A BRIEF STUDY ON CONCEPT OF NON - OBSTANTE

Archika Agarwal

Introduction

While interpreting the meaning of provisions contained in any statute, judges and lawyers rely upon certain aids to construction which will enable them to know as to what the Legislature meant when it enacted a particular statute. There are essentially two types of aids to construction of statutes:

- Internal aids to construction; and
- External aids to construction.

Examples of internal aids to construction are determined as follows:

- Preamble to the Act,
- Headings,
- Marginal notes,
- Definition sections,
- Provisos,
- Explanation,
- Schedules,
- Clauses etc.

These are internal aids to construction because they are contained in the statute itself. Thus, with relevance to this article, a non-obstante clause is usually used in a provision to indicate that the provision should prevail despite anything to the contrary in the provision mentioned in such non-obstante clause. In case there is any inconsistency or a departure between the non-obstante clause

1 4th year BBA LLB student, Institute of Law, Nirma University, Ahmedabad
and another provision, one of the objects of such a clause is to indicate that it is the non-obstante clause which would prevail over the other clause.”

A clause beginning with ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force’, is sometimes appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict, an overriding effect over the provision or Act mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision or the Act mentioned in the non-obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment. Thus a non-obstante clause may be used as a legislative device to modify the ambit of the provision or the law mentioned in such clause or to override it in specified circumstances.

The phrase ‘notwithstanding anything in’ is used in contradistinction to the phrase ‘subject to’, the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject.

A non-obstante clause must also be distinguished from the phrase ‘without prejudice’. A provision enacted ‘without prejudice’ to another provision has not the effect of affecting the

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2 Parasuramaiah v. Lakshamma AIR 1965 AP 220.


operation of the other provision and any action taken under it must not be inconsistent with such other provision.\(^8\)

Ordinarily, there is a close approximation between non-obstante clause and enacting part of the section and the non-obstante clause may throw some light as to the scope and ambit of the enacting part in case of its ambiguity, but when the enacting part is clear its scope cannot be cut down or enlarged by resort to a non-obstante clause. Further, the wide amplitude of a non-obstante clause must be kept confined to the legislative policy and it can be given effect to, to the extent Parliament intended and not beyond the same.\(^9\)

Therefore, while interpreting a non statute clause, the court is required to find out the extent to which the legislature intended to give it overriding effect.\(^10\)

The expression ‘notwithstanding anything in any other law’ occurring in a section of an Act cannot be construed to take away the effect of any provision of the Act in which that section appears. In other words, ‘any other law’ will refer to any law other than the Act in which that section occurs. In contrast, the expression ‘notwithstanding anything contained in this Act’ may be construed to take away the effect of any provision of the Act in which the section occurs but it cannot take away the effect of any other law. The expression ‘notwithstanding anything to the contrary in any enactment’ cannot take away the effect of any provision in a law which is not an enactment.\(^11\)

A provision beginning with the words, ‘notwithstanding anything in this Constitution’ added in the Constitution by a Constitution Amendment Act cannot be construed as taking away the provision outside the limitations on the amending power and it has to be harmoniously construed consistent with the founding principles and the basic features of the Constitution. But subject to this limitation, existing laws continued under such a provision cannot be held void on the ground

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that they infringe anything in the Constitution including Article 13 for the non-obstante clause will preclude any such attack.  

By Ordinance No. 19 of 1946 (promulgated under section 72 of the Government of India Act, 1935) section 3 of which provided; ‘notwithstanding the expiration of the Defence of India Act, 1939’, and the rules made there under, all requisitioned lands shall continue to be subject to requisition until the expiry of this Ordinance, all requisitions made under the Defence of India Rules were continued. It was, however, contended before the Supreme Court that section 3 continued only such requisitions which would have come to an end because of the expiry of the Defence of India Act and Rules and not those, which, by their own language as to the limitation of the period expired ipso facto on the date of expiration of the Act or Rules; and support for this contention was sought in the non-obstante clause. Rejecting the contention Bhagwati, J. observed as follows:

“The non-obstante clause need not necessarily and always be co-extensive with the operating part so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and capable of only one interpretation on a plain and grammatical construction of words thereof a non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases, the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by the way of abundant caution and not by the way of limiting the ambit and scope of the operative part of the enactment.”

The proper approach when the enacting part is not ambiguous has been indicated by the Supreme Court in Ashwini Kumar’s Case, where the question arose as to the true construction of section 2 of the Supreme Court Advocates (Practice in High Courts) Act, 1951, which contained a non-obstante clause in the following form:

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“Notwithstanding anything contained in the Indian Bar Councils Act, 1926, or in any other law regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practice in that High Court.”¹⁵

The Calcutta High Court in construing section 2 of the Act held that an advocate of the Supreme Court was not entitled to act on the original side of that High Court. This result was reached by limiting the enacting part of the section by the non-obstante clause, in overruling the High Court, Patanjali Shastri, CJ. observed:

“This is not, in our judgment, a correct approach to the construction of section 2. It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in the relevant provision or existing laws which is inconsistent with the new enactment.”¹⁶

Proceeding further, the Chief Justice also stated:

“the enacting part of the statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously; for, even apart from such a clause, a later law abrogates earlier laws clearly inconsistent with it.”¹⁷

Per Mukerjea, J.:

“it is one of the settled rules of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself.”

Although a relative or a qualifying phrase is normally taken with the immediately preceding term or expression, yet this rule has got to be discarded if it is against common sense and natural meaning of the words and the expression used.


¹⁷ Ibid at p. 580.
Per Das, J.:

“while it may be true that the non-obstante clause need not necessarily be co-extensive with the operative part, there can be no doubt that ordinarily there should be a close approximation between the two.”18

The above mode of approach in construing a non-obstante clause was followed in construing section 26 of the Travancore Cochin General Sales Tax Act (11 of 1125 ME). The section which was added by an amendment in 1951 provided that: “Notwithstanding anything contained in this Act – a tax on the sale or purchase of goods shall not be imposed under this Act”, in cases within the categories specified under Article 286 were taken out of the purview of the Act and the value thereof could not be included in the turnover of the dealer either for assessment or for levy of tax.19

In Kanwar Raj v. Pramod20, the Custodian of Evacuee Property cancelled a lease granted by him, under section 12 of the Administration of Evacuee Property Act, 1950. Section 12 enacts:

“Notwithstanding anything contained in other law for the time being in force the Custodian may terminate any lease, etc.”

It was contended that the power of the Custodian to cancel leases could be exercised only so as to override a bar imposed by any law but not the contract under which the lease was held because the non-obstante clause was limited to ‘anything contained in any other law for the time being in force’. It was held:

“the operative portion of the section which confers power on the custodian to cancel a lease or vary the terms thereof is unqualified and absolute, and that power cannot be abridged by reference to the provision that it could be exercised ‘notwithstanding anything contained in any other law for the time being in force’. This provision is obviously intended to repel a possible contention that section 12 does not by implication repeal statutes conferring rights or leases, and

18 Ibid.


20 AIR 1956 SC 105 : (1955) 2 SCR 977.
cannot prevail as against them and has been inserted ‘ex abundanti cautela’. It cannot be construed as cutting down the plain meaning of the operative portion of the section.”

In N.B. Pimputkar v. L.P. Pimputkar, the question was that whether a decree for possession of land awarded to the respondent had become in-executable by the reason of section 4 of the Gujarat Patel Watans Abolition Act, 1961. The section provided as follows:

“notwithstanding any usage or custom or anything contained in any settlement, grant, agreement, sanad, or any other decree or order of the court or to the existing watan law, with effect on and from the appointed day, (i) all patel watans shall be and are hereby abolished.”

It was contended on behalf of the appellant that the words ‘any other decree or the order of the court’ indicated that the decree or the order of the court could not be executed with effect from the appointed day. It was therefore held:

“it is a well established rule in construction of statutes that general terms following particular ones apply only to such persons or things as are ejusdem generis with those comprehended in the language of the legislature. In other words, the general expression is to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended. In our opinion, the opening clause of section 4 indicates that irrespective of any usage, custom etc. and irrespective of any settlement, grant, agreement, sanad, or any other decree or order of the court or to the existing watan law which might have been defined and declared the incidents appertaining to patel watans, the results contemplated by the various clauses of section 4 would follow and nothing contained in the agreement, settlement, grant etc., would prevent the operation of the section. But the fact that patel watans have been abolished and incidents

21 Vide the observations in Ashwini Kumar Ghosh v. Arabinda Bose AIR 1952 SC 369 on the scope of non-obstante clause.

22 (1974) 1 SCC 11.

appertaining to the watans have been extinguished, does not lead to the conclusion that the right of the erstwhile watandar to the possession of the lands also comes to an end.”

A piquant condition arose before the Court in the case of Shri Ram Narain v. Simla Banking & Industrial Co. Ltd., where the competing statutes being the Banking Companies Act, 1949, as amended by Act 52 of 1953 and the Displaced Persons (Debts Adjustment) Act, 1951. Section 45A of the former Act, which was introduced by the amending Act of 1953 and section 3 of the latter Act, each contained a non-obstante clause, providing that certain provisions would have effect ‘notwithstanding anything inconsistent therewith contained in any other law for the time being in force…’. This court resolved the conflict by considering the object and purpose of the two laws and giving precedence to the Banking Companies Act by observing as follows:

“it is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provision therein…”

Section 16 of the Hindu Marriage Act, 1955, which legitimizes children born of void marriages, opens with a non-obstante clause ‘notwithstanding that a marriage is null and void under section 11’, but having regard to the language and beneficent purpose of the enacting clause it was held to be not restricted to marriages that were void under section 11 and children born out of all void marriages were held to be legitimatized.

A special enactment or rule cannot be held to be overridden by a later general enactment or simply because the latter opens up with a non-obstante clause there should be a clear inconsistency between the two before giving effect to the non-obstante clause.

Even though the notwithstanding clause is very widely worded, its scope may be restricted by construction having regard to the intention of the legislature gathered from the enacting clause or

24 Ibid.


other related provisions in the Act. This may be particularly so when the notwithstanding clause “does not refer to any particular provisions of the statute generally.” Thus the notwithstanding clause in section 21A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 which reads ‘notwithstanding anything contained in any other law for the time being in force’ was construed not to override the definition of ‘stridhana land’ in section 3(42) even if the case fell within the enacting part of section 21A which validated the partition effected by a registered instrument between 15/2/1970 and 2/10/1970. The partition in that case was executed on 24/9/1970 giving certain lands in favour of the mother in lieu of her right to maintenance. But as the definition of ‘stridhana’ in section 3(42) required that a female should have held the land on 2/10/1970 as an owner, the land given to the mother in the said partition was held not to have become a stridhana land.

Similarly, section 6 of the Government Savings Certificate Act, 1959 by which a nominee of the certificate on the death of the holder becomes entitled to the certificate and to be paid the sum due thereon ‘notwithstanding anything contained in any other law for the time being in force, or in any disposing testamentary or otherwise in respect of any saving certificate’, does not make the nominee the owner of the sum so received to the exclusion of the legal heirs as is clear from section 8 and the other provisions of the Act, the object of permitting nomination being essentially to prevent the delay in collection of the money due under the certificate after the death of the holder.

But the wide meaning of the non-obstante clause and the enacting words following it cannot be curtailed when the use of wide language accords with the object. Thus section 2(ii) of the Forest Conservation Act, 1980 which provides that ‘notwithstanding anything contained in any other law for the time being in force in any State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing any forest land or any portion thereof may be used for any non-forest purpose’, was construed to prevent not only grant of mining lease in a forest but also renewal of a lease which was at the option of the lessee

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29 Ibid.


After referring to the principles and some of the cases mentioned above and the historical circumstances in which the precursor of section 129 of the Civil Procedure Code, 1908 was introduced, the Supreme Court declined to construe the non-obstante clause in that section in a limited sense and held that it was indicative of Parliament’s intention to prevent the application of the Code in respect of civil proceedings on the original side of the High Courts which are to be governed by the rules made by the High Court which will prevail over the rules contained in the Code.  

The influence of the non-obstante clause on a question of construction is illustrated by the ruling in Municipal Corporation, Indore v. Smt. Ratnaprabha. In this case, the Supreme Court considered section 138(b) of the Madhya Pradesh Municipal Corporation Act, 1956 which enacts that ‘the Annual Value of any building shall notwithstanding anything contained in any other law for the time being in force be deemed to be gross annual rent at which such building might reasonably at the time of assessment be expected to be let from year to year.’ In view of the non-obstante clause the Supreme Court held that the annual letting value determined under section 138(b) need not in every case be limited to the standard rent which might be fixed for the building under the Rent Control Act. The Court distinguished its earlier cases on the ground that in the enactments dealt with in those cases there was no non-obstante clause as contained in section 138(b) of the Municipal Corporation Act. The reasoning in those cases is that the landlord commits an offence if he collects rent above the standard rent determinable under the relevant Rent Control Act, and therefore, it can legitimately be stated that a landlord cannot be expected to let a building for a rent higher than the standard rent. In one of these cases, the

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33 AIR 1977 SC 308.


standard rent under the Rent Control Act had not been fixed but it was observed that the authorities concerned ought to take into account the principles applicable for determining standard rent in fixing the annual letting value. This reasoning could also be applied to section 138(b) of the Madhya Pradesh Corporation Act, but it was observed that the significance of the non-obstante clause was that in cases where standard rent was not determined under the Rent Control Act, the authorities under the Corporation Act were not obliged to adopt the principles contained in the Rent Control Act as the basis for determining the annual letting value.36

The notwithstanding clause was also used in construing the enacting part of section 32A of the Narcotics Drugs and Psychotropic Substances Act, 1958 (N.D.P.S. Act). This section read as follows:

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force – no sentence awarded under this Act – shall be suspended or remitted or commuted.” Section 36 provides for appeals and revision to the High Court and says that it ‘may exercise, so far as may be applicable, all the powers conferred under Chapters XXIX and XXX of the Code of Criminal Procedure, 1973’. The question before the Supreme Court was whether, the High Court could exercise its powers of suspending the sentence under section 389 which occurs in Chapter XXIX of the Code, pending an appeal. Having regard to the width of the notwithstanding clause in section 36A, which refers to the entire Cr.P.C. and any other law for the time being in force, as also to the qualifying words ‘so far as may be applicable’ in section 36B, it was held that the High Court has no such power and cannot suspend the sentence awarded under the NDPS Act pending an appeal before it.37

Sometimes one finds two or more enactments operating in the same field and each containing a non-obstante clause stating that its provisions will have effect ‘notwithstanding anything inconsistent therewith contained in any other law for the time being in force’. The conflict in such cases is resolved on consideration of purpose and policy underlying the enactments and the language used therein. Another test that is applied is that the later enactment normally prevails


over the earlier one. It is also relevant to consider as to whether any of the two enactments can be described a special one; in that case the special one may prevail over the more general one notwithstanding that the general one is later in time.\textsuperscript{38}

These principles were reiterated by Thakker, J. in KSL & Industries Ltd. v. Arihant Threads Ltd.\textsuperscript{39} But if the non-obstante clause in a later enactment is subject to and supplemental to the earlier enactment also containing a non-obstante clause, the earlier enactment may be interpreted to prevail over the later enactment.\textsuperscript{40} This led to a difference of opinion between Thakker, J. and Kabir, J. in the aforementioned case. According to Thakker, J. the non-obstante clause in section 34 of the Recovery of Debts Due to Banks and Financial Institutions (RDDB) Act, 1993 which was a later Act prevailed over Sick Industrial Companies (Special Provisions) Act (SICA) 1985 which also contained a non-obstante clause in section 32. But Kabir, J. held that section 34(2) in RDDB made it subject to SICA and was to be read in addition to and not in derogation of SICA therefore SICA would prevail over RDDB Act. Both the judges agreed to allow the appeal and to set aside the judgment of the High Court under appeal but in view of the difference of opinion on interpretation directed that the papers be placed before the CJ.\textsuperscript{41}

Section 19 of the Slum Areas (Improvement & Clearance) Act, 1956 as amended by Act 43 of 1964, provides that the proceedings for eviction of tenants cannot be taken without the permission of the competent authority notwithstanding anything contained in any other law for the time being in force. Section 39 of the Act further provides that provisions of the Act shall take effect notwithstanding anything inconsistent therewith contained in any other law. By Act 18 of 1976, the Delhi Rent Control Act, 1958 was amended and sections 14A, 25A 25B and 25C were introduced in it. Section 14A confers a right on the landlord to recover immediately possession of any premises let out by him in case he is required to vacate any residential premises allotted to him by the central government or any local authority. The conferral of the right is ‘notwithstanding anything contained elsewhere in this Act or in any other law for the

\textsuperscript{38} Sanwormal Kajriwal v. Vishwa Co-operative Housing Society Ltd., AIR 1990 SC 1563, p. 1575.

\textsuperscript{39} (2008) 9 SCC 763 paras 70 and 92.

\textsuperscript{40} Ibid, paras 120 to 122.

time being in force or in any contract (whether express or implied), custom or usage to the contrary’. Section 25B provides the special procedure for the enforcement of the right conferred by section 14A. Section 25A makes the provisions in section 25B to have effect ‘notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force’. Section 54 of the Delhi Rent Act provides that nothing in this Act shall effect the provisions of the Slum Areas act. After considering these provisions the Supreme Court\(^42\) held that the right to immediate possession conferred by section 14A of the Delhi Rent Act was not controlled by the Slum Clearance Act and this right could be enforced in the manner provided in section 25B without obtaining the permission of the competent authority under the Slum Clearance Act. In reaching this conclusion, the court considered the object and policy of the relevant provisions. The court also took into account the fact that sections 14A, 25A, 25B and 25C were introduced in the Delhi Rent Act by an amending Act which was later in time to the Slum Clearance Act. As regards section 54 of the Delhi Rent Act, the court held that it was overridden by the notwithstanding clauses in sections 14A and 25A. Applying the same principles it was held that the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, were a special and later law as against the Delhi Rent Control Act, 1958, and hence the Public Premises Act prevailed in case of a conflict over the Rent Control Act although both the Acts contained non-obstante clauses.\(^43\)

A conflict between provisions of two special statutes namely the Financial Corporation Act, 1951 and the Sick Industrial Companies (Special Provisions) Act, 1985, both containing non-obstante clauses (section 46B of the 1951 Act and section 32 of the 1985 Act) was resolved by giving overriding effect to the 1985 Act on the ground that the 1985 Act was a subsequent enactment, the non-obstante clause therein would prevail over the non-obstante clause in the 1951 Act unless it was found that 1985 Act is a general statute and the 1951 Act is a special one.\(^44\)

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\(^44\) Maharastra Tubes Ltd. v. state Industrial & Investment Corporation of India, JT 1993 (1) SC 310; Allahabad Bank v. Canara bank, AIR 2000 SC 1535, p. 1549.
The aforesaid principles were also laid down in resolving the conflict between section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and section 91 of the Maharashtra Co-operative Societies Act, 1960. Section 28 of the Rent Act which opens with the words ‘notwithstanding anything contained in any law’, confers jurisdiction on the court of small causes Bombay to entertain and try suits for recovery of rent and possession between a landlord and tenant. Section 91 of the Co-operative Societies Act, which would also open with a similar non-obstante clause, provides that any dispute touching the business of a society shall be referred to the Registrar if both the parties thereto are one or the other of the following namely, a society, a present or past member, or a person claiming through a member. Construing the provisions of the two Acts, it was held that even in respect of a tenant co-partnership type housing society whose business includes acquiring and letting out building to its members, a claim by the society to eject a deemed tenant who was let in by a member would be entertaining by the court of small causes under the Rent Act and not by the Registrar under the Co-operative Societies Act. It was pointed out that although the Co-operative Societies Act was a later Act, the Rent Act was a special law relating to the protection and eviction of tenants and therefore must prevail over the provisions of the Co-operative Societies Act.

A conflict between two special Acts both of which have notwithstanding clauses can also be resolved by seeing which is more special than the other in addition to the consideration that the conflict arose because of a provision added later in the Act which is more special. This is illustrated by the conflict between the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (in short, ‘the 1992 Act’) and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short, ‘the 1993 Act’). The conflict arose because insertion of section 9A by Act 24 of 1994 from 25/1/1994 in the 1992 Act which confers civil jurisdiction on the Special Court relating to property attached under sub-section 3 of section 3 and provides for the transfer to the Special Court every suit, claim or other legal proceeding pending before any court in respect of such property. It is also provided that no court other than the Special Court shall have the jurisdiction, power or authority in relation to any such matter. Section 13 of the


1992 Act provides for overriding effect of the Act notwithstanding anything inconsistent therewith contained in any other law. The 1993 Act relates to constitution of tribunals for recovery of debts due to banks and financial institutions. Section 14 provides for the Act to have overriding effect notwithstanding anything to the contrary contained in any other law. The conflict was as to whether the Special Court in the 1992 Act or the Tribunal in the 1993 Act will have the jurisdiction over a matter which could be taken cognizance of by both the authorities. The 1992 Act as well as the 1993 Act are both special Acts but the former was found to be more special as it was restricted in application to the transactions in securities after the 1st April 1991 and before 6/6/1992. Further, the conflict arose because of insertion of section 9A in the 1992 Act by an amendment in 1994 and was thus later in time to the enactment of the 1993 Act. On these considerations the conflict was resolved in favour of the Special Court in the 1992 Act.48

If the Acts containing wide notwithstanding clauses covering ‘any other law for the time being in force’ operate in different fields, harmonious construction has to be applied and when in a given case the application of the earlier Act is attracted, the question of its giving way to the later Act would not arise.49 On this basis, it was held that where section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, which bars execution against any of the properties of the company without the consent of the Board for the Industrial and Financial Reconstruction, applies an award made by the Industry Facilitation Council under section 6(2) of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, which is deemed to be made under the Arbitration and Conciliation Act 1993, cannot be executed without the consent of the Board as required by section 22 of the 1985 Act.50 Both section 22 of the 1985 Act and section 10 of the 1993 Act contain wide notwithstanding clauses but as both the Acts operate in the different fields, harmonious construction was applied and operation of section 22 of the 1985 Act in the case could not be negativied by the notwithstanding clause in section 10 of the 1993 Act.

48 Ibid, paras 19 and 28.


50 Ibid.
Recently, the Supreme Court in Central Bank of India v. State of Kerala\(^1\) had to interpret non-obstante clauses in two sets of laws namely, section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the DRT Act) and section 35 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the Securitization Act) on the one hand and section 38C of Bombay Sales Tax Act, 1959 and section 26B of the Kerala Sales Tax Act on the other. Briefly stated the non-obstante clauses in section 34 of the DRT Act and section 35 of the Securitization Act which are similarly worded provide that provisions of these Acts ‘shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force’. Section 26B of the Kerala General Sales Tax Act provides that ‘notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax penalty, interest and any other amount, if any, payable by a dealer or any another person under this Act shall be the first charge on the property of the dealer or such person’. Similar priority of first charge in respect of tax and other sums due under the Bombay Sales Tax Act is provided in section 38C of the Act. Neither the DRT Act nor the Securitization Act contains any provision by which first charge is created in favour of banks, financial institutions or secured creditors qua the property of the borrower. Interpreting these provisions, the Supreme Court held that the non-obstante clauses in section 34 of the DRT Act and section 35 of the Securitization Act gave overriding effect to these Acts not only if there was anything inconsistent in any other law. In the absence of any first charge provisions in these Acts it would not be held that the first charge provisions in the Sales Tax Acts regarding Sales tax due etc. were overridden by these Acts. The two sets of laws operated in different fields and, therefore, it was rightly held that non-obstante clauses and the priority provisions in the Sales Tax Acts though prior in time prevailed and could not be negatived by the non-obstante clauses in the DRT Act and the Securitization Act though they were later in time.\(^2\)

Thus, to summarize the entire view adopted in the project work it can be rightly stated that a non-obstante clause is inserted with a view to give the enacting part an overriding effect over other provisions of any statute or any other law, in case of any conflict. Also, while interpreting a

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non-obstante clause, the courts are necessarily required to find out the extent to which the legislature intended to give it an overriding effect.

Yet another aspect with regard to the applicability of a non-obstante clause which must be noted is that a special enactment or rule cannot be held to be overridden by a later general enactment or simply because the latter opens up with a non-obstante clause there should be a clear inconsistency between the two before giving effect to the non-obstante clause.

Moreover, any conflict between two special Acts both of which have notwithstanding clauses can also be resolved by seeing which is more special than the other in addition to the consideration that the conflict arose because of a provision added later in the Act which is more special.

Hence, it can be concretely concluded that the hypothesis formulated by the researcher has aided the researcher to make a statement that the a non-obstante clause is a legislative device which is usually employed to give an overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.