widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees. Section 6A(2) lays down that notwithstanding anything contained in Section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a pension fund to which a specified sum should be paid from the employer's contribution under Section 6. Section 6C(1) postulates framing of Employees' Deposit-linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which the Act applies. Section 6C(2) provides for establishment of a Deposit-linked Insurance Fund into which the employer is required to pay a specified amount in respect of every employee. Section 7A empowers the

A competent authority to decide dispute regarding applicability of the Act to an establishment as also the amount due from any employer under the provisions of the Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be. Section 7Q declares that the employer shall be liable to pay B simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under the Act from the date on which the amount has become so due till the date of its actual payment. Proviso to this Section lays down that higher rate of interest C specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank. Section 8 specifies the mode of recovery of moneys due from employers. Section 8B lays down that where any amount is in arrear under Section 8, the authorized officer may issue a certificate to the Recovery Officer specifying therein the amount of arrears and on receipt D of the certificate, the Recovery Officer shall proceed to recover the particular amount from the establishment or the employer by adopting one or more of the modes specified in that section. Section 8F specifies other modes of recovery. Section 11 speaks of priority of payment of contributions over other debts. E Section 14B provides for recovery of damages. Some of these provisions which have direct bearing on the decision of these appeals are reproduced below:

> *8. Mode of recovery of moneys due from employer* – Any F amount due—
>
> (*a*) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund damages recoverable G under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or under sub-section (5) of section 17 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or

H

(*b*) from the employer in relation to an exempted establishment in respect of any damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17 or in respect of the contribution payable by him towards the Pension Scheme under the said section 17.

may, if the amount is in arrear, be recovered in the manner specified in sections 8B to 8G.

8B. Issue of certificate to the Recovery Officer.

(1) Where any amount is in arrear under section 8, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:—

(*a*) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;

(*b*) arrest of the employer and his detention in prison;

(*c*) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer:

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such

arrears.

(2) The authorised officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

8F. Other modes of recovery.

(1) Notwithstanding the issue of a certificate to the Recovery Officer under section 8B, the Central Provident Fund Commissioner or any other officer authorised by the Central Board may recover the amount by any one or more of the modes provided in this section.

(2) xxx xxx xxx xxx

(3)(i) to (ix) xxx xxx xxx

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Central Provident Fund Commissioner or the officer so authorized he shall be deemed to be an employer 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 due from him, in the manner provided in sections 8B to 8E and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 8B.

(4) xxx xxx xxx xxx

(5) The Central Provident Fund Commissioner or any officer not below the rank of Assistant Provident Fund Commissioner may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from an employer or, as the case may be, from the establishment by distraint and sale of his

or its movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961 (43 of 1961). A

8G. Application of certain provisions of Income-tax Act – The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount mentioned in section 8 of this Act instead of to the Income-tax; B C

Provided that any reference in the said provisions and the rules to the "assessee" shall be construed as a reference to an employer as defined in this Act.

11.Priority of payment of contributions over other debts. D

(I) Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due—

(a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or E F

(b) from the employer in relation to an exempted establishment in respect of any contribution to the provident fund or any insurance fund (in so far it relates to exempted employees), under the rules of the provident fund or any insurance fund, any G H

A contribution payable by him towards the Pension Fund under sub-section (6) of section 17, damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the B conditions specified under section 17,

shall, where the liability therefor has accrued before the order of adjudication or winding up is made, be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909 (3 of 1909), or C under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920) or under section 530 of the Companies Act, 1956 (1 of 1956) are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

D

Explanation: In this sub-section and in section 17, "insurance fund" means any fund established by an employer under any scheme for providing benefits in the nature of life insurance to employees, whether linked to their E deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf.

(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer whether in respect F of the employees' contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be G paid in priority to all other debts.

14B. Power to recover damages.

Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance H Fund or in the transfer of accumulations required to be

transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer such damages, not exceeding the amount of arrears, as may be specified in the scheme:

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

18. An analysis of the above provisions shows that for providing financial benefits to the workers who contribute to the growth of the industries and industrialization of the country, the legislature has made provision for framing of various schemes under Sections 5(1), 6A(1) and 6C(1) and establishment of Funds under Sections 5(1), 6A(2) and 6C(2). With a view to ensure that the employers religiously comply with the mandate of provisions enacted for benefit of the workers, the legislature has not only provided for imposition of penalty under Sections 14, 14A, 14AA and damages under Section 14B, but also made comprehensive provisions for recovery of the dues by way of attachment and sale of movable or immovable property of the

A establishment or the employer, as the case may be. Section 8 lays down that if the amount is in arrear, the same can be recovered in the manner specified in Sections 8B to G. Section 8B provides for issue of certificate by the authorised officer in respect of the amount due to the Recovery Officer so as to B enable him to recover the amount specified therein by attachment and sale of movable or immovable property of the establishment or the employer or by arrest of the employer and his detention in prison or by appointing a receiver for the management of the movable or immovable properties of the C establishment or the employer, as the case may be. Section 8F specifies other modes of recovery of any amount due from the establishment or the employer. By Section 8G some of the provisions contained in Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 have been made applicable to the arrears of the amount mentioned in Section D 8. Section 11 gives statutory priority to the payment of contributions over other debts. The original Section 11 was renumbered as sub-section (1) by an amendment made vide Act No.40 of 1973. This sub-section relates to priority qua an employer who is adjudged insolvent or being a company an E order of winding up is made. It lays down that the amount due from the employer in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under Section 14B, accumulations required to be transferred under Section 15(2) or any charges payable by him F under any other provision of the Act or the Scheme or the Insurance Scheme shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be. Sub-section (2), which was added to Section 11 by Act No.40 of 1973 G contains a *non obstante* clause and lays down that if any amount is due from the employer whether in respect of the employees' contribution deducted from the wages of the employee or the employer's contribution, the same shall be deemed to be the first charge on the assets of the H establishment and shall, notwithstanding anything contained in

any other law for the time being in force, be paid in priority to all other debts. To put it differently, sub-section (2) of Section 11 not only declares that the amount due from the employer towards contribution under the Act shall be treated as the first charge on the assets of the establishment, but also lays down that notwithstanding anything contained in any other law, such dues shall be paid in priority to all other debts. Section 14B empowers the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette to recover from the defaulting employer damages which shall not exceed the arrears. First proviso to this section casts a duty on the concerned officer to give the employer reasonable opportunity of hearing before imposing and recovering damages. Second proviso thereto empowers the Central Board to reduce or waive damages levied in relation to establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board of Financial and Industrial Reconstruction.

19. Since the Act is a social welfare legislation intended to protect the interest of a weaker section of the society, i.e., the workers employed in factories and other establishments, it is imperative for the courts to give a purposive interpretation to the provisions contained therein keeping in view the Directive Principles of State Policy embodied in Articles 38 and 43 of the Constitution. In this context, we may usefully notice the following observations made by Krishna Iyer, J. in *Organo Chemical Industries v. Union of India* (1979) 4 SCC 573:

> "The pragmatics of the situation is that if the stream of contributions were frozen by employers' defaults after due deduction from the wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of the Fund, public frustration from the failure of the project and psychic demoralisation of the miserable beneficiaries whey they find their wages deducted and the

employer get away with it even after default in his own contribution and malversation of the workers' share. "Damages" have a wider socially semantic connotation than pecuniary loss of interest on non-payment when a social welfare scheme suffers mayhem on account of the injury. Law expands concepts to embrace social needs so as to become functionally effectual.

The measure was enacted for the support of a weaker sector viz. the working class during the superannuated winter of their life. The financial reservoir for the distribution of benefits is filled by the employer collecting, by deducting from the workers' wages, completing it with his own equal share and duly making over the gross sums to the Fund. If the employer neglects to remit or diverts the moneys for alien purposes the Fund gets dry and the retirees are denied the meagre support when they most need it. This prospect of destitution demoralises the working class and frustrates the hopes of the community itself. The whole project gets stultified if employers thwart contributory responsibility and this wider fall-out must colour, the concept of 'damages' when the court seeks to define its content in the special setting of the Act. For, judicial interpretation must further the purpose of a statute. In a different context and considering a fundamental treaty, the European Court of Human Rights, in the Sunday Times Case, observed:

> The Court must interpret them in a way that reconciles them as far as possible and is most appropriate in order to realise the aim and achieve the object of the treaty.

A policy-oriented interpretation, when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution

since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to "damages" a larger, fulfilling meaning." A

20. We shall now consider the question whether the provision contained in Section 11(2) of the Act operates against other debts like mortgage, pledge, etc. Answer to this question is clearly discernible from the plain language of Section 11. The priority given to the dues of provident fund etc. in Section 11 is not hedged with any limitation or condition. Rather, a bare reading of the section makes it clear that the amount due is required to be paid in priority to all other debts. Any doubt on the width and scope of Section 11 qua other debts is removed by the use of expression 'all other debts' in both the sub-sections. This would mean that the priority clause enshrined in Section 11 will operate against statutory as well as non-statutory and secured as well as unsecured debts including a mortgage or pledge. Sub-section (2) was designedly inserted in the Act for ensuring that the provident fund dues of the workers are not defeated by prior claims of secured or unsecured creditors. This is the reason why the legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable under the Act would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any other law for the time being in force. It is, therefore, reasonable to take the view that the statutory first charge created on the assets of the establishment by sub-section (2) of Section 11 and priority given to the payment of any amount due from an employer will operate against all types of debts. B C D E F

21. The view we have taken on the interpretation of Section 11(2) is in tune with a series of decisions of this Court in which the provisions contained in different statutes giving priority to the dues of the State and workers have been interpreted. In the first place, we may refer to some decisions relating to dues of G H

A the State. In *Builders Supply Corporation v. Union of India* 1965(2) SCR 289, the Constitution Bench considered the question whether tax payable to the Union of India has priority over other debts. After making reference to some judgments of the Bombay and Madras High Courts, the Constitution B Bench laid down the following propositions:

> *1.* There is a consensus of judicial opinion that the arrears of tax due to the State can claim priority over private debts.
>
> *2.* The common law doctrine about priority of Crown debts C which was recognised by Indian High Courts prior to 1950 constitutes "law in force" within the meaning of Article 372(1) and continues to be in force.
>
> *3.* The basic justification for the claim for priority of State D debts is the rule of necessity and the wisdom of conceding to the State the right to claim priority in respect of its tax dues.
>
> *4.* The doctrine may not apply in respect of debts due to the State if they are contracted by citizens in relation to E commercial activities which may be undertaken by the State for achieving socio-economic good. In other words, where the welfare State enters into commercial fields which cannot be regarded as an essential and integral part of the basic government functions of the State and seeks F to recover debts from its debtors arising out of such commercial activities the applicability of the doctrine of priority shall be open for consideration.

22. In *State Bank of Bikaner and Jaipur v. National Iron* G *and Steel Rolling Corporation* (1995) 2 SCC 19, a three-Judge Bench considered whether statutory first charge created by Section 11-AAAA of the Rajasthan Sales Tax Act, 1954 in favour of the State will have priority over the debts of the bank which had been secured by the borrower by creating mortgage H of its factory and answered the same in affirmative by making

the following observations:

"Section 100 of the Transfer of Property Act deals with charges on an immoveable property which can be created either by an act of parties or by operation of law. It provides that where immoveable property of one person is made security for the payment of money to another, and the transaction does not amount to a mortgage, a charge is created on the property and all the provisions in the Transfer of Property Act which apply to a simple mortgage shall, so far as may be, apply to such charge. A mortgage on the other hand, is defined under Section 58 of the Transfer of Property Act as a transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced as set out therein. The distinction between a mortgage and a charge was considered by this Court in the case of *Dattatreya Shanker Mote* v. *Anand Chintaman Datar* (1974) 2 SCC 799. The Court has observed (at pages 806-807) that a charge is a wider term as it includes also a mortgage, in that, every mortgage is a charge, but every charge is not a mortgage. The Court has then considered the application of the second part of Section 100 of the Transfer of Property Act which inter alia deals with a charge not being enforceable against a bona fide transferee of the property for value without notice of the charge. It has held that the phrase "transferee of property" refers to the transferee of entire interest in the property and it does not cover the transfer of only an interest in the property by way of a mortgage.

In the present case we have to consider whether the statutory first charge which is created under Section 11-AAAA of the Rajasthan Sales Tax Act over the property of the dealer or a person liable to pay sales tax and/or other dues under the Rajasthan Sales Tax Act, is created in respect of the entire interest in the property or only the

A mortgagor's interest in the property when the dealer has created a mortgage on the property. In other words, will the statutory first charge have priority over an earlier mortgage. It was urged by Mr. Tarkunde, learned counsel for the appellant-bank that at the time when the statutory first B charge came into existence, there was already a mortgage in respect of the same property. Therefore, the only property which was possessed by the dealer and/or person liable to pay tax or other dues under the Rajasthan Sales Tax Act, was equity of redemption in respect of that C property. The first charge would operate, therefore, only on the equity of redemption. The argument though ingenious, will have to be rejected. *Where a mortgage is created in respect of any property, undoubtedly, an interest in the property is carved out in favour of the mortgagee. The* D *mortgagor is entitled to redeem his property on payment of the mortgage dues. This does not, however, mean that the property ceases to be the property of the mortgagor. The title to the property remains with the mortgagor. Therefore, when a statutory first charge is created on the property of the dealer, the property subjected to the first* E *charge is the entire property of the dealer. The interest of the mortgagee is not excluded from the first charge. The first charge, therefore, which is created under Section 11-AAAA of the Rajasthan Sales Tax Act will operate on the property as a whole* and not only on the equity of F redemption as urged by Mr. Tarkunde.

In the present case, the section creates a first charge on the property, thus clearly giving priority to the statutory charge over all other charges on the property including G *a mortgage.* The submission, therefore, that the statutory first charge created by Section 11-AAAA of the Rajasthan Sales Tax Act can operate only over the equity of redemption, cannot be accepted. *The charge operates on the entire property of the dealer including the interest of* H *the mortgagee therein.*

Looked at a little differently, the statute has created a first charge on the property of the dealer. What is meant by a "first charge"? Does it have precedence over an earlier mortgage? Now, as set out in Dattatreya Shanker Mote case (1974) 2 SCC 799 a charge is a wider term than a mortgage. It would cover within its ambit a mortgage also. Therefore, when a first charge is created by operation of law over any property, that charge will have precedence over an existing mortgage."

(emphasis supplied)

23. In *Dena Bank v. Bhikhabhai Prabhudas Parekh & Co.* (2000) 5 SCC 694, a two-Judge Bench reiterated the principles enunciated in *Builders Supply Corporation v. Union of India* (supra) and proceeded to observe that Section 158(1) of the Karnataka Land Revenue Act not only gives a statutory recognition to the doctrine of State's priority for recovery of debts, but also extends its applicability over private debts forming the subject matter of mortgage, judgment, decree, execution or attachment of the like.

24. In *State of M.P. v. State Bank of Indore* (2002) 10 SCC 441, this Court considered whether statutory first charge created under Section 33-C of the M.P. General Sales Tax Act, 1958 would prevail over the bank's charge. The facts of that case were that for securing repayment of the loan obtained from the State Bank of Indore, the borrower executed a promissory note and pledged certain machinery. The bank sued the borrower for recovery of its dues. During the pendency of the case instituted by the bank, Section 33-C was inserted in the State Act. Thereafter, the State claimed priority in the matter of recovery of dues of sales tax vis-à-vis the dues of the bank. The trial Court and the High Court rejected the plea of the State. The High Court observed that the bank's charge on the machinery was prior to the insertion of Section 33-C in the State Act and the subsequent loans taken in 1979 do not alter the

A position in favour of the State. The High Court then proceeded to hold that the charge created in favour of the Bank remains valid and operative till repayment of the loan. This Court reversed the judgments of the trial Court and the High Court and held:

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> "Section 33-C creates a statutory first charge that prevails over any charge that may be in existence. Therefore, the charge thereby created in favour of the State in respect of the sales tax dues of the second respondent prevail over the charge created in favour of the Bank in respect
C of the loan taken by the second respondent. There is no question of retrospectivity here, as, on the date when it was introduced, Section 33-C operated in respect of all charges that were then in force and gave sales tax dues precedence over them."

D

25. Recently, in *Central Bank of India v. State of Kerala* 2009(4) SCC 94, the issue was considered in a slightly different perspective. The appellant-bank had challenged the vires of Section 26-B of the Kerala General Sales Tax Act, 1963,
E whereby first charge was created on the property of the dealer or the person liable to pay tax by contending that the same was beyond the legislative competence of the State and was also inconsistent with the provisions contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1963 and
F the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In the connected appeals, vires of Section 38C of the Bombay Sales Tax Act, 1959 was challenged on similar grounds. This Court considered various facets of the challenge and held that the
G provisions contained in the Sales Tax Act were not beyond the legislative competence of the State. The Court further held that there is no inconsistency between the provisions of the State and Central Acts and the *non obstante* clauses contained in the Central legislations will not override the provisions of the State legislations by which first charge was created in favour

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of the State in the matter of recovery of the dues of sales tax. A

26. We shall now notice some decisions in which statutes giving parity or priority to the workers claim have been interpreted. In *UCO Bank v. Official Liquidator, High Court Bombay and another* (1994) 5 SCC 1, this Court considered B the scope of proviso to Section 529(1) of the Companies Act as inserted by the Companies (Amendment) Act, 1985. The Court noted that the object of the amendment was to protect the interest of the workers and to place them at par with secured creditors and held: C

> "The proviso to sub-section (1) of Section 529 inserted by the Amending Act clearly provides that "the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen". *The effect of the proviso is to create, by statute, a charge pari passu* D *in favour of the workmen on every security available to the secured creditors of the employer company for recovery of their debts at the time when the amendment came into force. This expression is wide enough to apply to the security of every secured creditor which remained* E *unrealised on the date of the amendment. The clear object of the amendment is that the legitimate dues of workers must rank pari passu with those of secured creditors and above even the dues of the Government.* This literal construction of the proviso is in consonance F with, and promotes, the avowed object of the amendment made. On the contrary, the construction of the proviso suggested by the learned counsel for the appellant, apart from being in conflict with the plain language of the proviso also defeats the object of the legislation. G
>
> A debt due to a secured creditor, when recovered by realisation of the security after commencement of the winding up proceedings, results in depletion of the assets in the hands of the Official Liquidator. *This provision is* H

A *intended to protect the interests of the workmen in proceedings for winding up. In view of the nature of workmen's dues being similar to those of secured creditors, the purpose of this provision is to place the workmen on a par with the secured creditors and create* B *a statutory charge in their favour on all available securities forming part of the assets of the company in liquidation so that the workmen also share the securities pari passu with the secured creditors. The workmen contribute to the growth of the capital and must get their* C *legitimate share in the assets of the company when the situation arises for its closure and distribution of its assets first among the secured creditors due to winding up of the company. The aforesaid amendment made in the Act is a statutory recognition of this principle equating the legitimate dues of the workmen with the debts of the* D *secured creditors of the company. To achieve this purpose, it is necessary that the amended provision must apply to all available securities which form part of the assets of the company in liquidation on the date of the amendment.* The conclusion reached by the Division E Bench of the High Court is supported by this reason."

(emphasis supplied)

27. In *A.P. State Financial Corporation v. Official* F *Liquidator* (supra), this Court considered the inter-play of Section 29(1) of the State Financial Corporations Act, 1951 and Section 529A of the Companies Act, 1956, which is *pari materia* to Section 11(2) of the Act, and held:

"The Act of 1951 is a special Act for grant of financial G assistance to industrial concerns with a view to boost up industrialisation and also recovery of such financial assistance if it becomes bad and similarly the Companies Act deals with companies including winding up of such companies. *The proviso to sub-section (1) of Section 529* H *and Section 529-A being a subsequent enactment, the*

non obstante clause in Section 529-A prevails over Section 29 of the Act of 1951 in view of the settled position of law. We are, therefore, of the opinion that the above proviso to sub-section (1) of Section 529 and Section 529-A will control Section 29 of the Act of 1951. In other words the statutory right to sell the property under Section 29 of the Act of 1951 has to be exercised with the rights of pari passu charge to the workmen created by the proviso to Section 529 of the Companies Act. Under the proviso to sub-section (1) of Section 529, the liquidator shall be entitled to represent the workmen and force (sic enforce) the above pari passu charge. Therefore, the Company Court was fully justified in imposing the above conditions to enable the Official Liquidator to discharge his function properly under the supervision of the Company Court as the new Section 529-A of the Companies Act confers upon a Company Court the duty to ensure that the workmen's dues are paid in priority to all other debts in accordance with the provisions of the above section. The legislature has amended the Companies Act in 1985 with a social purpose viz. to protect dues of the workmen. If conditions are not imposed to protect the right of the workmen there is every possibility that the secured creditor may frustrate the above pari passu right of the workmen."

(emphasis supplied)

28. In *Textile Labour Association and another v. Official Liquidator and another* (2004) 9 SCC 741, this Court again interpreted the scope of Section 529-A of the Companies Act, 1956 and held:

"The effect of Sections 529 and 529-A is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues provided there exists secured creditor by contract If there is no secured creditor then the workmen of the company become

A unsecured preferential creditors under Section 529-A to the extent of the workmen's dues. The purpose of Section 529-A is to ensure that the workmen should not be deprived of their legitimate claims in the event of the liquidation of the company and the assets of the company B would remain charged for the payment of the workers' dues and such charge will be *pari passu* with the charge of the secured creditors. There is no other statutory provision overriding the claim of the secured creditors except Section 529-A. This section overrides preferential C claims under Section 530 also. Under Section 529-A the dues of the workers and debts due to the secured creditors are to be treated *pari passu* and have to be treated as prior to all other dues."

29. The primacy of first charge created under Section 11(2) D of the Act was considered by a Division Bench of the Kerala High Court in *Recovery Officer and Assistant Provident Fund Commissioner v. Kerala Financial Corporation* (2002) 2 KLT 723, in the backdrop of the argument that the provision contained in Section 46-B of the State Financial Corporations E Act, 1951 which also contains a *non obstante* clause, will override the provisions of the Act. In that case, the Recovery Officer appointed under the Act made an application for recovery of the dues of provident fund payable by the employer-company. He also attached 37 cents of land which the company F had mortgaged to the State Financial Corporation. The latter challenged the action of the Recovery Officer by filing writ petition under Article 226 of the Constitution. A learned Single Judge of the High Court allowed the writ petition and declared that the company's land could not have been attached for G recovery of dues payable under the Act because the same stood mortgaged in favour of the State Financial Corporation. The Division Bench reversed the order of the learned Single Judge and held:

"... Sub-section (2) of Section 11 of the EPF and MP Act H

has two facets. First, it declares that the amount due from the employer towards contribution under the EPF and MP Act shall be deemed to be the first charge on the assets of the establishment. Second, it also declares that notwithstanding anything contained in any other law for the time being in force, such debt shall be paid in priority to all other debts. Both these provisions bring out the intention of Parliament to ensure the social benefit as contained in the legislation. There are other provisions in the Act rendering the amounts of provident fund immune from attachment of civil court's decree, which also indicate such intention of Parliament."

The Division Bench of the High Court then considered the argument that the *non obstante* clause contained in Section 46-B of the State Financial Corporations Act has overriding effect qua Section 11(2) of the Act and negatived the same by making the following observations:

"The contention of the first respondent based on the overriding effect of Section 46-B of the SFC Act has no substance in our judgment. Undoubtedly, the intention of Parliament in enacting Section 46-B in the year 1956 was to ensure that a State Financial Corporation could quickly and effectively recover the amounts due by taking possession of the property of the defaulter instead of having resort to the cumbersome method of recovery through a court of law. While this was the law, Parliament amended Section 11 of the EPF and MP Act by specifically enacting sub-section (2) thereof, declaring that the amount due as contribution to the employees provident fund has first charge on the assets of the establishment and that, notwithstanding anything contained in any other law for the time being in force, it shall be paid in priority against all other debts. In fact, the second facet of Section 11(2) of the EPF and MP Act goes one step further than what is provided in Section 46-B of the SFC Act. The

A reason for this is obvious. While the State Financial Corporation would have to be helped to recover the debts due to it from a defaulting debtor, the provident fund payable to workers is of greater moment, since it is a matter of terminal social security benefit made available
B by statute to the working class. Taking into consideration that the EPF and MP Act is a social benefit legislation, and the evil consequences of provident fund dues being defeated by prior claims of secured or unsecured creditors, the legislature took care to declare that irrespective of when
C a debt is created, the dues under the EPF and MP Act would always remain first charge and shall be paid first out of the assets of the establishment. We are also not impressed by the contention of the first respondent that upon usage of non obstante clause in Section 46-B of the
D SFC Act. Sub-section (2) of Section 11 of the EPF Act is of subsequent date. No doubt, both Section 46-B of the SFC Act and Section 11(2) of the EPF and MP Act declare their intent by usage of the non obstante clause. But, since Section 11(2) of the EPF and MP Act has been enacted later, we must ascribe to Parliament the intention to
E override the earlier legislation also. It is, therefore, clear that Section 11(2) of the EPF and MP Act overrides all provisions of other enactments including Section 46-B of the SFC Act."

F 30. In the light of the above analysis of the relevant provisions of the Act and precedents, we shall now examine the tenability or otherwise of the argument of the learned senior counsel appearing on behalf of the appellant-bank that by virtue of the deeds of pledge executed by the Sugar Mills, his client
G had become owner of the sugar bags and the same could not have been attached and sold for realization of the amount due under the Act.

31. A careful reading of the deed of pledge dated 5.3.2001 executed by the management of Kannad Sahakari Sakhar
H Karkhana Ltd. (the terms of three deeds dated 2.1.2003,

6.2.2003 and 4.4.2003 executed by the management of the other Sugar Mill are substantially similar) shows that even though the sugar bags which were available with the Sugar Mills at the relevant time were placed in the custody of the appellant-bank as security for repayment of loan together with interest, the former continued to be owner thereof. To put it differently, title of the property remained with the Sugar Mills and only limited interest therein was passed on to the appellant-bank as security for repayment of the loan etc. If the management of the Sugar Mills were to repay the dues of the appellant-bank within the time specified in the deeds of pledge, the latter was duty bound to lift its notional control over the sugar bags lying in the godowns of the Sugar Mills. In case of default, the appellant-bank could recover its dues by selling the sugar bags. If the price of the sugar bags was less than the amount due, the appellant-bank could resort to other appropriate adjudicatory mechanism for recovery of the balance amount. If the sugar bags had become property of the appellant-bank simply because the same were pledged by the management of the Sugar Mills for securing repayment of the loan etc., there was no occasion for the latter to take the responsibility of hiring godowns on behalf of the appellant-bank, pay rent thereof and get the goods insured. Equally, there was no reason for the management of the Sugar Mills to take the responsibility of changing or repairing the godowns and bear its cost or confer immunity upon the bank in the matter of weight, quality, conditions or safety of the goods and take upon itself the responsibility for any shortage, damage or shrinkage and insure the goods against any damage or loss or riots or civil commotion. In our considered view, the very fact that except giving the symbolic custody of the sugar bags to the appellant-bank by allowing it to put lock and key on the godowns, all steps for preserving the goods and getting the same insured were taken by the management of the Sugar Mills which also agreed to take the responsibility of any shortage, damage or shrinkage unmistakably shows that the Sugar Mills continued to be owner of the sugar bags.

A 32. As per Black's Law Dictionary (Eighth edition), "pledge" is a formal promise or undertaking; the act of providing something as security for a debt or obligation; a bailment or other deposit of personal property to a creditor as security for debt or obligation. In the "Law of Personal Property" by Ray B Andrews Brown (Second edition 1936), the term "pledge" has been described in the following words:

> "A pledge is a bailment of personal property to secure an obligation of the bailor. If the purpose of the transaction is to transfer property for security only, then the Courts will C hold the transaction a pledge, even though in form it may be a sale or other out-and-out transfer."

In Mulla's Treaties on the Transfer of Property, the following description has been given to the term "pledge":

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> "A pledge is a bailment of movable property by way of security. Possession is given and the transaction involves a transfer of special property in the subject of the security. A *Pawnee has no right of foreclosure since he never had absolute ownership at law* and his equitable title cannot E exceed what is specifically granted by law. In a pledge the pledge is in possession of and has a special property in the goods which he is entitled to detain to secure repayment."

F (underlining is ours)

33. Under the common law a pawn or a pledge is a bailment of personal property as a security for some debt or engagement. A pawner is one who being liable to an G engagement gives to the person to whom he is liable a thing to be held as security for payment of his debt or the fulfilment of his liability. The two ingredients of a pawn or a pledge are: (1) that it is essential to the contract of pawn that the property pledged should be actually or constructively delivered to the pawnee and (2) a pawnee has *only a special property in the* H

pledge but the general property therein remains in the pawner and wholly reverts to him on discharge of the debt. A pawn therefore is a security, where, by contract a deposit of goods is made as security for a debt. The *right to property vests in the pledgee only so far as is necessary to secure the debt.* In this sense a pawn or pledge is an intermediate between a simple lien and a mortgage which wholly passes the property in the thing conveyed.

34. In *Lallan Prasad v. Rahmat Ali* (1967) 2 SCR 233, this Court referred to the above noted common law principles and observed:

> ".....A contract to pawn a chattel even though money is advanced on the faith of it is not sufficient in itself to pass special property in the chattel to the pawnee. Delivery of the chattel pawned is a necessary element in the making of a pawn. But delivery and advance need not be simultaneous and a pledge may be perfected by delivery after the advance is made. *Satisfaction of the debt or engagement extinguishes the pawn and the pawnee on such satisfaction is bound to redeliver the property. The pawner has an absolute right to redeem the property pledged upon tender of the amount advanced but that right would be lost if the pawnee has in the meantime lawfully sold the property pledged.* A contract of pawn thus carries with it an implication that the security is available to satisfy the debt and under this implication the pawnee has the power of sale on default in payment where time is fixed for payment and where there is no such stipulated time on demand for payment and on notice of his intention to sell after default. *The pawner however has a right to redeem the property pledged until the sale. If the pawnee sells, he must appropriate the proceeds of the sale towards the pawner's debt, for, the sale proceeds are the pawner's monies to be so applied and the pawnee must pay to the pawner any surplus after satisfying the debt.*

A The pawnee's right of sale is derived from an implied authority from the pawner and such a sale is for the benefit of both the parties. He has a right of action for his debt notwithstanding possession by him of the goods pledged. *But if the pawner tenders payment of the debt the pawnee* B *has to return the property pledged.* If by his default the pawnee is unable to return the security against payment of the debt, the pawner has a good defence to the action. This being the position under the common law, it was observed in *Trustees of the Property of Ellis & Co.* v. C *Dixon-Johnson* that if a creditor holding security sues for the debt, he is under an obligation on payment of the debt to hand over the security, and that if, having improperly made away with the security he is unable to return it to the debtor he cannot have judgment for the debt."

D (underlining is ours)

The Court further observed that there is no difference between Common Law of England and the law with regard to the pledge, as codified in Sections 172 to 176 of the Contract Act and held:

E "Under Section 172 a pledge is a bailment of the goods as security for payment of a debt or performance of a promise. Section 173 entitles a pawnee to retain the goods pledged as security for payment of a debt and under Section 175 he is entitled to receive from the pawner any F extraordinary expenses he incurs for the preservation of the goods pledged with him. Section 176 deals with the rights of a pawnee and provides that in case of default by the pawner the pawnee has (*1*) the right to sue upon the debt and to retain the goods as collateral security and (2) G to sell the goods after reasonable notice of the intended sale to the pawner. Once the pawnee by virtue of his right under Section 176 sells the goods the right of the pawner to redeem them is of course extinguished. But as aforesaid the pawnee is bound to apply the sale proceeds H towards satisfaction of the debt and pay the surplus, if any,

to the pawner. So long, however, as the sale does not take place the pawner is entitled to redeem the goods on payment of the debt. It follows therefore that where a pawnee files a suit for recovery of debt, though he is entitled to retain the goods he is bound to return them on payment of the debt. The right to sue on the debt assumes that he is in a position to redeliver the goods on payment of the debt and therefore if he has put himself in a position where he is not able to redeliver the goods he cannot obtain a decree. If it were otherwise, the result would be that he would recover the debt and also retain the goods pledged and the pawner in such a case would be placed in a position where he incurs a greater liability than he bargained for under the contract of pledge. The pawnee therefore can sue on the debt retaining the pledged goods as collateral security. If the debt is ordered to be paid he has to return the goods or if the goods are sold with or without the assistance of the court appropriate the sale proceeds towards the debt. But if he sues on the debt denying the pledge, and it is found that he was given possession of the goods pledged and had retained the same, the pawner has the right to redeem the goods so pledged by payment of the debt. If the pawnee is not in a position to redeliver the goods he cannot have both the payment of the debt and also the goods. Where the value of the pledged property is less than the debt and in a suit for recovery of debt by the pledgee, the pledgee denies the pledge or is otherwise not in a position to return the pledged goods he has to give credit for the value of the goods and would be entitled then to recover only the balance....."

35. In *Bank of Bihar v. State of Bihar* (1972) 3 SCC 196, this Court considered the question whether the Cane Commissioner, who was an unsecured creditor of the Sugar Mill named Jagdishpur Zamindari Company Limited and did not have any right of priority over other creditors and in particular

A the secured creditors of the company, could seize and sell the sugar which was already pledged with the appellant-bank as security for the advances made by it to the company. The appellant-bank sued the State of Bihar and others including the Cane Commissioner and the company for return of 1818 bags
B of 27D quality of sugar and, in the alternative, for recovery of Rs.1,81,700.93 with interest by way of damages or illegal removal and detention of sugar or price thereof. The trial Court decreed the suit. It held that even though the order of seizure of the stock of sugar was valid, the plaintiff's right as pledgee
C could not be extinguished by such seizure. The High Court allowed the appeal filed by the State of Bihar and others and held that the plaintiff-bank had not been wrongfully deprived of the sugar. In para 4 of the judgment, this Court noted that the Cane Commissioner did not have any right of priority over the
D other creditors of the company and, in particular, the secured creditors and reversed the judgment of the High Court by recording the following observations.

> "The pawnee has special property and a lien which is not of ordinary nature on the goods and so long as his claim
E is not satisfied no other creditor of the pawnor has any right to take away the goods or its price. After the goods had been seized by the Government it was bound to pay the amount due to the plaintiff and the balance could have been made available to satisfy the claim of other creditors
F of the pawnor. But by a mere act of lawful seizure the Government could not deprive the plaintiff of the amount which was secured by the pledge of the goods to it. As the act of the Government resulted in deprivation of the amount to which the plaintiff was entitled it was bound to
G reimburse the plaintiff for such amount which the plaintiff in ordinary course would have realized by sale of the goods pledged with it on the pawnor making a default in payment of debt.
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> The approach of the trial court was unexceptionable. The

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plaintiff's right as a pawnee could not be extinguished by the seizure of the goods in its possession inasmuch as the pledge of the goods was not meant to replace the liability under the cash credit agreement. It was intended to give the plaintiff a primary right to sell the goods in satisfaction of the liability of the pawnor. The Cane Commissioner who was an unsecured creditor could not have any higher rights than the pawnor and was entitled only to the surplus money after satisfaction of the plaintiff's dues."

36. The ratio of the above noted two judgments is that in a contract of pawn the property pledged should be actually or constructively delivered to the pawnee and pawnee has only a special property in the pledge but the general property remains with the pawner and wholly reverts to him on discharge of debt. The right to property vests in the pledgee only so far as necessary to secure his debt. We, therefore, hold that the deeds of pledge executed by the management of the Sugar Mills as security for repayment of loan etc. did not have the effect of transferring of the ownership of the sugar bags to the appellant-bank and the Recovery Officer did not commit any illegality by attaching the same and the High Court was fully justified in directing payment of a portion of the sale price to the Assistant Commissioner for being appropriated towards the provident fund dues of the workers.

37. Before leaving this issue, we may refer to the judgments on which reliance has been placed by the learned senior counsel appearing for the appellant-bank. The question which fell for consideration in *Karnataka Pawnbrokers' Association v. State of Karnataka* (supra), was whether pawnbroker is a dealer and carries on business within the meaning of Tamil Nadu General Sales Tax Act, 1959 read with the Tamil Nadu Pawnbrokers Act, 1943 and Rules as also the Karnataka Sales Tax Act, 1957 read with Karnataka Pawnbrokers Act, 1961 and Rules, when it caused sale of unredeemed goods occasioned by the default of the pawnor. The Court referred to the decisions

A of the Division Benches of Karnataka and Madras High Courts and held:

> "It cannot be and it is not disputed that the pawnbroker has special property rights in the goods pledged, a right higher than a mere right of detention of goods but a right lesser than general property right in the goods. To put it differently, the pawnor at the time of the pledge not only transfers to the pawnee, the special right in the pledge *but also passes on his right to transfer the general property right in the pledge in the event of the pledge remaining unredeemed resulting in the sale of the pledge by public auction through an approved auctioneer.* The position being what is stated above, the natural consequence will be that it is the pawnee who holds not only the absolute special property right in the pledge but also the *conditional general property interest* in the pledge, the condition being that he can pass on that general property only in the event of the pledge being brought to sale by public auction in accordance with the Act and the Rules framed thereunder."
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> (underlining is ours)

38. In *Central Bank of India v. Siriguppa Sugars & Chemicals Ltd.* (supra), an interim order passed by the Division Bench of Karnataka High Court, directing disbursement of certain amount realized from sale of stocks of sugar owned by respondent no.1 – company, which was held under pledge by the appellant-bank, came up for consideration before this Court. The Labour Commissioner had passed an order under Section 33-C of the Industrial Disputes Act in respect of the dues of the workmen. The same was challenged by respondent no.1, by filing a writ petition. The Cane Commissioner also passed orders for recovery of the amount due from respondent no.1 – company for being paid to the sugarcane growers for the cane supplied by them. During the pendency of the writ petition, the concerned authority took possession of the stock of sugar which was pledged with the appellant-bank. The

appellant-bank got itself impleaded as party to the writ petition. As the stock of sugar was likely to lose its value by being stored indefinitely, the High Court directed sale thereof. The writ petition was finally dismissed by the learned Single Judge. During the pendency of the appeal, the Division Bench made an interim order directing disbursement of a portion of the sale proceeds to the Labour Commissioner and Cane Commissioner for being paid to the employees of the company and sugarcane cultivators. The bank challenged the interim order by contending that as the sugar was pledged with it, the High Court could not have ordered disbursement of a portion of the price. After making reference to various judgments including *Bank of Bihar v. State of Bihar* (supra) and *Karnataka Pawnbrokers' Association v. State of Karnataka* (supra), this Court held:

> "Thus, going by the principles governing the matter propounded by this Court, there cannot be any doubt that the rights of the appellant Bank over the pawned sugar had precedence over the claims of the Cane Commissioner and that of the workmen. The High Court was, therefore, in error in passing an interim order to pay parts of the proceeds to the Cane Commissioner and to the Labour Commissioner for disbursal to the cane growers and to the employees. There is no dispute that the sugar was pledged with the appellant Bank for securing a loan of the first respondent and the loan had not been repaid. The goods were forcibly taken possession of at the instance of the revenue recovery authority from the custody of the pawnee, the appellant Bank. In view of the fact that the goods were validly pawned to the appellant Bank, the rights of the appellant Bank as pawnee cannot be affected by the orders of the Cane Commissioner or the demands made by him or the demands made on behalf of the workmen. *Both the Cane Commissioner and the workmen in the absence of a liquidation, stand only as unsecured creditors and their rights cannot prevail over the rights of*

A *the pawnee of the goods."*

(underlining is ours)

39. The above referred judgments do not have any bearing on these appeals because in both the cases, the Court dealt B with the right of unsecured creditors vis-à-vis secured creditors i.e., the bank in whose favour the goods had been pledged/ mortgaged. Moreover, in neither of the cases, a provision analogous to Section 11 of the Act was considered by the Court.

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40. The next point which requires consideration is whether the sugar bags pledged with the appellant-bank constitute assets of the establishment within the meaning of Section 11(2) of the Act.

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41. As per Black's Law Dictionary (Eighth edition), the word 'asset' means, an item that is owned and has value; the entries on a balance sheet showing the items of property owned, including cash, inventory, equipment, real estate, accounts receivable and goodwill; all the property of a person E available for paying debts or for distribution. In Law Lexicon by P. Ramanatha Aiyar (Second edition), the word 'assets' has been described as the property in the hands of an heir, an executor, administrator or trustee which is legally or equitably chargeable with the obligations with such heir, executor, F administrator or trustee is, as such, required to discharge. Everything which can be made available for the payment of debts, whether belonging to the estate of a deceased person or not; property in general all that one owns, considered as applicable to the payment of his debts; as, his assets are much G greater than his liabilities. In *Velchand Chhaganlal v. Mussan* 14 Bom.L.R. 633, it was held that the word 'assets' means, a man's property of whatever kind which may be used to satisfy debts or demands existing against him.

42. As per Salmond's Jurisprudence, the word "property"

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means – in its widest sense, property includes a person's legal rights, of whatever description. A man's property is all that is his in law. This usage however, is obsolete at the present day, though it is common enough in the older books. In a second and narrower sense, property includes not all a person's rights, but only his proprietary as opposed to his personal rights. The former constitutes his estate or property, while the latter constitute his status or personal condition. In this sense a man's land, chattel, shares and the debts due to him are his property; but not his life or liberty or reputation.... In a third application, which is that adopted (here) the terms includes not even all proprietary rights but only those which are both proprietary and in rem. The law of property is the right of proprietary rights in rem, the law of proprietary rights in personam being distinguished from it as the law of obligations. According to this usage a freehold or leasehold estate in land, or a patent or copyright, is property; *but a debt or the benefit or a contract is not.* Finally, in the narrowest use of the term, it includes nothing more than corporeal property - that is to say, the right of ownership in a material object, or that object itself.

43. In the light of the above dictionary and legal meanings of the word 'assets' and jurisprudential concept of the word 'property', it has to be seen whether the sugar bags pledged with the appellant-bank constituted assets of the establishment for the purpose of Section 11(2) of the Act. We have already held that even though symbolic custody of the sugar bags was given to the appellant-bank as security for repayment of loan etc., the Sugar Mills continued to be owner thereof. In other words, the sugar bags pledged with the appellant-bank continued to be movable property i.e. assets of the establishment, which could be attached and sold by the Recovery Officer in terms of Section 8B or by adopting alternative modes of recovery enumerated in Section 8F.

44. At the cost of repetition, it is apposite to mention that Section 11 is declaratory in nature. Sub-section (2) thereof

declares that any amount due from an employer shall be deemed to be first charge on the assets of the establishment and shall be paid in priority to all other debts. For recovery of the amount due from an employer which is treated as arrear of land revenue, the Recovery Officer or any other authorized officer has to take recourse to the provisions contained in Section 8 read with Sections 8B and 8F. The recovery can be effected by attachment or sale of the movable or immovable property of the establishment or, as the case may be, the employer, or by arrest of the employer and his detention in prison or by appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer or by taking action in the manner laid down in the Third Schedule to the Income-tax Act, 1961.

45. The judgment in *Transcore v. Union of India* (supra) on which reliance has been placed by Shri Desai, does not have any bearing on any of the facets of the question raised in these appeals. In paragraph 62 of that judgment, the Court merely referred to Snell's Principles of Equity. In paragraph 73, the Court explained the distinction between symbolic and physical possession and observed that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 basically deals with the securities by which the creditor obtains ownership of or interest in the property concerned i.e., mortgages and the securities under which the secured creditor, namely, the Bank/Financial Institution obtains interest in the property concerned.

46. We shall now deal with the last argument of the learned senior counsel for the appellant-bank that the interest payable in terms of Section 7Q and damages imposed under Section 14B of the Act cannot be treated as first charge on the assets of the establishment payable in priority to all other debts within the meaning of Section 11(2).

47. Section 11 gives statutory priority to the amount due from the employer vis-à-vis all other debts. Clause (a) of sub-section (1) of Section 11 is applicable to cases where an employer is adjudicated insolvent or, being a company, an order of its winding up is made. In that situation, the amount due from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under Section 14B, accumulations required to be transferred under Section 15(2) or any other charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme. Clause (b) is applicable to cases where the amount is due from the employer in relation to exempted establishment in respect of any contribution to the provident fund or any insurance fund in so far it relates to exempted employees under the rules of provident fund or any insurance fund, any contribution payable by him towards the Pension Fund under Section 17(6), damages recoverable under Section 14B or any charges payable by him to the appropriate Government under the Act or under any of the conditions specified in Section 17. This sub-section then lays down that such amount shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up. Sub-section (2) lays down that any amount due from the employer whether in respect of the employees' contribution deducted from the wages of the employee or the employer's contribution shall be deemed to be the first charge on the assets of the establishment, and shall be paid in priority to all other debts. The expression "any amount due from an employer" appearing in sub-section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub-section (1) of Section 11 and Sections 7A, 7Q, 14B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund.

A If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of
B levy of damages. As mentioned earlier, sub-section (2) was inserted in Section 11 by Amendment Act No.40 of 1973 with a view to ensure that payment of provident fund dues of the workers are not defeated by the prior claims of the secured and/or of the unsecured creditors. While enacting sub-section
C (2), the legislature was conscious of the fact that in terms of existing Section 11 priority has been given to the amount due from an employer in relation to an establishment to which any scheme or fund is applicable including damages recoverable under Section 14B and accumulations required to be
D transferred under Section 15(2). The legislature was also aware that in case of delay the employer is statutorily responsible to pay interest in terms of Section 17. Therefore, there is no plausible reason to give a restricted meaning to the expression 'any amount due from the employer' and confine it to the amount determined under Section 7A or the contribution
E payable under Section 8. If interest payable by the employer under Section 7Q and damages leviable under Section 14 are excluded from the ambit of expression "any amount due from an employer", every employer will conveniently refrain from paying contribution to the Fund and other dues and resist the
F efforts of the concerned authorities to recover the dues as arrears of land revenue by contending that the movable or immovable property of the establishment is subject to other debts. Any such interpretation would frustrate the object of introducing the deeming provision and *non obstante* clause in
G Section 11(2). Therefore, it is not possible to agree with the learned senior counsel for the appellant-bank that the amount of interest payable under Section 7Q and damages leviable under Section 14B do not form part of the amount due from an employer for the purpose of Section 11(2) of the Act.

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48. In the result, the appeals are dismissed. A

49. Although, while issuing notice in the special leave petitions and passing order of *status quo*, the Court had made it clear that in the event of dismissal of the special leave petitions, the amount shall be paid by the petitioner (appellant herein) with interest at the rate which may be fixed by the Court, we do not consider it just and proper to saddle the appellant-bank with the liability of interest because price of the sugar sold pursuant to the High Court's order remained deposited with its Registrar General and the appellant-bank did not have the benefit of utilizing the same. B C

D.G. Appeals dismissed.