

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 16<sup>th</sup> DAY OF JUNE, 2026**

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**BEFORE**

**THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE**

**WRIT PETITION NO. 47483 OF 2018 (L-PF)**

**BETWEEN:**

THE REGIONAL PROVIDENT FUND COMMISSIONER-I,  
EMPLOYEES' PROVIDENT FUND ORGANISATION,  
REGIONAL OFFICE,  
NO.570 RAJARAJESHWARI REGENCY,  
26<sup>TH</sup> CORSS, IDEAL HOMES COOP SOCIETY LAYOUT  
RAJARAJESHWARI NAGAR,  
BANGALORE-560 098.

...PETITIONER

(BY SMT. NANDITA D HALDIPUR, ADVOCATE)

**AND:**

1. M/S DEVKI DESIGNS,  
A PARTNERSHIP FIRM  
REPRESENTED BY ITS PARTNER  
VIDYUT KULKARNI,  
HILL VIEW BUILDINGS,  
NAYANDANHALLI, MYSORE ROAD,  
BANGALORE-560 039.
2. M/S AXIS BANK LTD,  
SOUTHERN RECOVERY CELL,  
2<sup>ND</sup> FLOOR, KARUMUTHU NILAYAM,  
NO.192, ANNA SALAI,  
CHENNAI-600 002,  
REPRESENTED BY ITS BRANCH MANAGER.

RESPONDENTS

(BY SRI TEJAS S R, ADVOCATE FOR  
DIA ASSOCIATES, ADVOCATE FOR R2,  
SRI S GURUPRASAD, ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO



DIRECT THE RESPONDENT NO.2 TO PAY THE AMOUNT OF RS.60,75,347/- (RUPEES SIXTY LAKH SEVENTY FIVE THOUSAND AND THREE HUNDRED FORTY SEVEN ONLY) BEING THE PROVIDENT FUND DUES FROM THE AMOUNT RECOVERED FROM THE SALE OF THE ASSETS OF THE RESPONDENT NO.1.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18<sup>TH</sup> MARCH 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

**CAV ORDER**

1. The petitioner is the Employees Provident Fund Organisation. The petition is filed seeking a writ of mandamus directing respondent No.2-bank ('bank') to pay Rs.60,75,347/- to the petitioner, towards the provident fund dues of respondent No.1-a partnership firm('the firm').

2. The petitioner contends that the contribution towards the 'provident funds' under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (*'the Act, 1952'*) was due from the firm and the same was quantified vide order dated 09.01.2014 directing payment of dues for the period September, 2013 to February, 2014. Another order dated 10.07.2017 was also passed in respect of the dues from March, 2014 to March, 2015. The firm was closed in March, 2015.

3. The firm did not pay the dues as ordered. The petitioner initiated recovery proceedings. On 27.02.2018, property of one of the partners of firm was attached. On knowing that the property attached was auctioned by the bank to recover the loan amount due to the bank, the petitioner issued the letter dated 05.06.2018 claiming **first charge** over the property auctioned.

4. Respondent No.2-bank vide reply dated 11.06.2018 claimed prior right over the property as a mortgagee.

5. On 28.06.2018, the petitioner demanded payment of Rs.60,75,347/- from the bank and the bank declined to accede to the demand

6. In this background the petitioner is before this Court seeking a direction against the bank to pay the aforesaid amount.

7. Learned counsel for the petitioner would submit that the petitioner has **first charge** over the property of the firm. The petitioner is entitled to recover its dues from the sale proceeds from the auctioned property as Section 11(2) of the

Act, 1952, confers a **first charge** on the assets of the firm to recover the dues under the Act, 1952.

8. Learned Counsel for the petitioner also referred to Section 8B of the Act, 1952. It is urged that the bank had advanced a loan to the firm and one of the partners had offered his property as security for the loan and the property thus would be the property of the firm.

9. Learned counsel for **bank** would urge that Section 11(2) of the Act of 1952 provides for first charge only over the **assets of the establishment** and not over the **assets of the partner** of the firm. The auctioned property was not the property of the firm but was the separate property of the partner and the first charge under the Act, 1952, does not extend over the separate property of the partner.

10. It is further urged that while Section 8B of the Act, 1952 enables the petitioner to proceed against the individual assets of the employer, does not confer a first charge in respect of such individual assets.

11. It is also urged that unless it is established that the property of the partner is brought into the stock of the

partnership firm, the petitioner cannot claim first charge over the separate property of such partner.

12. Learned counsel for the petitioner by way of reply, produced the copy of Form No.5A filed by the firm under the Employees' Provident Funds Scheme, 1952 ("Scheme, 1952"). Referring to the said Form, it is urged that the column No. 8 discloses two partners as the owners of the firm and one of the partner's property is offered as a security to the loan advanced to the firm and the same leads to the conclusion that the property belonged to the firm.

13. Learned counsel for the petitioner relies on the judgment of the Division Bench of Chattisgarh High Court in ***Alchemist Asset Reconstruction Company Ltd and Ors v. The Regional Provident Fund Commissioner-ii and Ors***<sup>1</sup> to urge that the Act, 1952 has an overriding effect over all Acts including the - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act').

14. It is also urged that the bank has taken possession of certain other assets of the firm and apart from the property in question, there are other three assets which are in possession of

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<sup>1</sup> W A No. 311 of 2023

respondent No.2 and from sale and recovery of the said assets respondent No.2 can recover the dues payable to respondent No.2.

15. The Court has considered the contentions raised, perused the records and the judgments cited.

16. The following questions arise for consideration:

- a. Whether the security interest/mortgage created over the property will have priority over the dues payable under the provisions of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952?
- b. Whether the **provident fund organization** will have a **first charge** over the property of a partner of a partnership firm which owes provident fund dues under the Act, 1952, in derogation of the **security interest** created over the property of the partner of a firm?"

17. It is not in dispute that the firm owed provident fund dues under the Act, 1952. The dues relate to the period September, 2013 to March, 2015.

18. The partner's property was mortgaged in favour of the bank on 24.09.2012, as a security for the loan advanced to the firm and the mortgage was extended from time to time.

19. Section 11 of the Act, 1952 reads as under.

**"11. Priority of payment of contributions over other debts.—**

*(1) 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*

*(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 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 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*

*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.*

*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 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 of the employee's 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 force, be paid in priority to all other debts."*

20. The Apex Court in **Jalgaon District Central Coop. Bank Ltd. Vs State of Maharashtra and Others 2025 SCC online 2513** has held that the Act, 1952 prevails over the SARFAESI Act. Apex Court has held that the word "**priority**" found in Section 26E of the SARFAESI Act, cannot override the **first charge** over the assets of the establishment conferred under

Section 11(2) of the Act, 1952, in respect of the dues under the said Act, 1952.

21. Even otherwise, Section 26E of Act of 2002 is held to be prospective in operation by the Full Bench of the Bombay High Court in ***Jalgaon Janata Sahakari Bank Limited vs. Joint Commissioner of Sales Tax***<sup>2</sup>. In addition, said judgment is referred to by the Apex Court in ***Punjab and Sindh Bank vs. State of Punjab***<sup>3</sup> and the Apex Court has also approved the said view.

22. Accordingly, Section 26E of the SARFAESI Act, cannot override the ***first charge*** over the assets of the establishment conferred under Section 11(2) of the Act, 1952 in case such first charge is prior to the registration of charge under Chapter IVA of the Act, 2002. In such situation the ***first charge*** under Section 11(2) of the Act, 1952 overrides the claim under SARFAESI Act.

23. Next question is whether the Section 11(2) of the Act of 1952 provides for the first charge over the separate asset of a partner of an establishment in arrears of provident fund dues.

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<sup>2</sup> 2022 SCC OnLine BOM 1767

<sup>3</sup> 2023 SCC OnLine SC 1894

24. The Act, 1952 is a welfare legislation aimed at achieving the social security and financial stability of employees. It provides for provident fund and pension schemes, vests authorities with powers to ensure timely contributions, and to recover dues. To secure contributions to the fund from the establishment, the statute also provides for a first charge over the assets of the establishment.

25. It is to be noticed that Section 11(2) of the Act, 1952 does not expressly provide for the first charge over the separate assets of the partner of the firm. First charge is expressly provided over the assets of the ***establishment***, to recover the dues under the Act, 1952.

26. The petitioner contends that Section 8B and 11(2) of the Act, 1952 are to be interpreted by applying the principles of purposive interpretation and harmonious construction, to advance the object of the Act, 1952 which seeks to provide social security and financial stability to the employees.

27. It is settled position that while interpreting a provision of law; the Court has to keep in mind the object of the enactment. The interpretation must aim at achieving the object of the enactment. However, merely because legislation is welfare

legislation, it does not mean that each and every provision in such legislation has to be interpreted beyond what explicitly emerges from the language and context of the legislation. Though the Courts do have power to interpret law, like every power, the power to interpret law also has inherent limitations. Even welfare legislation may contain a provision, consciously incorporated by the law maker, designed to keep a check on the sweeping effects of purposive interpretations, on the rights conferred on others under any other law.

28. In addition, the right to property is a Constitutional right guaranteed under Article 300A of the Constitution of India which mandates that no person shall be deprived of his property, save by authority of law. The law providing a statutory first charge over property will have significant legal consequences. Such statutory first charge though may not divest the owner the title to the property, will impair the owner's right to alienate the property or appropriate the sale proceeds thereof towards the discharge of other liabilities, unless the statutory first charge is first satisfied.

29. In other words, a statutory provision creating a first charge over property bears a nexus to the protection

assured under Article 300A of the Constitution. In such circumstances, this Court is of the considered view that the existence of a statutory first charge need not be inferred through an elaborate process of interpretation when the language of the provision itself does not expressly or by necessary implication indicate the creation of such a first charge.

30. If the above settled principle is kept in mind, the Court does not find any justifiable reason to stretch scope of Section 11(2) of the Act, 1952 to fasten the **first charge on the separate assets of the partner of a firm/establishment** to recover the dues under the Act, 1952. This is the view that emerges on reading the definition of the term "employer" in Section 2(e), the procedure of recovery dealt in Sections 8B, and also from the language of 11 (2) of the Act, 1952.

31. The definition of the word *employer* in Section 2(e) reads as under:

**"2. Definitions**

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(e) "**employer**" means— (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or

*occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and*

*(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;*

XXXX”

32. The Act, 1952, does not define the word establishment, however, has defined the word “employer”. Under Section 2(e) (i) the Act, 1952, in case of a factory, the *owner or occupier* of the factory including the *agent and the occupier and legal representative of a deceased owner or an occupier or a manager* named under clause (f) of sub-section 1 of Section 7 of the Factories Act, 1948, is the employer.

33. Under Section 2(e)(ii) of the Act, 1952, a person who has ultimate control over the affairs of the establishment, or the manager, managing director or managing agent will be the employer in case of an establishment other than a factory.

34. In this case, the Court is dealing with the asset of a partner and the dues of a partnership firm. The partnership firm is not a juristic person in law. Thus, the partners of the firm are the employers under Section 2(e) of the Act, 1952 and are liable to pay the dues.

35. From a reading of Sections 2(e) and 8B of the Act, 1952 it is evident that the liability to pay the dues under the Act, 1952 will be on the **establishment or as the case may be on the employer**. In other words, the Act, 1952 recognises that the establishment and the employer in a given case may be the same or may be distinct.

36. *The parliament though specifically provided for first charge on the assets of the establishment, has not provided for such first charge on the assets of the employer. However, in a given case, if the establishment and the employer are one and the same, then the first charge will be available on the assets of the employer. If assets of establishment and the employer are distinct then the first charge will be only on the assets of establishment and not on the assets of the employer. The parliament though being aware of such distinction has consciously not provided for first charge on the assets of the employer where the employer's assets*

*are distinct from the assets of the establishment despite providing first charge over the assets of the establishment.*

37. At this juncture, the Court has to take note of the procedure of recovery envisaged under Section 8B of the Act of 1952. Said provision provides for issuance of recovery certificate to recover the dues under the Act of 1952. Section 8B(1) of the Act, 1952 reads as under:

**"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*

proportion 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.

*(emphasis supplied)*

38. Proviso to Section 8B of the Act, 1952 lays down the procedure for recovery of the dues from the separate assets of the employer. However, the Provident Fund Organisation has to first proceed against the property of the establishment. If the assets of the establishment are insufficient to satisfy the full dues, then it can proceed against the assets of the employer.

39. On a combined reading of Sections 2(e), 8B and 11(2), of the Act, 1952 and the implications of those provisions, one can conclude that, the establishment and employer may be distinct or the same, depending on the facts. For example, the establishment, if run by the proprietary concern, then the establishment and the employer are one and the same. In case of a partnership, the firm may have its own assets and capital distinct from the assets of the partners of the firm. However, the partners by an agreement may bring all their assets into the stock of the firm, in which case, the assets of the partners will be the assets of the firm/establishment.

40. As already noted Section 11(2) explicitly provides for the **first charge** over the assets of the **establishment**. In a situation where the assets of the firm and the assets of the partners are the same, then the first charge over those assets of the partners which are brought into the stock of the firm is available to recover the dues under the Act, 1952.

41. If the assets of the firm and the assets of the partners are distinct, then the provident fund organization can certainly proceed against the property of the partner, **after** exhausting the remedy against the assets of the firm. Proviso to Section 8B of the Act, 1952 specifies such a procedure. This procedure does not translate into a first charge over the assets of the partner.

42. As already noticed the property of the partner and the property of the firm need not be one and the same. If agreed by the partners, it can be otherwise. It is indeed true that in Form No. 5A, two partners have described themselves as the owners of the firm. That would lead to the conclusion that both of them are the owners of the firm or that both are the employers if any either of them is not shown as the managing partner or the manager of the firm. Since, no such materials are placed before the Court, the

Court will proceed on the basis that both partners are the employers.

43. It is quite possible that the firm may have its assets or may not have the assets. No materials are placed before the Court to record a finding that the property of the partners, were brought into the stock of the partnership firm. Admittedly, the property in question stood in the name of one of the partners' before the auction by the bank. Under law the property in the name of the individual is presumed to be his self acquired property unless shown otherwise. Since in the said Form No. 5A, there is no declaration the property of a partner which is auctioned was brought into the assets of the firm, the Court has to hold that the said property was not the property of the establishment and was the separate property of one of the partners.

44. In the instant case, the partner of the firm had mortgaged his property as security for the loan advanced to the firm by the bank. Thus, the bank had prior claim and interest over the mortgaged property. There are no materials to take a view that the property of the partner was treated as the asset of the firm. Merely because the partner of partnership firm offered his property as a security for the loan availed by the firm, that does not render

the separate property as the property of the firm. Thus, the petitioner cannot claim first charge over the property of the partner which is auctioned to recover the dues of the bank.

45. On these facts, the Court has to take a view that the property which was mortgaged in favour of the bank is the separate property of the partner or one of the employers. The petition averments are also to the effect that the partner of the firm owned the property. This being the position the petitioner cannot claim first charge over the separate property of the partner.

46. **Conclusions:**

- (a) The **first charge** under Section 11(2) of The Employees' Provident Fund and Miscellaneous Provisions Act, 1952, prevails over the **security interest** under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- (b) The **first charge** under Section 11(2) of The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 can be enforced against the asset

of the employer ***if the asset of the establishment and asset of the employer are the same.***

- (c) The ***first charge*** under Section 11(2) of The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is confined to the asset of the establishment under the Act, 1952 and will not extend to the separate asset of the employer.
- (d) The ***first charge*** under Section 11(2) of The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 can be enforced over the asset of the partner of a partnership firm, provided the property of a partner is brought into the stock of the firm. If not, ***the first charge*** under the Act, 1952 is not available and recovery through such separate asset of the partner will be subject to any other prior charge.

**ORDER**

- i. Accordingly, the Writ Petition stands ***dismissed.***
- ii. No order as to cost.

**Sd/-  
(ANANT RAMANATH HEGDE)  
JUDGE**