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# SECURITISATION AND DEBT RECOVERY JUDGEMENTS

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## TABLE OF CASES


| Sr. No. | | Date | Page Nos. |
|---|---|---|---|
| 1. | Amritlal P Shah vs. TJSB Sahakari Bank Limited; A S Construction; Surendra Pratap M Yadav; Mattuk Narayan A Tiwari; Sunita P Mishra **[Bombay High Court]** | 23/12/2025 | 20 |
| 2. | ASREC (India) Ltd vs. State of Punjab and Ors **[Punjab And Haryana High Court]** | 24/12/2025 | 14 |
| 3. | Authorised Officer, IDBI Bank Ltd and Another vs. District Magistrate Panipat and Others **[Punjab And Haryana High Court]** | 16/09/2025 | 127 |
| 4. | Canara Bank (Erstwhile Syndicate Bank) vs. M/s Karishma Enterprises & Ors **[Delhi High Court]** | 06/12/2025 | 68 |
| 5. | Hdfc Bank Limited vs. State of Punjab and Others **[Punjab And Haryana High Court]** | 17/12/2025 | 41 |
| 6. | Indian Overseas Bank vs. Radhey Infra Solutions (Pvt ) Ltd & Ors **[Supreme Court Of India]** | 07/10/2025 | 12 |
| 7. | Jalgaon District Central Coop Bank Ltd vs. State of Maharashtra and Ors **[Supreme Court Of India]** | 20/11/2025 | 3 |
| 8. | Kotak Mahindra Bank Ltd; Anbit Finvest Pvt Ltd; Reliance Asset Reconstruction Company Ltd; Vinay Jain vs. State of Maharashtra; Debit Recovery Tribunal-1 **[Bombay High Court]** | 10/12/2025 | 56 |
| 9. | M/s Lucky Footwear Components; V Tabraze Basha; V Aslam Basha vs. Authorized Officer, Indian Bank, District- Tirupattur; Manager, District- Tirupattur; Amarnath Reddy **[Madras High Court]** | 29/10/2025 | 96 |
| 10. | M/s Shaftek Infrastructure Private Limited and Another vs. Union of India **[Telangana High Court]** | 04/12/2025 | 77 |
| 11. | M/s Sham Lal and Bros and Others vs. Authorized Officer, Punjab and Sind Bank and Another **[Punjab And Haryana High Court]** | 17/12/2025 | 45 |

| Sr. No. | | Date | Page Nos. |
|---|---|---|---|
| 12. | Mini Zakir, W/o Muhamed Zakir vs. M/s Phoenix Arc Private Limited; M/s Kaerl Tech Projects (P) Ltd **[Kerala High Court]** | 24/10/2025 | 103 |
| 13. | S R Educational and Charitable Trust & Ors vs. Asset Reconstruction Company (India) Ltd **[Supreme Court Of India]** | 21/11/2025 | 1 |
| 14. | Sangli Zilla Parishad Employees, Co-operative Credit Society, Limited vs. Ninaidevi Sahakari Sakhar Karkhana Limited; Dalmia Bharat Sugar and Industrict Limited **[Bombay High Court]** | 01/12/2025 | 91 |
| 15. | Senbo Engineering Limited vs. Bank of Maharashtra **[Calcutta High Court]** | 03/12/2025 | 81 |
| 16. | Smriti Talkies, Parasia Distt Chhindwara vs. Chandra Kumar Galani and Others **[Madhya Pradesh High Court]** | 09/12/2025 | 63 |
| 17. | Vijaykumar Shobhalal Shah & Anr vs. Bank of Baroda Thro Roopesh Gupta & Anr **[Gujarat High Court]** | 09/10/2025 | 118 |
| 18. | Vikas Bharti & Anr ; M/s Krishna Traders vs. Punjab National Bank And; Punjab National Bank & Ors **[Jammu And Kashmir High Court]** | 16/12/2025 | 49 |

## SUBJECT INDEX


| Sr. No. | | | Page Nos. |
|---|---|---|---|
| 1. | APPOINTMENT OF COURT COMMISSIONER UNDER SARFAESI | GHC | 118 |
| 2. | AUCTION IRREGULARITY | MP | 63 |
| 3. | AUCTION SALE | DEL | 68 |
| 4. | DRT DELAY | SC | 12 |
| 5. | E-AUCTION SALE | JK | 49 |
| 6. | IMPLEADMENT OF AUCTION PURCHASER | BHC | 91 |
| 7. | INSOLVENCY JURISDICTION TRANSFER | BHC | 56 |
| 8. | JURISDICTION ISSUE | BHC | 21 |
| 9. | ONE TIME SETTLEMENT | CAL | 81 |
| 10. | PRE-DEPOSIT COMPUTATION | KER | 103 |
| 11. | PRIORITY OF CHARGE | PH | 41 |
| 12. | PRIORITY OF CLAIMS | SC | 3 |
| 13. | REVIEW OF PRE-DEPOSIT ORDER | SC | 1 |
| 14. | SARFAESI ORDER RECALL | PH | 127 |
| 15. | SARFAESI PROCEEDINGS | PH | 14 |
| 16. | SARFAESI PROCEEDINGS | PH | 45 |
| 17. | SARFAESI PROCEEDINGS | TEL | 77 |
| 18. | SARFAESI PROCEEDINGS | TN | 97 |

## ACT AND SECTION INDEX


| | Page Nos. |
|---|---|
| Banking Regulation Act, 1949 Sec. 35A, Sec. 21 | 69 |
| Banking Regulation Act, 1949 Sec. 56, Sec. 2, Sec. 5, Sec. 34 | 21 |
| Code of Civil Procedure, 1908 Or. 6R. 17 | 92 |
| Code of Civil Procedure, 1908 Or. 7R. 11 | 82 |
| Income Tax Act, 1961 Sec. 61, Sec. 60 | 64 |
| Insolvency and Bankruptcy Code, 2016 Sec. 13, Sec. 96, Sec. 95, Sec. 60 | 56 |
| Insolvency and Bankruptcy Code, 2016 Sec. 63, Sec. 7 | 82 |
| Maharashtra Co-Operative Societies Act, 1960 Sec. 163, Sec. 91 | 21 |
| Punjab Value Added Tax Act, 2005 Sec. 34, Sec. 35, Sec. 36 | 41 |
| Recovery of Debts and Bankruptcy Act, 1993 Sec. 17, Sec. 1, Sec. 2, Sec. 31, Sec. 18 | 21 |
| Recovery of Debts and Bankruptcy Act, 1993 Sec. 19 | 15 |
| Recovery of Debts and Bankruptcy Act, 1993 Sec. 19, Sec. 17 | 82 |
| Recovery of Debts and Bankruptcy Act, 1993 Sec. 30 | 64 |
| Recovery of Debts and Bankruptcy Act, 1993 Sec. 31 | 41 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 17 | 1 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 17, Sec. 26E | 4 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 17 | 13 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 17 | 15 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 2 | 21 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 26, Sec. 14 | 41 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 | 46 |

| | Page Nos. |
|---|---|
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 | 49 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14 | 56 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 | 64 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 17 | 69 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 17, Sec. 26D | 77 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 19, Sec. 34 | 82 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 | 92 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 | 97 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 18, Sec. 5 | 104 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 14, Sec. 17 | 119 |
| Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14 | 127 |
| Security Interest (Enforcement) Rules, 2002 Rule 8 | 49 |
| Security Interest (Enforcement) Rules, 2002 Rule 9 | 97 |
| Security Interest (Enforcement) Rules, 2002 Rule 9, Rule 8 | 69 |
| Wealth Tax Act, 1957 Sec. 34AB | 97 |

## TOPICAL INDEX

**APPOINTMENT OF COURT COMMISSIONER UNDER SARFAESI**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 Sec. 14 Sec. 17 - Appointment of Court Commissioner under SARFAESI - Petitioners challenged order authorising Civil Registrar as Court Commissioner for taking possession of secured assets under Sec. 14 SARFAESI - Contended appointment without jurisdiction as such post not subordinate officer - Respondent bank argued Registrar subordinate to Magistrate and competent - Court observed Sec. 14(1A) empowers Magistrate to authorise subordinate officer and appointment of advocate or staff permissible - Registrar being part of court establishment held subordinate employee capable of executing order - No prejudice shown to petitioners - Remedy lies before Debt Recovery Tribunal under Sec. 17 - Petition not maintainable and devoid of merit - Petition Dismissed [*Vijaykumar Shobhalal Shah & Anr vs. Bank of Baroda Thro Roopesh Gupta & Anr* (GUJARAT HIGH COURT) 2026(1)SDJ118]

**AUCTION IRREGULARITY**

Income Tax Act, 1961 Sec. 61, Sec. 60 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 - Recovery of Debts and Bankruptcy Act, 1993 Sec. 30 - Auction Irregularity - Petitioner availed loan and defaulted leading to recovery proceedings - Property auctioned by Recovery Officer for lesser amount despite higher bids and objections during auction - DRT found irregularities in auction and set aside sale but DRAT restored auction holding appeal barred by limitation - Petitioner challenged on ground that appeal filed within statutory period and that auction suffered from procedural lapses - Court found auction conducted in haste without allowing higher bidders to participate and with inadequate reserve price - Also found that appeals before DRT were within limitation under Section 30 of RDDB Act - DRAT erred in dismissing valid appeals and ignoring material irregularities - Order of DRAT set aside and DRT order restored. - Petition Allowed [*Smriti Talkies, Parasia Distt Chhindwara vs. Chandra Kumar Galani and Others* (MADHYA PRADESH HIGH COURT) 2026(1)SDJ63]

**AUCTION SALE**

Banking Regulation Act, 1949 Sec. 35A, Sec. 21 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 17 - Security Interest (Enforcement) Rules, 2002 Rule 9, Rule 8 - Auction Sale - Petitioner Bank granted credit facility to borrower secured by mortgage of properties - Borrower defaulted leading to NPA classification and issuance of SARFAESI notice - Property auctioned after consent of borrower recorded by DRT - Sale confirmed and title transferred to auction purchaser - Borrowers later challenged sale before DRAT which

set aside DRT order despite earlier consent - Court found that borrowers had voluntarily agreed to sale and later appeal barred by principle of approbation and reprobation - DRAT erred in ignoring borrower's earlier conduct and in granting relief after confirmation of sale - Held sale conducted in compliance with law and consent of borrowers valid - Appeal Disposed [*Canara Bank (Erstwhile Syndicate Bank) vs. M/s Karishma Enterprises & Ors* (DELHI HIGH COURT) 2026(1)SDJ68]

**DRT DELAY**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 17 - DRT Delay - Complaint raised by bank that debt recovery tribunal not disposing securitisation application within statutory time - High Court declined to issue direction except referring to statute - Matter remained pending despite lapse of period - Statute mandates tribunal to decide within sixty days extendable to four months with reasons recorded - Tribunal failed to comply with mandate and did not record reasons for delay - Hence direction issued to tribunal to adhere to statutory requirement and dispose matter expeditiously - Appeal disposed of [*Indian Overseas Bank vs. Radhey Infra Solutions (Pvt ) Ltd & Ors* (SUPREME COURT OF INDIA) 2026(1)SDJ12]

**E-AUCTION SALE**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 - Security Interest (Enforcement) Rules, 2002 Rule 8 - E-Auction Sale - Petitioner obtained loan from bank and mortgaged property as security - Default occurred and account classified as NPA - Bank issued demand notice and proceeded under SARFAESI Act - One Time Settlement sanctioned but borrower failed to pay as per scheme - Bank conducted e-auction and declared respondents successful bidders - Borrower challenged sale alleging illegality of notices and prior OTS - Bank contended borrower defaulted and suppressed facts - Court found petitioner failed to repay despite opportunities and filed repeated petitions - Held borrower cannot claim equity after auction finalisation - Sale proceedings held valid - Connected petition of successful bidder disposed accordingly - Petitions Dismissed [*Vikas Bharti & Anr ; M/s Krishna Traders vs. Punjab National Bank And; Punjab National Bank & Ors* (JAMMU AND KASHMIR HIGH COURT) 2026(1)SDJ49]

**IMPLEADMENT OF AUCTION PURCHASER**

Code of Civil Procedure, 1908 Or. 6R. 17 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 - Impleadment of Auction Purchaser - Petitioner sought to implead auction purchaser in execution of award against borrower society - Auction conducted under SARFAESI Act - Purchaser contended liability limited to secured assets and not to business dues of borrower - Court observed petitioner not secured creditor and award did not create charge on property - Transfer under SARFAESI covered assets, not ownership of business - Purchaser not successor in interest - Executing court rightly refused

impleadment - Petition Dismissed [*Sangli Zilla Parishad Employees, Co-operative Credit Society, Limited vs. Ninaidevi Sahakari Sakhar Karkhana Limited; Dalmia Bharat Sugar and Industrict Limited* (BOMBAY HIGH COURT) 2026(1)SDJ91]

**INSOLVENCY JURISDICTION TRANSFER**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14 - Insolvency and Bankruptcy Code, 2016 Sec. 13, Sec. 96, Sec. 95, Sec. 60 - Insolvency Jurisdiction Transfer - Petitions filed by secured creditors challenging proceedings before DRT initiated under Insolvency Code against personal guarantors of corporate debtor - Petitioners contended such proceedings should lie before NCLT as per Supreme Court ruling - Court referred to Section 60 of IBC holding that NCLT is adjudicating authority for insolvency of personal guarantors when corporate insolvency is pending - Held proceedings before DRT without jurisdiction and required to be transferred to NCLT - Petitions Allowed [*Kotak Mahindra Bank Ltd; Anbit Finvest Pvt Ltd; Reliance Asset Reconstruction Company Ltd; Vinay Jain vs. State of Maharashtra; Debit Recovery Tribunal-1* (BOMBAY HIGH COURT) 2026(1)SDJ56]

**JURISDICTION ISSUE**

Maharashtra Co Operative Societies Act, 1960 Sec. 163, Sec. 91 - Banking Regulation Act, 1949 Sec. 56, Sec. 2, Sec. 5, Sec. 34 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 2 - Recovery of Debts and Bankruptcy Act, 1993 Sec. 17, Sec. 1, Sec. 2, Sec. 31, Sec. 18 - Jurisdiction Issue - Review sought reconsideration of earlier writ decision restoring money decree in favor of cooperative bank - Ground urged concerned jurisdiction of cooperative forum vis a vis debt recovery mechanism under central legislation - Facts undisputed regarding loan transactions and recovery proceedings initiated before cooperative forum - Observation recorded existence of serious legal controversy on whether cooperative banks fall within definition of bank for exclusive recovery before specialized tribunal - Conflicting interpretations and constitutional interplay noticed - Issue involved effect of central enactment on state recovery remedy and extent of legislative competence - Determination required authoritative resolution - Matter found unsuitable for summary adjudication in review jurisdiction - Proper course required reference to larger bench - Review not decided on merits but procedural direction issued - Matter Referred to larger Bench [*Amritlal P Shah vs. TJSB Sahakari Bank Limited; A S Construction; Surendra Pratap M Yadav; Mattuk Narayan A Tiwari; Sunita P Mishra* (BOMBAY HIGH COURT) 2026(1)SDJ21]

**ONE TIME SETTLEMENT**

Code of Civil Procedure, 1908 Or. 7R. 11 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 19, Sec. 34 - Insolvency and Bankruptcy Code, 2016 Sec. 63, Sec. 7 - Recovery of Debts and Bankruptcy Act, 1993 Sec. 19, Sec. 17 - One Time Settlement - Defendant bank

sought rejection of plaint filed by borrower company claiming concluded OTS contract - Plaintiff asserted bank acted upon settlement and accepted payments - Bank argued OTS not enforceable right and suit barred by SARFAESI, IBC and DRT Acts - Court observed rejection of plaint warranted only if suit barred by law - Found that plaint disclosed triable issue on existence of concluded contract - Rejection would amount to deciding facts without trial - Bar under SARFAESI and IBC not attracted as plaintiff did not challenge bank's actions under such statutes - Court held plaint maintainable and fit for trial - Application Dismissed [*Senbo Engineering Limited vs. Bank of Maharashtra* (CALCUTTA HIGH COURT) 2026(1)SDJ81]

**PRE-DEPOSIT COMPUTATION**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 18, Sec. 5 - Pre-deposit Computation - Petitioner challenged orders rejecting waiver of pre-deposit and dismissal of appeal under SARFAESI Act - Petitioner obtained housing loans secured by land and default occurred - Bank assigned asset to first respondent under Sec. 5 - Appeal filed before DRAT with waiver request asserting deposit exceeding fifty percent of demand - DRAT directed further deposit of forty percent and Dismissed appeal for non-compliance - Contention raised that future interest after Sec. 13(2) notice cannot be included in 'debt due' for pre-deposit - Respondent maintained petition not maintainable as amounts paid under interim orders cannot be treated as statutory deposit - Debate existed between High Courts whether future interest forms part of debt due - Kerala High Court followed view that interest accrued after notice under Sec. 13(2) forms part of debt due - Held that DRAT order directing deposit based on possession notice amount is within statutory discretion - Petition Dismissed [*Mini Zakir, W/o Muhamed Zakir vs. M/s Phoenix Arc Private Limited; M/s Kaerl Tech Projects (P) Ltd* (KERALA HIGH COURT) 2026(1)SDJ103]

**PRIORITY OF CHARGE**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 26, Sec. 14 - Punjab Value Added Tax Act, 2005 Sec. 34, Sec. 35, Sec. 36 - Recovery of Debts and Bankruptcy Act, 1993 Sec. 31 - Priority Of Charge - Petition filed by bank seeking direction to remove lien created by tax department over mortgaged property - Borrower defaulted on loan secured by equitable mortgage duly registered in Central Registry - Bank initiated SARFAESI proceedings and obtained recovery order from Debt Recovery Tribunal - Tax department later created lien citing arrears under Punjab VAT Act - Bank contended secured creditor's charge had statutory priority under Section 26E of SARFAESI Act and Section 31B of RDB Act - Department argued government dues constitute first charge under VAT Act - Court held secured creditor's rights prevail over all government dues after registration of security interest - Lien created subsequent to mortgage cannot override prior charge - Lien ordered to be removed - Petition

Allowed [*Hdfc Bank Limited vs. State of Punjab and Others* (PUNJAB AND HARYANA HIGH COURT) 2026(1)SDJ41]

**PRIORITY OF CLAIMS**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act Sec. 13, Sec. 17, Sec. 26E - Priority Of Claims - Secured creditor proceeded against mortgaged assets of sugar manufacturing society due to defaulted loan - Factory remained nonfunctional and properties taken over under SARFAESI - Creditor contended priority under registration in Central Registry and sought satisfaction of dues over PF dues and wages - Workmen asserted nonpayment of wages and PF amounts while creditor pointed to delay in claims rejected earlier - Liquidator involvement became irrelevant after creditor took possession - Non obstante clause under SARFAESI considered against first charge in EPF Act - Statutory first charge under welfare legislation held to prevail over priority created under SARFAESI - Workmen dues not quantified hence no precedence over secured creditor - PF dues including contribution interest penalty and damages directed to be satisfied first from sale proceeds - Residual amount if any to be applied towards secured debt - Workmen permitted to seek determination of dues before competent authority - Appeals Allowed [*Jalgaon District Central Coop Bank Ltd vs. State of Maharashtra and Ors* (SUPREME COURT OF INDIA) 2026(1)SDJ3]

**REVIEW OF PRE-DEPOSIT ORDER**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 17 - Review of Pre-Deposit Order - Appeal filed against High Court order affirming review by DRAT - Action initiated under SARFAESI Act for recovery - DRT dismissed interim stay plea of borrower - DRAT directed 40 percent pre-deposit which later enhanced to 30 percent of higher debt figure upon review sought by creditor - Appellant challenged review asserting revised claim not served - Supreme Court found revised amount not communicated and held review order unsustainable - Set aside High Court and DRAT review orders - Directed DRAT to proceed based on original pre-deposit direction and granted short time to comply - Clarified that creditor may assert revised claim in future proceedings without prejudice - Appeal disposed of with such directions - Appeal Allowed [*S R Educational and Charitable Trust & Ors vs. Asset Reconstruction Company (India) Ltd* (SUPREME COURT OF INDIA) 2026(1)SDJ1]

**SARFAESI ORDER RECALL**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14 - SARFAESI Order Recall - Petition filed seeking enforcement of earlier SARFAESI order for possession of secured asset - District Magistrate initially passed order under Sec. 14 of SARFAESI - Later recalled based on civil court decree from borrower's relative - District Magistrate has no statutory power to review or recall order once passed under SARFAESI - Recalling order found

without jurisdiction - Powers under Sec. 14 are ministerial and not quasi-judicial - Such powers do not include authority to consider civil disputes or third-party claims - Any subsequent review held invalid and beyond scope of statute - High Court set aside recall and directed enforcement of original order - Writ Petition Allowed [*Authorised Officer, IDBI Bank Ltd and Another vs. District Magistrate Panipat and Others* (PUNJAB AND HARYANA HIGH COURT) 2026(1)SDJ127]

**SARFAESI PROCEEDINGS**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 17 - Recovery of Debts and Bankruptcy Act, 1993 Sec. 19 - SARFAESI Proceedings - Petition sought quashing of order rejecting application under Section 14 of SARFAESI Act for assistance in taking possession of secured asset - Petitioner, assignee of Allahabad Bank loan, claimed right to possession after borrower defaulted - District Magistrate dismissed application by entering into adjudication beyond jurisdiction - Court examined Section 14 and held that District Magistrate or Chief Metropolitan Magistrate required only to verify affidavit compliance and assist in taking possession without adjudicating disputes - Once affidavit fulfills statutory conditions, authority must act ministerially within prescribed period - Impugned order exceeded jurisdiction and violated legislative intent - Petition disposed with direction for fresh consideration strictly in accordance with Section 14 - Petition Disposed [*ASREC (India) Ltd vs. State of Punjab and Ors* (PUNJAB AND HARYANA HIGH COURT) 2026(1)SDJ14]

**SARFAESI PROCEEDINGS**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 - SARFAESI Proceedings - Petitioners sought quashing of letters denying benefits of relief package and notices issued under SARFAESI Act - Petitioner firm obtained Cash Credit Limit from Bank and maintained accounts regularly till Covid Pandemic affected business - Despite Government and RBI relief schemes Bank refused benefits and declared account as Non-performing Asset - Petitioners claimed entitlement under MSME circulars and challenged demand and possession notices under Sec.13(2) and 13(4) of SARFAESI Act - Respondent contended petitioners failed to adhere to repayment schedule and were rightly declared NPA - Remedy available under Sec.17 of SARFAESI Act before Debt Recovery Tribunal - Disputed facts involved could not be adjudicated under Art.226 of Constitution - High Court observed that SARFAESI Act provides complete code for recovery and redressal through DRT and interference under writ jurisdiction unjustified - Petition held not maintainable - Writ Petition Dismissed [*M/s Sham Lal and Bros and Others vs. Authorized Officer, Punjab and Sind Bank and Another* (PUNJAB AND HARYANA HIGH COURT) 2026(1)SDJ45]

**SARFAESI PROCEEDINGS**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 17, Sec. 26D - SARFAESI Proceedings - Petitioners challenged bank's recovery under SARFAESI Act alleging non-registration of security interest with CERSAI - Record showed mortgage created and registered under new door number - Petitioners earlier approached DRT and failed to comply with conditional order - Court found registration valid and petition barred by alternate remedy - Action of bank upheld and writ petition dismissed as abuse of process - No costs ordered - Petition Dismissed [*M/s Shaftek Infrastructure Private Limited and Another vs. Union of India* (TELANGANA HIGH COURT) 2026(1)SDJ77]

**SARFAESI PROCEEDINGS**

Wealth Tax Act, 1957 Sec. 34AB - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 - Security Interest (Enforcement) Rules, 2002 Rule 9 - SARFAESI Proceedings - Borrowers challenged auction sale conducted by bank under SARFAESI Act alleging defect in notice, improper valuation and non-consideration of objections - Bank contended compliance with procedure and rejection of objections - Observed that borrowers failed to prove prejudice or violation of mandatory provisions - Found that sale conducted as per Rules and valuation valid - Dismissal of securitisation application and appeal upheld - Petition Dismissed [*M/s Lucky Footwear Components; V Tabraze Basha; V Aslam Basha vs. Authorized Officer, Indian Bank, District- Tirupattur; Manager, District-Tirupattur; Amarnath Reddy* (MADRAS HIGH COURT) 2026(1)SDJ97]

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2026(1)SDJ1

**IN THE SUPREME COURT OF INDIA**

[From KERALA HIGH COURT]

(Hon'ble Judge : Dipankar Datta ; Augustine George Masih)

Civil Appeal No 13894 of 2025 **dated 21/11/2025**

*S R Educational and Charitable Trust & Ors*

**Versus**

*Asset Reconstruction Company (India) Ltd*

**REVIEW OF PRE-DEPOSIT ORDER**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 17 - Review of Pre-Deposit Order - Appeal filed against High Court order affirming review by DRAT - Action initiated under SARFAESI Act for recovery - DRT dismissed interim stay plea of borrower - DRAT directed 40 percent pre-deposit which later enhanced to 30 percent of higher debt figure upon review sought by creditor - Appellant challenged review asserting revised claim not served - Supreme Court found revised amount not communicated and held review order unsustainable - Set aside High Court and DRAT review orders - Directed DRAT to proceed based on original pre-deposit direction and granted short time to comply - Clarified that creditor may assert revised claim in future proceedings without prejudice - Appeal disposed of with such directions - Appeal Allowed

**Law Point : Review of pre-deposit direction by DRAT without prior notice or service of revised debt amount is impermissible - Any alteration in debt figure must be duly served before acting upon it to ensure fairness and compliance with natural justice**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 17

**Counsel :**

V Chitambaresh (Senior Advocate), Govind Venugopal, Manu Krishnan G, Smrithi V S , Nikhil Goel (Senior Advocate), P S Sudheer, Rishi Maheshwari, Anne Mathew, Bharat Sood, Jai Govind M J, Jashan Vir Singh

**JUDGEMENT**

**[1]** Leave granted.

**[2]** The High Court of Kerala at Ernakulam vide judgment and order dated 24th October, 2025 has dismissed the original petition [OP (DRT) No. 246/2025] filed by the appellants. As a result of such dismissal, the order of the Debts Recovery Appellate Tribunal, Chennai [DRAT], on a review petition [Review Application No. 1/2025] of the respondentAsset Reconstruction Company (India) Ltd [ARCIL], stood affirmed.

**[3]** The judgment and order dated 24th October, 2025 is under challenge in this appeal.

**[4]** Decision on the present appeal does not require us to note the facts giving rise thereto in any great detail. Suffice it to note that upon ARCIL initiating action against the appellants under Section 13(2) followed by Section 13(4) read with Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act], the appellants moved the Debts Recovery Tribunal II, Erankulam [DRT], by filing an application [SA No.63/2025] under Section 17 of the SARFAESI Act.

**[5]** An interim application [IA No.373/2025] was moved by the appellant before the DRT seeking stay of the order of the Chief Judicial Magistrate, Thiruvananthapuram under Section 14 of the SARFAESI Act, which directed taking of possession of the secured asset. The interim application was dismissed by the DRT by an order dated 5th May, 2025.

**[6]** The appellant then preferred an appeal [AIR(SA) No.1241/2025] before the DRAT together with an application [IA No.825/2025] seeking waiver of "pre-deposit". By an order dated 11th July, 2025, the DRAT directed the appellant to deposit 40% of Rs.22.80 crore on account of "pre-deposit". Close on the heels of such an order, ARCIL applied for review [IA No.828/2025]. While allowing the review petition, the DRAT directed the appellant to deposit 30% of Rs.193.10 crore by its order dated 1st August, 2025. It is the said order that has been affirmed by the High Court by the judgment and order under challenge.

**[7]** According to ARCIL, Rs.22.80 crore was erroneously indicated as the amount of debt due to it from the appellant in the application under Section 14. However, such error was sought to be rectified and in fact was rectified by claiming that Rs.193.10 crore was the amount of debt due and not Rs.22.80 crore. The DRAT while passing the order on the review petition accepted such claim of ARCIL.

**[8]** We have heard Mr. Chitambaresh and Mr. Nikhil Goel, learned senior counsel for the appellant and ARCIL, respectively.

**[9]** Having read the order on the review petition, we had enquired from Mr. Goel as to whether the rectified amount of debt due, i.e., Rs.193.10 crore mentioned in the application before the Chief Judicial Magistrate was served on the appellant or not to which Mr. Goel fairly submitted in the negative. In such view of the matter, we do not see reason to hold that there existed any ground for review of the parent order dated 11th July, 2025. The order on the review petition, since affirmed by the High Court, is

indefensible. Hence, the judgment and order under challenge as well as the order dated 1st August, 2025, passed by the DRAT stand set aside.

**[10]** In the event the appellants have deposited the amount on account of "pre-deposit" in terms of the parent order dated 11th July, 2025, the appeal may be considered by the DRAT in accordance with law; if not, we grant seven days' time to the appellants to put in the "pre-deposit" as a one-time opportunity. In default, the appeal shall stand dismissed.

**[11]** All points are kept open for a decision by the DRAT and the DRT, as the case may be.

**[12]** The appeal is, accordingly, allowed on the aforesaid terms.

**[13]** Pending application(s), if any, stand disposed of.

**[14]** It is made clear that this order is passed without prejudice to the rights and contentions of ARCIL to claim in future proceedings that the amount due from the appellants, as stated initially in the application under Section 14 of the SARFAESI Act being erroneous was sought to be rectified, and that Rs.193.10 crore is the amount of debt due from the appellants

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2026(1)SDJ3

**IN THE SUPREME COURT OF INDIA**

[From BOMBAY HIGH COURT]

(Hon'ble Judge : B R Gavai ; K Vinod Chandran )

Civil Appeal No 13884 of 2025 **dated 20/11/2025**

*Jalgaon District Central Coop Bank Ltd*

**Versus**

*State of Maharashtra and Ors*

**PRIORITY OF CLAIMS**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act Sec. 13, Sec. 17, Sec. 26E - Priority Of Claims - Secured creditor proceeded against mortgaged assets of sugar manufacturing society due to defaulted loan - Factory remained nonfunctional and properties taken over under SARFAESI - Creditor contended priority under registration in Central Registry and sought satisfaction of dues over PF dues and wages - Workmen asserted nonpayment of wages and PF amounts while creditor pointed to delay in claims rejected earlier - Liquidator involvement became irrelevant after creditor took possession - Non obstante clause under SARFAESI considered against first charge in EPF Act - Statutory first charge under welfare legislation held to prevail over priority created under SARFAESI - Workmen dues not quantified hence no precedence over secured

creditor - PF dues including contribution interest penalty and damages directed to be satisfied first from sale proceeds - Residual amount if any to be applied towards secured debt - Workmen permitted to seek determination of dues before competent authority - Appeals Allowed

**Law Point : Statutory first charge created under EPF Act overrides priority conferred on secured creditors under SARFAESI since priority cannot supersede a legislatively created first charge and provident fund dues must be satisfied before applying sale proceeds toward secured debts**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 17, Sec. 26E

**Counsel :**

M Y Deshmukh, Manjeet Kirpal, Sanyukta N Suryawanshi, D Aswathaman, Atharva D Kale, Dhumal Viraj Prataprao, Preet S Phanse, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Shrirang B Varma, Shivaji M Jadhav, M/S S M Jadhav And Company

## JUDGEMENT

**K. Vinod Chandran, J.**

**[1]** Leave granted.

**[2]** The appellant in all these appeals is the secured creditor, a Co-operative Bank, who seeks to proceed against the properties of the mortgagee, a Co-operative Society, engaged in the manufacture of sugar at its factory. The specific contention is that the appellant having registered the transaction with the respondent Society, at the Central Registry, as constituted by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short, 'the SARFAESI Act'], has an overriding claim over the assets of the factory. The factory has become defunct, and the Society has defaulted the loan. For recovery of the dues, the mortgaged property has been proceeded against by the Bank, which has a priority insofar as satisfaction of the defaulted loan amounts. The specific contention taken is that the secured creditor has a priority, even as against the dues of the workmen and the Provident Fund amounts defaulted, as provided under Section 26E of the Act of 2002.

**[3]** We heard Mr.M.Y. Deshmukh, learned counsel appearing for the appellant-bank and Mr. Shivaji M. Jadhav, learned counsel appearing for the respondentworkmen and their union.

**[4]** It is submitted by Mr. Deshmukh that Sections 26D and 26E of the SARFAESI Act introduced w.e.f. 24.01.2020, has an overriding effect insofar as the recovery of dues of the secured creditor. The learned counsel also placed heavy reliance on the judgment in **Punjab National Bank & Ors. v. Union of India & Ors**, 2022 7 SCC 260.

**[5]** Mr. Jadhav, on the other hand makes a fervent plea that the workmen have been denied their wages and even the PF amounts defaulted. The provident fund dues definitely have a first charge, as has been affirmed in **Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner**, 2009 10 SCC 123 which are to be first paid before the bank proceeds to set off the defaulted loan amounts. The learned counsel for the appellant points out that the claim made by the workmen, which was grossly delayed, was rejected by the Industrial Court. The respondent-workmen, however, point out that by Annexure R-3 a learned Single Judge of the High Court of Judicature of Bombay, at Aurangabad had permitted them to approach the liquidator appointed by the Sugar Commissioner to consider their claims and in any event, the Industrial Court without consideration of the merits rejected the claim on the mere premise that there was no affidavit filed putting forth the reasons for delay, seeking condonation.

**[6]** On facts, it has to be noticed that the Co-operative Society engaged in the manufacturing of sugar, mortgaged their properties and also hypothecated the stock in trade to the Bank as security for loan availed. In the year 2000, the factory stood closed because of the huge losses. On 17.03.2001, the appellant-bank approached the Cooperative Court with Dispute No.459 of 2000 in which dispute a Receiver was appointed on 11.01.2001. The dispute was adjudicated, allowing the appellant-bank to recover an amount of Rs.30,24,32,954/-. In 2002, the Commissioner of Sugar appointed a liquidator to commence the proceedings for liquidation and in 2006, the appellant-bank issued a notice under Section 13(2) of the SARFAESI Act and took over possession of the secured assets of the Society. After the takeover of the assets, for a year, the factory was run by another company, based on an agreement of lease, which also did not turn around the business, upon which the assets were handed over back to the appellant-bank.

**[7]** The workers approached the liquidator for payment of their dues and later in the year 2007 approached the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 [for short, 'the MRTU & PULP Act']. The said application stood dismissed as it was delayed and since there was no application filed for condonation of the delay occasioned.

**[8]** When the appellant-bank proceeded to sell the properties, there were multiple writ petitions filed challenging the same by the workmen and their Union seeking recovery of the dues of the workmen and the defaulted amounts of provident fund. A Director of the appellant also challenged the auction proceedings, specifically a corrigendum issued. The Society and its members also filed separate writ petitions; all of which were decided by the impugned judgment, against which the appeals are filed. The impugned judgment relied on the judgment in **United Bank of India v. Satyawati Tondon and Ors.**, 2010 8 SCC 110 wherein this Court had expressed serious concern in the High Courts' continuing to ignore the statutory remedies available under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the

SARFAESI Act to invoke the jurisdiction under Article 226, having serious adverse impact on the rights of the banks and other financial institutions. The Division Bench which heard the writ petitions by the common impugned judgment left remedy to the different petitioners to approach the appellate authority and insofar as the claim made by the workmen, liberty was left to them to seek for their dues once it is quantified by a competent court. The provident fund dues were found to have priority which was directed to be paid immediately on the sale of the property, before applying the proceeds to the debt due to the bank.

**[9]** The directions issued, which the appellant-bank seriously assail, found in paragraph 26, are as under: -

"26. In these circumstances, the following order will meet the ends of justice:

(i) The bank may proceed with the sale in accordance with the law.

(ii) The sale proceeds shall be deposited in a separate account i.e. "No Lien Account" in the bank. Unpaid wages and other legal dues of the workers shall be paid from this account once the dues are quantified by a competent court.

(iii) The provident fund dues shall be deposited with the Provident Fund authorities, immediately on the sale of the property and before applying the proceeds to any other debt, including the banks claim.

(iv) All other contentions raised by the petitioners in the present petitions may be agitated by them before the Debt Recovery Tribunal under Section 17 of the Securitization Act."

**[10]** The contention raised by the appellant-bank is also based on the introduction of Chapter IVA w.e.f. 24.01.2020. Chapter IV constitutes a Central Registry and Section 23 requires that all the particulars of every transaction of securitisation, asset reconstruction or creation of security interest, shall be filed with the Central Registrar in the manner provided, on payment of such fee as may be prescribed. The appellant has complied with Section 23 as is evident from Annexure A-40. The 'Asset ID Search Report' (A-40) speaks of the appellant-bank having complied with Section 23 insofar as the security interest created on the assets of the respondent-society, having been registered with the Central Registry, thus making applicable Section 26E.

**[11]** The provision under Section 26E, in addition to Section 35, gives a debt of the secured creditor priority over the workmen's dues if it is registered with the Central Authority as provided under the Act of 2002.

**[12]** One other aspect to be observed is that the workmen had approached the Industrial Court which rejected the different claims filed by them which have been annexed as Annexures A-6 to A-16. A challenge was made to the order of the Industrial Court in a writ petition which was disposed of by Annexure R-3. The petitioners therein challenged the order of the Industrial Court, claiming wages between March 1998 to December 1999. The learned Single Judge who disposed of the petition posed a question as to whether the matter should be remanded to the

Industrial Court, since it was rejected on the ground of delay or allowed to be agitated before the Liquidator. Eventually, the Liquidator was directed to verify the claims and pass an order computing the amounts due to the workmen, pending disposal of the present appeals. The Liquidator's role is no more relevant since the secured creditor has taken over the property and had proceeded for sale as per the Act of 2002. There is hence no question of determination of the amounts due, by the Liquidator,

**[13] Punjab National Bank**, 2022 7 SCC 260 considered the issue of priority of Central Excise dues as against the secured creditor to proceed under the SARFAESI Act. The first charge provided for the excise dues was incorporated in the Central Excise Act, 1944 w.e.f. 08.04.2011, that too subject to the SARFAESI Act, while the mortgage/ hypothecation of the properties to the secured creditor in that case occurred long before. Hence, Section 13 of the Act of 2002 read with Section 35 was found to enable an overriding effect for the Act of 2002 over all other existing laws. The claim for prior satisfaction of the excise dues was rejected. This applies squarely to the dues of the workmen which as of now has not even been quantified. As of now since Section 26E gives a priority to the secured creditor's dues even if the claim of the workmen was accepted and their dues determined, it could not have been recovered from the sale proceeds of the auction conducted by the secured creditor; if the proceeds could only satisfy the debt due to the secured creditor.

**[14]** The next question is as to the priority of the provident fund dues which, in any event has a first charge created under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [for short, 'the EPF&MP Act'] . This Court in **Maharashtra State Cooperative Bank Ltd**, 2009 10 SCC 123. found that the priority under Sections 11(1) and (2) of the EPF & MP Act would operate against the statutory as well as non-statutory and secured as well as un-secured debts, including mortgage or pledge. Section 11 as amended in 1973, was found to be as under:

**"27**...It (sub-section (1) of Section 11) 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 14-B, 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 case may be.

**28.** Sub-section (2), which was added to Section 11 by Act 40 of 1973 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 establishment and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts...."

**[15]** We are in the present case concerned with a non obstante clause, giving priority to the secured creditors brought under the SARFAESI Act in the year 2020 which overrides any other law in force at the time of its incorporation, pitted against a specific first charge provided in a welfare legislation, enacted earlier. The above requires consideration based on the precedents of this Court on similar issues of precedence, whether it be to a priority conferred by statute, notwithstanding the law in force at the time of enactment or a first charge statutorily created in a stand-alone provision.

**[16] Maharashtra State Cooperative Bank Ltd**, 2009 10 SCC 123 has to be perused in detail, though the said decision is prior to introduction of Chapter 26-E in the Act of 2002 with effect from 24.01.2020. The issue arising therein was whether the sugar bags pledged by a company in favour of the appellant bank as security for repayment of a loan, could be attached and sold in realization of provident fund dues. The appellant bank contended that since the sugar bags were already pledged with the appellant bank, the first charge created statutorily under Section 11(2) of the EPF&MP Act cannot have priority over the dues of the appellant bank. It was also alternatively contended that even if the first charge could be said to operate for the amounts determined under Section 7-A, being the contributions of the employer and the employee, it could not apply to interest payable under Section 7-Q and the damages levied under Section 14-B.

**[17]** This Court in **Maharashtra State Cooperative Bank Ltd**, 2009 10 SCC 123 considered the background which led to the enactment of EPF&MP Act, which was found belonging to "the family of legislations enacted by Parliament in furtherance of the mandate of Articles 38 and 43 of the Constitution" (sic), intended to give social security to the workers employed in the factories and other establishments; essentially a welfare legislation. On an analysis of the provisions of the EPF&MP Act, it was found to provide for framing of various schemes, establishment of funds and a regulatory regime to ensure compliance by imposition of penalty and damages as also comprehensive provisions for recovery by way of attachment and sale of the assets of the employer. Sub-section (2) of Section 11 was held to be not only a declaration "that the amount due from the employer towards contribution under the Act shall be treated as the first charge of the assets of the establishment, but also lays down that notwithstanding anything contained in other law, such dues shall be paid in priority to all other dues (sic. paragraph 28)". Asserting that the Act is a social welfare legislation intended to protect the interest of weaker sections of the society it was found imperative that the Court give a purposive interpretation to the provisions, keeping in mind the Directive Principles of State Policy embodied in the Constitution.

**[18] Builders Supply Corporation v. Union of India & Ors**, 1965 2 SCR 289 considered the question as to whether the tax payable to the Union of India has priority over other debts, which affirmed such priority. **State Bank of Bikaner and Jaipur v. National Iron Steel Rolling Corporation**, 1995 2 SCC 19 considered the priority of

an earlier mortgage as against the first charge created under a sales tax enactment. It was held unequivocally that the statutory first charge created on the property of a dealer is on the entire property, the title of which is held by the mortgagee. Despite the mortgage it operates on the property as a whole, without being subject to the mortgage, was the finding. A charge was held to be a wider term, covering within its ambit, a mortgage, giving absolute precedence to the charge created. **State of M.P. v. State Bank of Indore**, 2002 10 SCC 441 likewise held the statutory first charge created under the sales tax act to prevail over the banks charge created by a mortgage.

**[19]** In **Maharashtra State Cooperative Bank Ltd**, 2009 10 SCC 123 this Court referred, with approval, to a decision of a Division Bench of the Kerala High Court in **Recovery Officer and Assistant Provident Fund Commissioner v. Kerala Financial Corporation**, 2002 3 LLJ 643 which considered the interplay of Section 46-B of State Financial Corporations Act, 1951 [for short, 'SFC Act'] with Section 11 of the EPF&MP Act. The Division Bench emphasised the two facets of Section 11(2) of the EPF&MP Act, primarily the first charge created and then the declaration that it would have priority over all other debts notwithstanding any law for the time being in force. Section 11(2) of EPF&MP Act having been enacted later, to the SFC Act, was found to override the earlier legislation i.e. Section 46-B which was an identical non-obstante clause. Similar was the principle propounded in **A.P. State Financial Corporation v. Official Liquidator**, 2000 7 SCC 291 wherein Section 29 of the SFC Act was found to subserve Section 529(1) and Section 529A of the Companies Act, which provisions were introduced subsequently with a social purpose, i.e.: to protect the dues of a workman.

**[20]** This Court in **Maharashtra State Co-operative Bank Ltd**, 2009 10 SCC 123 while upholding the first charge and priority created under Section 11(2) of the EPF&MP Act also considered the question as to whether the first charge would be restricted to the amount determined under Section 7-A or would include the interest and damages levied. Paragraph 67 of the said decision is extracted hereunder:

**“67.** 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 7-A, 7-Q, 14-B 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. 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 7-Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages.”

**[21] Union of India v. SICOM Ltd**, 2009 2 SCC 121 was concerned with the Common law doctrine of priority or precedence of Crown debts vis-a-vis secured debts under the SFC Act of 1951. Therein, the appellant in satisfaction of amounts due to it

proceeded against the properties of respondent No. 2. Respondent No.2 had borrowed a sum from SICOM; covered under the SFC Act, through an indenture of mortgage based on which, on default, SICOM sought to attach and seize the properties of the defaulter raising the issue of first charge by way of a prior mortgage. It was held that the common law principle of precedence conferred on Crown debt was a law, within the meaning of Article 13 of the Constitution of India, saved in terms of Article 372. However, when a debt is secured by reason of the provisions of a statute that becomes a first charge over the properties having regard to the plain meaning of Article 372 of the Constitution of India, which prevails over the Crown debt; an unsecured debt, was the finding. The Court also referred to Section 46-B of the SFC Act which is a nonobstante clause giving the provisions of the SFC Act an overriding effect notwithstanding anything inconsistent in any other law for the time being in force or any other instrument having effect by virtue of any law.

**[22] Punjab National Bank**, 2022 7 SCC 260 again considered the question of priority of Crown debt, being the duty due under the Central Excise Act of 1944, as against the secured creditor. Therein the department had made a confiscation order which however was not tenable, for reason of the power in the rules permitting such confiscation, having been omitted before the order was passed. Section 35 of the Act of 2002 which is in pari materia with Section 46-B of the SFC Act was noticed along with Section 13 to find that the secured debt has a priority especially when the Central Excise Act and Rules at that time did not provide for a first charge; which was later provided as per Section 11-E. The mere provision, enabling recovery of debts due, deeming it to be arrears due on land revenue, it was held, would not confer a charge having precedence over all other debts. Even after introduction of Section 11-E wherein a first charge was created, Section 13 and Section 35 of the SARFAESI Act was held to prevail, since the first charge created under Section 11-E of the Central Excise Act, 1944 was subject to the provisions contained in the SARFAESI Act.

**[23]** In **Central Bank of India v. State of Kerala**, 2009 4 SCC 94 a threeJudge Bench was concerned with the first charge statutorily created under the Bombay Sales Tax Act, 1959 and Kerala General Sales Tax Act, 1963 inter alia as against the SARFAESI Act. Despite Section 13 and Section 35 of the SARFAESI Act, it was held that the GST Acts enacted by the State Legislature under Entry 54 of List II, creating first charge on the property of the dealer or person liable to pay sales tax cannot be struck down on the ground of inconsistency with the non-obstante clause in Section 35 of the SARFAESI Act, both of which provided for only preferential enforcement of security interest.

**[24] Employees Provident Fund Commissioner v. Official Liquidator**, 2011 10 SCC 727 was concerned with the interplay of again the EPF&MP Act and the Companies Act, specifically Section 529-A. The question raised was as to whether the employees' dues under the Companies Act had a priority as against the dues under the EPF&MP Act. It was held that the non-obstante clause in Section 11(2) of the EPF Act

is not subject to the non-obstante clause in Section 529-A of the Companies Act since the words "all other debts" in Section 11(2) included debts due to secured creditors whereas Section 529-A of the Companies Act merely expanded the scope of workmen's dues and placed them on a par with debts due to secured creditors without creating any first charge in respect thereof.

**[25]** Hence, when there are two enactments conferring priority in satisfaction of a debt coming under the respective enactments, by virtue of a non-obstante clause overriding the provisions of any law in force at that time, the time in which the statute was enacted or the provision was incorporated, assumes significance and the provision latter in time would prevail. However, if there is a first charge statutorily created, validly, dehors the non obstante clause conferring priority over other debts, the statutory charge would prevail. With these principles in mind, when we look at the provisions under the SARFAESI Act and the EPF&MP Act, the former with the incorporation of Section 26-E, we are of the opinion that there has to be found a first charge to the EPF&MP Act dues, under Section 11(2) of that Act.

**[26]** We extract Section 11(2) of the EPF Act and Section 26-E of the SARFAESI Act hereunder.

**"Sec. 11(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 in force, be paid in priority to all other debts.

**Sec. 26-E:** Priority to secured creditors- Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority."

**[27]** Undisputedly, SARFAESI Act is the latter act and if the question was solely of the non-obstante clause giving it overriding effect from any law for the time being in force, the SARFAESI Act would prevail. However, in the EPF&MP Act, Section 11(2) creates a statutory first charge on the assets of the establishment for any amount due from an employer, be it the employers' or employees' contribution, which would include any interest or damages also as has been held in **Maharashtra State Co-operative Bank Limited**, 2009 10 SCC 123. In that circumstance, the effect of the non obstante clause giving precedence over any other law for the time being in force pales into insignificance, as held in **Central Bank of India**, 2009 2 SCC 121. There being a clear first charge created under the EPF&MP Act, it overrides the priority under Section 35 and Section 13 as also that conferred under Section 26-E since a priority cannot be equated with a first charge and cannot be given prevalence over the first charge statutorily created.

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

**[29]** On the above reasoning, we cannot but partly set aside the impugned judgment and the directions therein. The appellant-bank would be entitled to proceed with the auction, if not already proceeded with and from the proceeds received in auction, first the dues under the EPF&MP Act will have to be satisfied and then the debts due to the appellant Bank. We would only leave liberty to the workmen to approach the appropriate authority under the MRTU & PULP Act by an application to determine the dues, which shall be considered de hors the order rejecting the same on the ground of delay and de hors the delay caused as such. Such determination would be necessitated if there is any amount remaining after satisfaction of the provident fund dues and that of the secured creditor.

**[30]** The appeals are allowed, setting aside the impugned judgment with the aforesaid directions.

**[31]** Pending applications, if any, shall also stand disposed of

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2026(1)SDJ12

**IN THE SUPREME COURT OF INDIA**

[From UTTARAKHAND HIGH COURT]

(Hon'ble Judge : Sanjay Kumar ; Alok Aradhe )

Civil Appeal No 12554 of 2025 **dated 07/10/2025**

*Indian Overseas Bank*

**Versus**

*Radhey Infra Solutions (Pvt ) Ltd & Ors*

**DRT DELAY**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 17 - DRT Delay - Complaint raised by bank that debt recovery tribunal not disposing securitisation application within statutory time - High Court declined to issue direction except referring to statute - Matter remained pending despite lapse of period - Statute mandates tribunal to decide within sixty days extendable to four months with reasons recorded - Tribunal failed to comply with

mandate and did not record reasons for delay - Hence direction issued to tribunal to adhere to statutory requirement and dispose matter expeditiously - Appeal disposed of

**Law Point : Debt Recovery Tribunal must strictly follow statutory timeline under Section 17(5) of SARFAESI Act and record reasons if unable to conclude within prescribed period.**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 17

**Counsel :**

Rohit Kumar Singh, Alka Marwala, Swati Sood, Payal Golimar, Shivam Sharma, Akash Kumar, Mahender Rathour, Anshuman Gupta

## JUDGEMENT

**[1]** Leave granted.

**[2]** We are of the opinion that notice need not be issued to the respondents in this appeal in the light of the order that we propose to pass, which is strictly in keeping with the statutory mandate and no more.

**[3]** The grievance of the appellant, Indian Overseas Bank, is that the Debts Recovery Tribunal [For short "DRT"], Dehradun, is not deciding Securitisation Application No. 264 of 2024 filed by M/s. Radhey Infra Solutions (Pvt.) Ltd., respondent No. 1, expeditiously. The complaint made in this regard by the appellant, Indian Overseas Bank, before the High Court failed to evoke a positive response, as the High Court merely took note of the statutory provision and observed that it would not be proper to issue a direction in the light thereof. Liberty was, however, given to the appellant to show the relevant provision to the DRT, Dehradun.

**[4]** We are informed that even after the passing of the aforestated order in July, 2025, the matter has not been decided by the DRT, Dehradun, till date.

**[5]** We may only take note of Section 17(5) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [For short, "SARFAESI Act"], which reads as under:

xxx xxx xxx

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application: Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section(1).

xxx xxx xxx

**[6]** Once the statute itself mandates that the DRT should dispose of the matter within the stipulated time, it is incumbent upon the DRT, Dehradun, to abide thereby. Further, in the event it fails to do so, the proviso to Section 17(5) ordains that reasons need to be recorded. We find from the orders passed by the DRT, Dehradun, that this statutory direction has also not been respected.

**[7]** We, accordingly, dispose of the appeal directing the DRT, Dehradun, to take note of the statutory mandate under Section 17(5) of the SARFAESI Act and act accordingly without further delay.

**[8]** Pending application(s), if any, shall stand disposed of

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2026(1)SDJ14

**PUNJAB AND HARYANA HIGH COURT**

(Hon'ble Judge : Sheel Nagu ; Sanjiv Berry)

Civil Writ Petition No. 29981 of 2025 **dated 24/12/2025**

*ASREC (India) Ltd*

**Versus**

*State of Punjab and Ors*

**SARFAESI PROCEEDINGS**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 17 - Recovery of Debts and Bankruptcy Act, 1993 Sec. 19 - SARFAESI Proceedings - Petition sought quashing of order rejecting application under Section 14 of SARFAESI Act for assistance in taking possession of secured asset - Petitioner, assignee of Allahabad Bank loan, claimed right to possession after borrower defaulted - District Magistrate dismissed application by entering into adjudication beyond jurisdiction - Court examined Section 14 and held that District Magistrate or Chief Metropolitan Magistrate required only to verify affidavit compliance and assist in taking possession without adjudicating disputes - Once affidavit fulfills statutory conditions, authority must act ministerially within prescribed period - Impugned order exceeded jurisdiction and violated legislative intent - Petition disposed with direction for fresh consideration strictly in accordance with Section 14 - Petition Disposed

**Law Point : Authority under Section 14 SARFAESI performs ministerial duty and cannot adjudicate borrower's objections; must act upon compliant affidavit of secured creditor**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 17

Recovery of Debts and Bankruptcy Act, 1993 Sec. 19

**Counsel :**

K P S Dhillon, Vipan Pal Yadav, I S Ratta

**JUDGEMENT**

**Sanjiv Berry, J.**

**[1]** The instant petition under Article 226/227 of the Constitution has been preferred by the petitioner Company seeking issuance of a writ for quashing the impugned order dated 26.05.2024 (Annexure P-14) passed by respondent No.2, allegedly in violation of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act), with further prayer seeking writ of mandamus directing respondent No.2 to pass order under Section 14 of the SARFAESI, Act without entering into any adjudicatory process and in a time bound manner.

**[2]** In nutshell, the case of the petitioner is that respondent No.3 through its proprietor respondent No.4 along with respondent No.5 as guarantor had availed extensive credit facilities from Allahabad Bank including different term loans, FITL etc. amounting to Rs. 7,97,24,000/- by mortgaging the property which was under exclusive charge of secured creditor. Since the respondent borrower did not maintain the financial discipline the account was declared Non-Performing Asset (NPA) on 26.06.2013 in accordance with RBI guidelines. Further, the original lender Allahabad Bank invoked measures under SARFAESI Act including demand notice and possession notice under Section 13(2) and 13(4) of the Act, respectively. The private respondent-borrower preferred petition before the learned Debt Recovery Tribunal under Section 17 of the Act whereas the original lender Allahabad Bank also filed its Original Application under Section 19 of the Recovery of Debts and Bankruptcy Act 1993, in OA NO. 767/2017. There is no dispute regarding the mortgage right of the secured creditor over the secured asset as the same stood upheld by the learned Debt Recovery Tribunal-III, Chandigarh vide judgment (Annexure P-4) dated 12.07.2017, and accordingly recovery certificate was issued with no challenge till date. The Allahabad Bank preferred an application under Section 14 of the Act before the respondent No.2 but the same was declined vide Annexures P-10 to P-14.

**[3]** It is averred that the petitioner has entered into Assignment Agreement dated 27.02.2018 (Annexure P-1) registered on 16.04.2018 entered into between the original lender Allahabad Bank(now Indian Bank) whereby the financial asset/loan/debt of respondent No.3 has been assigned to the petitioner. The petitioner has therefore stepped into the shoes of original lender, Allahabad Bank, and is in possession of

original documents including the title deed of the borrower guarantor. It is averred that on application moved by the petitioner under Section 14 of the Act, the Additional District Magistrate, Ludhiana passed impugned order dated 26.05.2024 (Annexure P-14) dismissing the application under Section 14 of the SARFAESI Act. Hence the petition.

**[4]** We have heard learned counsel for the parties and also perused the record.

**[5]** Considering the rival contentions and perusing the record, it is observed that the case put forth by the petitioner is that the private respondents had availed the loan facility amounting to Rs. 7,97,24,000/- from Allahabad Bank by mortgaging the secured assets. Since the private respondents failed to maintain the financial discipline as such the account was declared as "Non Performing Asset" (NPA) and the securitization proceedings were initiated. Original Application No. 767/2017 was filed by the Allahabad Bank which was decided on 12.07.2017 (Annexure P-4) in favour of the Bank and recovery certificate dated 12.07.2017 was issued. It is claimed that in the meanwhile, the petitioner, ASERC (India) Ltd. entered into an Assignment Agreement with Allahabad Bank on 27.02.2018 (Annexure P-1), whereby acquiring the rights and liability qua the aforesaid loan agreement.

**[6]** The grievance of the petitioner is that despite the application under Section 14 of the SARFAESI Act being lawfully made, the respondent No.2 has failed to pass an appropriate order thereon and has wrongly dismissed the application by adjudicating thereupon of which he had no right.

**[7]** The relevant provision in this regard laid down under Section 14 of the SARFAESI Act, providing the Chief Metropolitan Magistrate or District Magistrate to assist the secured creditor in taking possession of the secured assets, reads as under:-

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.-(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii)above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a nonperforming asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of subsection (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets [within a period of thirty days from the date of application]:

xxxx xxxx xxxx”

**[8]** As regards the power conferred upon the Chief Metropolitan magistrate/District Magistrate under Section 14 of the SARFAESI, Act is concerned, there is no doubt that these authorities are not supposed to adjudicate the dispute between the borrower or secured creditor or third party, however, once an application to this effect is moved, complying with all the requirements as laid down under Section 14 of the SARFAESI Act, secured creditor is entitled to obtain the possession of the secured assets. In this regard reference is made to the judgment of Hon'ble Supreme Court in **M/s R.D.Jain and Co. vs. Capital First Ltd. & Ors**, 2022 3 RCR(Civ) 781; and **Balkrishna Rama Tarle Dead Thr Lrs & Anr. vs. Phoenix ARC Private Limited & Ors.; Law Finder Doc ID # 2040117.**

**[9]** The relevant portion of which reference has been made by Hon'ble Supreme Court in R.D. Jains case (supra) reads as under:-

"8.1 However, for taking physical possession of the secured assets in terms of 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. As mandated by 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. As observed and held by this Court in the case of NKGSB Cooperative Bank Ltd. (supra), the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the advocate commissioner who is considered as an officer of his/her court. 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. **Thus, we reiterate that the step to be taken by the CMM/DM under 14 of the SARFAESI Act, is a ministerial step. While disposing of the application under 14 of the SARFAESI Act, no element of quasi-judicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets."**

**[10]** It is also not disputed that the concerned Magistrate for the purpose of Section 14 of the SARFAESI Act is not required to adjudicate the dispute between the borrower and secured creditor and/or between any third party and the secured creditor with regard to the secured asset as has been observed in the case of **Balakrishna's case (supra).**

**[11]** In the light of the provisions contained under Section 14 of the Act and the abovementioned judgments of Hon'ble Supreme Court on the subject, it would be apt to peruse the impugned order dated 26.05.2024 (Annexure P-14) passed by Additional District Magistrate, which reads as under :-

" The Hon'ble Chief Judicial Magistrate, Ludhiana, dismissed the application filed by the applicant financial company under Section 14 of the SARFAESI Act, 2002, vide order dated 11-03-2024, as the Hon'ble Court was of the view that the parties case had

already been dismissed by the District Magistrate, Ludhiana. Therefore, the learned court cannot decide on a fresh application filed for the same action and purpose by reviewing the orders of the District Magistrate. Subsequently, the applicant financial company ASREC India ltd. Filed the present application in the court.

According to the facts presented by the debtor firm, the Fast Track Court (Additional District Judge) has issued prohibitory orders against alienation of the property vide order dated 09-03-2012 in the case titled: Punjab Kashmir Finance Ltd. vs. Dr. Jatinder Gambhir, etc., filed under Section 9 of the Arbitration and Conciliation Act. In this case also, the applicant company should appear before the Hon'ble Court and get the stay orders vacated, just as it had filed objections in 2022 in pending Execution No. 428/2017 before the court of Hon'ble Jagdeep Sood, Additional District Judge, Ludhiana, and also before Hon'ble DRT-2, Chandigarh, in ICICI Bank vs. Dr. Jatinder Gambhir, so that no legal impediment arises due to the said orders at the time of possession proceedings.

Furthermore, the Assignment Deed dated 27-2-2018, registered on 16-4-2018, based on which the applicant financial company is claiming its right in the loan case of Jatinder Gambhir Hospital in place of Allahabad Bank, has not yet been approved by the Hon'ble DRT-3, Chandigarh, and the Hon'ble Additional District Judge, Ludhiana. Ignoring the pending proceedings for approval of the Assignment Deed before the Hon'ble DRT-3 and the Hon'ble Court, this authority/court cannot accept the Assignment Deed.

Therefore, in light of the above facts, the application dated 12-6-2024 filed by the applicant ASREC India Ltd. under Section 14 of the SARFAESI Act is dismissed. The authorized officer of ASREC India Ltd. may file a fresh application after completing the necessary actions under the Act and removing the said deficiencies/legal impediments. The file be consigned to the record."

**[12]** As has been discussed above, no doubt that the Chief Metropolitan Magistrate or District Magistrate, as the case may be, while deciding the application under Section 14 of the SARFAESI Act is not supposed to adjudicate the dispute inter se borrower, creditor or any third party but at the same time it is required from the concerned Magistrate to satisfy himself, so far as the compliance of the provisions contained in proviso to Section 14 of the SARFAESI Act as mentioned (supra), are strictly adhered to.

12.1 Therefore, assessing the impugned order dated 26.05.2024 (Annexure P-14) in the context of requisite compliance of the proviso to Section 14 which the concerned Magistrate is duty bound to be satisfied, it is observed that in the present case an application under Section 14 moved by the petitioner has been declined primarily on the ground that originally the loan was taken from Allahabad Bank while the petitioner claimed right on the secured assets on the basis of Assignment Agreement, it transpires from the order that the Assignment in favour of the petitioner was pending approval qua which the proceedings were pending before the Debt Recovery Tribunal-III, Chandigarh

and in the absence of any finality being accorded thereof, the Magistrate could not have accepted the Assignment deed. Another ground of rejection was to the effect that earlier application under Section 14 moved by the petitioner was dismissed by the Court of Chief Judicial Magistrate vide order dated 11.03.2024 as such the recourse upon to the petitioner was to seek review of the order rather than filing of the application afresh.

**[13]** In the backdrop of the aforesaid observations made in the impugned order, learned counsel for the petitioner has not been able to apprise this Court as to whether the assignment from the Allahabad Bank in favour of the petitioner vide Assignment Agreement dated 27.02.2018, has been finalized by the DRT or not. It was the duty of the concerned Magistrate to satisfy himself with regard to the right/title of the petitioner company to be a bonafide creditor which the petitioner claimed to be so under Assignment Agreement dated 27.02.2018 which was pending approval before the DRT. Therefore, in the absence of specific order of DRT approving the assignment in favour of the petitioner, no infirmity can be observed in the impugned order dismissing the application.

**[14]** Therefore, in these circumstances, it is observed that the Additional District Magistrate has not exceeded its jurisdiction as conferred under Section 14 of the Act while passing the impugned order, but has only ensured compliance of the mandatory requirements under Section 14 of the Act. At the same time the concerned Magistrate vide the impugned order has also granted liberty to the petitioners to file a fresh application after completing the requisite formalities under the Act and after removing the deficiency or legal impediment mentioned in the order.

**[15]** Resultantly, we find no infirmity in the impugned order so as to interfere therein in any manner.

**[16]** As a consequence to the above discussion, finding no merits, the petition is hereby dismissed. However, the petitioner Bank is at liberty to move an appropriate application under Section 14 of the SARFAESI Act afresh after complying with all the requisite documents/ requirements envisaged under the Act, which if made complete in all respects, will be considered in accordance with law by the concerned Magistrate.

**[17]** With the aforesaid observations, the writ petition stands disposed of

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2026(1)SDJ20

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

(Hon'ble Judge : Amit Borkar)

Review Petition; Writ Petition No. 184 of 2025; 2679 of 2023 **dated 23/12/2025**

*Amritlal P Shah*

**Versus**

*TJSB Sahakari Bank Limited; A S Construction; Surendra Pratap M Yadav; Mattuk Narayan A Tiwari; Sunita P Mishra*

**JURISDICTION ISSUE**

Maharashtra Co Operative Societies Act, 1960 Sec. 163, Sec. 91 - Banking Regulation Act, 1949 Sec. 56, Sec. 2, Sec. 5, Sec. 34 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 2 - Recovery of Debts and Bankruptcy Act, 1993 Sec. 17, Sec. 1, Sec. 2, Sec. 31, Sec. 18 - Jurisdiction Issue - Review sought reconsideration of earlier writ decision restoring money decree in favor of cooperative bank - Ground urged concerned jurisdiction of cooperative forum vis a vis debt recovery mechanism under central legislation - Facts undisputed regarding loan transactions and recovery proceedings initiated before cooperative forum - Observation recorded existence of serious legal controversy on whether cooperative banks fall within definition of bank for exclusive recovery before specialized tribunal - Conflicting interpretations and constitutional interplay noticed - Issue involved effect of central enactment on state recovery remedy and extent of legislative competence - Determination required authoritative resolution - Matter found unsuitable for summary adjudication in review jurisdiction - Proper course required reference to larger bench - Review not decided on merits but procedural direction issued - Matter Referred to larger Bench

**Law Point : When substantial jurisdictional conflict and constitutional questions arise review jurisdiction may yield to reference to larger bench instead of final determination**

**Acts Referred :**

Maharashtra Co-Operative Societies Act, 1960 Sec. 163, Sec. 91

Banking Regulation Act, 1949 Sec. 56, Sec. 2, Sec. 5, Sec. 34

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 2

Recovery of Debts and Bankruptcy Act, 1993 Sec. 17, Sec. 1, Sec. 2, Sec. 31, Sec. 18

**Counsel :**

Sharad Bansal, Laxman Jain, Shadab Jan, Nikhil Rajani, Ajay Deshmane, V Deshpande & Co

**JUDGEMENT**

**Amit Borkar, J.**

**[1]** By judgment and order dated 11 November 2025, the writ petition filed by Respondent No.1 was allowed and the order dated 27 December 2021 passed by the Maharashtra State Cooperative Appellate Court was set aside. Consequentially, the money decree dated 25 October 2017 passed in favour of Respondent No.1 and against the present Petitioner stood restored. The Petitioner, who was the original respondent in the writ petition, has preferred the present review petition seeking review of the judgment dated 11 November 2025. The sole ground urged in the review petition is the order dated 3 November 2025 passed by the learned Single Judge of this Court at the

Nagpur Bench in Washim Urban Cooperative Bank Ltd. v. Girishchandra, in Writ Petition No.3783 of 2021 dated 03.11.2025( Nagpur Bench) wherein it has been observed that a cooperative bank is a bank within the meaning of the Recovery of Debts and Bankruptcy Act, 1993("RDB Act")and the Cooperative Courts under the Maharashtra Cooperative Societies Act, 1960("MCS Act") are barred from entertaining applications for recovery of debts exceeding Rupees Ten Lakhs.

**[2]** The Respondent Bank calls in question the correctness of the Single Judge's decision in Washim Urban Co-operative Bank Ltd. v. Girishchandra, which held that a co-operative bank's loan recovery claims in excess of Rs 10 lakh fall exclusively within the juri sdiction of the Debts Recovery Tribunal (DRT) under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and oust the Co-operative Court's jurisdiction under Section 91 of the MCS Act . The Petitioner in this review submits that **Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Ltd**, 2020 9 SCC 215 and the Washim Urban decision itself dictate that cooperative banks are "banks" under central law and must proceed only under the RDB Act, not under Section 91 MCS Act. The Respondent contends that Pandurang Ganpati Chaugule dealt exclusively with the SARFAESI Act, and did not alter the law as to the RDB Act; that the definition of "bank" in the RDB Act differs; and that earlier law in **Greater Bombay Coop. Bank Ltd. v. United Yarn Tex Pvt. Ltd.**, 2007 6 SCC 236 excluded co-op banks from RDB jurisdiction. He further argues that the constitutional basis (Part IX-B of the Constitution via the 97th Amendment) supporting Pandurang Ganpati Chaugule has since been struck down in **Union of India v. Rajendra N. Shah**, 2022 19 SCC 520, rendering Pandurang Ganpati' Chougule's reasoning weak.

**[3]** I have heard learned counsel and have considered all submissions. The principal questions are (a) whether a cooperative bank is a "bank" under the RDB Act so as to confer exclusive jurisdiction on the DRT for debt recovery beyond Rs 10 lakh, thereby ousting the Co-operative Court under Section 91 MCS Act, and (b) whether Pandurang Ganpati Chaugule and the Washim Urban judgment applying it, require reconsideration by a larger bench in view of the Respondents' contentions. Because these issues involve a significant interplay of constitutional entries and conflicting precedents, and in the absence of a directly onpoint Supreme Court ruling on the RDB Act, I refrain from a finaldetermination on the merits and leave the matter to a larger bench. However, for completeness I detail below the arguments of each side and my provisional analysis of the competing legal positions.

**Factual Background:**

**[4]** The facts are not in dispute. The Washim Urban Co-op Bank a society registered under the MCS Act had advanced loans to the respondents who were member-borrowers. The sums due exceeded Rs 10 lakh. The Bank filed a recovery petition before the Co-operative Court under Section 91 MCS Act. The borrowers challenged the jurisdiction of the Co-operative Court on the ground that the Debts

Recovery Tribunal (DRT) under the RDB Act had exclusive jurisdiction for such claims. The Co-operative Court initially proceeded with the case. On appeal, the Co-operative Appellate Court relied on Pandurang Ganpati Chaugule and held that the Bank is a "bank" under the RDB Act, so that Sections 17 18 of the RDB Act apply and bar the Co-operative Court's jurisdiction (as the claim exceeds the Rs 10 lakh threshold). The Bank then challenged that ruling in this Court by way of writ petition under Article 226. The Single Judge in Washim Urban Coop. Bank Ltd. v. Girishchandra agreed with the Appellate Court: it found that Pandurang Ganpati Chaugule establishes that a cooperative bank is a "banking company" under the RDB Act, and that Section 18 RDB Act bars other forums for recovery above Rs 10 lakh. The writ petitions were dismissed.

**Petitioner's Submissions:**

**[5]** The Petitioner submits that a co operative bank registered under the Maharashtra Co operative Societies Act, 1960 is not entitled to institute proceedings under Section 91 of the said Act before the Co operative Court for recovery of its dues. The only statutory remedy available to a co operative bank, including Respondent No.1 who was the original petitioner, is to invoke the jurisdiction of the Debts Recovery Tribunal under the Recovery of Debts and Bankruptcy Act, 1993. The Petitioner submits that the judgment delivered in Washim Urban Co operative Bank Ltd. v. Girishchandra states the prevailing position of law. The reasoning supporting this conclusion is set out hereinbelow.

**A. Jurisdiction of the Debts Recovery Tribunal .**

**[6]** The Petitioner submits that a co operative bank is competent to institute proceedings under Section 17 of the RDB Act for recovery of its debts. Section 17 expressly confers jurisdiction upon the Debts Recovery Tribunal to entertain applications filed by banks and financial institutions. Section 2(d) of the RDB Act defines the expression bank and includes within it a banking company. Section 2(e) of the RDB Act assigns to the expression banking company the same meaning as contained in Section 5(c) of the Banking Regulation Act, 1949.

**[7]** The SARFAESI Act, 2002 adopts an identical legislative scheme. Section 2(1)(c) defines a bank to include a banking company. Section 2(1)(d) of the SARFAESI Act defines banking company by expressly incorporating the definition under Section 5(c) of the Banking Regulation Act. Thus, both the RDB Act and the SARFAESI Act trace the meaning of banking company to the Banking Regulation Act.

**[8]** The Petitioner submits that prior to the Constitution Bench decision in Pandurang Ganpati Chaugule, a three Judge Bench of the Supreme Court in Greater Bombay Co operative Bank Ltd. had held that a co operative bank did not fall within the definition of a banking company under Section 5(c) of the Banking Regulation Act and therefore could not invoke the RDB Act.

**[9]** The Constitution Bench in Pandurang Ganpati Chaugule has expressly overruled the decision in Greater Bombay. The Court has categorically held that a co operative bank is included within the definition of a banking company under Section 5(c) of the Banking Regulation Act. Consequentially, it has been held that a co operative bank is a banking company under Section 2(1)(d) of the SARFAESI Act and a bank under Section 2(1)(c) thereof. In light of this authoritative pronouncement, the Petitioner submits that since a co operative bank falls within the definition of a banking company under Section 5(c) of the Banking Regulation Act, it necessarily falls within Section 2(e) of the RDB Act and is therefore a bank under Section 2(d) of the RDB Act. As a result, a co operative bank is fully entitled to invoke Section 17 of the RDB Act and approach the Debts Recovery Tribunal for recovery of its dues.

**B. Bar on jurisdiction of the Co operative Court under Section 91 of the MCS Act.**

**[10]** The Petitioner submits that a co operative bank cannot invoke the jurisdiction of the Co operative Court under Section 91 of the MCS Act for recovery of debts.

**[11]** The first submission is that upon enactment of the RDB Act, Section 91 of the MCS Act ceases to operate insofar as it relates to recovery of debts by co operative banks. To that extent, the provision suffers from lack of legislative competence. Without prejudice to the above, even assuming that Section 91 continues to exist on the statute book, Section 18 of the RDB Act expressly bars the jurisdiction of all other courts and authorities in respect of matters covered by Section 17. The Co operative Court exercising jurisdiction under Section 91 is squarely covered by this bar. The RDB Act is a central legislation enacted under Entry 45 of List I of the Seventh Schedule, which deals with banking. This position has been affirmed by the Supreme Court in **Union of India v. Delhi High Court Bar Association**, 2002 4 SCC 275 and reiterated in Pandurang Ganpati Chaugule. In contrast, the MCS Act is a State legislation enacted under Entry 32 of List II, which governs incorporation, regulation and winding up of co operative societies. In Greater Bombay, the Supreme Court had held that cooperative societies incidentally carrying on banking activity continued to fall within Entry 32 of List II. However, this view no longer holds the field. The Constitution Bench in Pandurang Ganpati Chaugule has clearly held that the banking activity of co operative banks, including recovery of dues, falls within Entry 45 of List I. Parliament is therefore competent to legislate on the recovery mechanism of co operative banks. The argument that such recovery falls exclusively within State legislative competence was expressly rejected. The Court further held that recovery of dues is an essential and integral part of banking. Matters such as incorporation, regulation and winding up alone remain within Entry 32 of List II. Recovery of debts does not.

**[12]** Accordingly, once Parliament has enacted the RDB Act governing recovery of debts by banks including co operative banks, the State legislature lacks competence to provide a parallel recovery mechanism under Section 91 of the MCS Act. The

Petitioner places reliance on the decisions in **UCO Bank v. Dipak Debbarma**, 2017 2 SCC 585, **Fatehchand Himmatlal v. State of Maharashtra**, 1977 2 SCC 670 and **Nedumpilli Finance Co. Ltd. v. State of Kerala**, 2022 7 SCC 394. To the extent Section 91 of the MCS Act purports to permit recovery proceedings by co operative banks, it becomes inoperative and unenforceable, as the field stands occupied by central legislation enacted under Entry 45 of List I.Article 246 of the Constitution further fortifies this position. In the event of any overlap between Parliamentary legislation under List I and State legislation under List II, the law enacted by Parliament prevails. This principle has been settled in **Union of India v. H.S. Dhillon**, 1971 2 SCC 779 and reaffirmed in **State of West Bengal v. Kesoram Industries**, 2004 10 SCC 201.

**[13]** Any interpretation permitting co operative banks to proceed under Section 91 would amount to sustaining a provision which is constitutionally infirm insofar as recovery of bank dues is concerned. Even otherwise, Section 18 of the RDB Act creates an express statutory bar. Once a matter falls within Section 17, no other court or authority can exercise jurisdiction. Therefore, even if Section 91 is assumed to survive, the Co operative Court is denuded of jurisdiction by operation of Section 18. The Petitioner further submits that although both the RDB Act and the MCS Act contain non obstante clauses, the RDB Act must prevail. It is a special statute governing recovery of debts due to banks. Special law prevails over general law. **Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.**, 2023 6 SCC 401. Even if both are treated as special statutes, the later enactment prevails over the earlier one.**Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal**, 2022 6 SCC 496

**C. Incorrectness of Viren Foods and Supreme Agro Trade .**

**[14]** The Petitioner submits that this Court has rightly declined to follow the decisions in Viren Foods and Beverages Pvt. Ltd. v. State of Maharashtra, dated 11 April 2022 passed in Writ Petition No. 691 of 2022 and Supreme Agro Trade v. State of Maharashtra, dated 9 February 2024 in Writ Petition No. 2188 of 2022. Viren Foods was decided in the context of the SARFAESI Act, which does not contain a provision analogous to Section 18 of the RDB Act. The absence of a jurisdictional bar in SARFAESI materially distinguishes that decision. Supreme Agro Trade proceeds on the premise that a co operative bank is not a banking company under Section 5(c) of the Banking Regulation Act. This reasoning directly contradicts the Constitution Bench ruling in Pandurang Ganpati Chaugule. To that extent, Supreme Agro Trade does not lay down correct law.

**[15]** In view of the above submissions, the Petitioner submits that the Co operative Court lacks jurisdiction to entertain recovery proceedings instituted by co operative banks. This position is consistent with the Full Bench decision of this Court in **Narendra Kantilal Shah v. Joint Registrar**, 2004 1 MhLJ 704 which held that Section 18 of the RDB Act bars proceedings under Section 91 of the MCS Act. Though that decision was earlier overruled in Greater Bombay, the foundation of

Greater Bombay Co-operative Bank Ltd.now stands removed by the Constitution Bench in Pandurang Ganpati Chaugule.

**Respondent's Submissions:**

**[16]** The Respondent submits that the decision in Washim Urban is founded upon the judgment of the Supreme Court rendered by a Constitution Bench in **Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Ltd.**, 2020 9 SCC 215, decided on 5 May 2020. It is submitted that according to the reasoning adopted by Washim Urban, the decision in Pandurang Ganpati Chaugule has overruled the earlier judgment of the Supreme Court in Greater Bombay Cooperative Bank Ltd. , which had held that the provisions of the RDB Act were not applicable to cooperative banks. The Respondent submits that it is in this background that the Petitioner has filed the present review petition contending that the Cooperative Court was a forum non judice and lacked jurisdiction to entertain the dispute application filed by Respondent No.1, and therefore seeks review and setting aside of the judgment dated 11 November 2025. The Respondent submits that the decision in Washim Urban proceeds on the premise that the judgment in Greater Bombay Co-operative Bank Ltd.stands overruled by the subsequent Constitution Bench decision in Pandurang. It is further assumed therein that the Supreme Court in Pandurang Ganpati Chaugule has held that a cooperative bank falls within the definition of a bank under the RDB Act. On this reasoning, the Nagpur Bench has concluded that Cooperative Courts have no jurisdiction to entertain recovery proceedings above Rupees Ten Lakhs and that such proceedings lie exclusively before the Debts Recovery Tribunal. The Respondent submits that the scope of the decision in Pandurang Ganpati Chaugule has been misconstrued. The Supreme Court in Pandurang Ganpati Chaugule was dealing with a challenge to the constitutional validity of the SARFAESI Amendment Act, 2012 and the Notification dated 28 January 2003 issued under Section 2(1)(c)(v) of the SARFAESI Act, whereby cooperative banks and multi state cooperative banks were brought within the definition of bank for the purposes of the SARFAESI Act.

**[17]** The issues framed and considered by the Supreme Court in Pandurang Ganpati Chaugule were limited. They related to the extent of legislative competence under Entry 45 of List I and Entry 32 of List II of the Seventh Schedule, the meaning of the expression banking company under Section 5(c) of the Banking Regulation Act, and the applicability of the SARFAESI Act to cooperative banks and multi state cooperative banks. While upholding the validity of the 2013 Amendment and the 2003 Notification, the Supreme Court held that in respect of banking activity, cooperative banks are governed by legislation relatable to Entry 45 of List I. At the same time, matters relating to incorporation, regulation and winding up continue to be governed by State legislation under Entry 32 of List II. The Court further held that cooperative banks fall within the meaning of banking company under the Banking Regulation Act and are therefore banks for the purposes of the SARFAESI Act. The Respondent submits that the judgment in Pandurang Ganpati Chaugule was rendered after the

Ninety Seventh Constitutional Amendment inserting Part IX B into the Constitution. The Supreme Court relied upon the scheme of Part IX B, including Article 243 ZL, while examining legislative competence in the context of SARFAESI.

**[18]** The Respondent submits that the decision in Greater Bombay Cooperative Bank Ltd. was rendered prior to the 2013 amendment to the RDB Act, by which multi state cooperative banks were specifically included within the definition of bank under Section 2(d). At the relevant time, neither cooperative banks nor multi state cooperative banks were expressly included within the RDB Act. It is in that statutory backdrop that Greater Bombay Cooperative Bank Ltd.was decided. The Respondent submits that the issue in Greater Bombay Cooperative Bank Ltd. was confined to the applicability of the RDB Act to cooperative banks and the competence of the State legislature under Entry 32 of List II to legislate in respect of cooperative banks carrying on banking business. In that context, the Supreme Court held that the RDB Act did not apply to cooperative banks and that the State legislature was competent to enact laws governing them.

**[19]** The Respondent submits that the decision in Washim Urban suffers from serious infirmities. The Washim Urban has proceeded on the assumption that the definitions of bank under the SARFAESI Act and the RDB Act are identical. This assumption is incorrect. The definition under the SARFAESI Act includes cooperative banks by virtue of a specific notification issued under Section 2(1)(c)(v). The definition under the RDB Act does not include cooperative banks and includes only multi state cooperative banks.

**[20]** The Respondent submits that the Washim Urban failed to notice that while cooperative banks were expressly included within SARFAESI by the 2003 Notification, no corresponding inclusion was made under the RDB Act. It is further submitted that the Washim Urban has erroneously inferred that Pandurang Ganpati Chaugule holds cooperative banks to be banks under the RDB Act. There is no finding, observation or declaration to that effect in Pandurang Ganpati Chaugule . The Supreme Court was not concerned with the interpretation of the term bank under the RDB Act.

**[21]** The Respondent places reliance on the decision of the Supreme Court in Secunderabad Club v. Commissioner of Income Tax,2023 SCCOnLineSC 1004 wherein it has been held that only the ratio decidendi of a judgment is binding, that stray observations do not constitute precedent, and that a decision cannot be treated as law declared unless the issue was directly considered and decided. The Respondent submits that Pandurang Ganpati Chaugule is confined to the applicability of the SARFAESI Act to cooperative banks. It does not declare that cooperative banks fall within the definition of bank under the RDB Act or that Debts Recovery Tribunals have exclusive jurisdiction over recovery proceedings above Rupees Ten Lakhs. The application of Pandurang Ganpati Chaugule to the facts in Washim Urban is therefore legally unsustainable.

**[22]** The Respondent further submits that the Washim Urban has summarily concluded that Greater Bombay Cooperative Bank Ltd. stands overruled without undertaking any reconciliation of the two judgments. A judgment cannot be treated as overruled by implication unless there is a clear and irreconcilable conflict on the same issue.

**[23]** On a harmonious reading, the Respondent submits that both decisions can coexist. Pandurang Ganpati Chaugule departs from Greater Bombay Co-operative Bank Ltd. only to the extent of recognising that cooperative banks are engaged in banking activity and fall within the meaning of banking company under the Banking Regulation Act. It does not deal with, nor overrule, the conclusions in Greater Bombay Co-operative Bank Ltd.regarding the inapplicability of the RDB Act.

**[24]** The Respondent submits that Pandurang Ganpati Chaugule does not lay down any proposition that cooperative banks are banks under the RDB Act or that Debts Recovery Tribunals have exclusive jurisdiction in recovery matters exceeding Rupees Ten Lakhs.

**[25]** Lastly, the Respondent submits that the Washim Urban has failed to consider the effect of the subsequent Constitution Bench decision in **Union of India v. Rajendra N. Shah**, 2022 19 SCC 520, whereby the Ninety Seventh Constitutional Amendment was struck down insofar as it applied to cooperative societies.

**[26]** The Respondent submits that the judgment in Pandurang Ganpati Chaugule relied upon Part IX B of the Constitution, including Article 243 ZL, while examining legislative competence. The striking down of Part IX B in Rajendra N. Shah materially alters the constitutional foundation on which Pandurang Ganpati Chaugule was decided. This vital aspect was not considered in Washim Urban.

**Legal Framework:**

**[27]** Before analysing the arguments, it is useful to make reference to the relevant statutory provisions and constitutional entries:

**[28]** Section 91 Confers jurisdiction on Co-operative Courts to try "all disputes or suits regarding the business of the co-operative society" between, inter alia, the society and its members. It thus empowers the State forum to hear loan-recovery disputes when a cooperative bank (as a society) sues its members.

**[29]** Section 17 vests exclusive jurisdiction in the DRT for suits or applications by a "bank" to recover debts due to it. Section 18 bars the jurisdiction of "every Court or any authority" in relation to matters covered by Section 17, once a DRT has been constituted and the debt exceeds the threshold. Section 1(4) of the RDB Act limits its application to debts of Rs 10 lakh or more (unless the Central Government raises that limit). Section 34(1) gives the RDB Act an overriding effect over other laws.

**[30]** Section 2(1)(d) defines "banking company" as in Section 5(c) of the Banking Regulation Act, 1949. Section 2(1)(e) defines "bank" to mean "banking company". Under Section 5(c) (preamendment), "banking company" included certain co-operative

institutions incorporated as companies, but excluded co-operative societies. Section 56(a) of the BR Act treated State co-operative banks as banking companies once Central assistance was received, but this provision was largely rendered moot by 1975 amendments (indeed Section 56 was omitted in 1993). In short, the statutory text was not crystal clear on co-op banks.

**[31]** Co-Operative societies fall under Entry 32, List II (State List). “Banking” and “recovery of debts” fall under Entry 45, List I (Union List). Entry 43C (by 97th Amendment) and Part IX-B (now struck down) also pertained to co-operatives.

**[32]** State law (MCS Act) creates a remedy and forum for co-op societies, while central law (RDB Act) provides an alternate debtrecovery mechanism under Union entry 45. Under the pith and substance doctrine, it must be determined which law prevails on its true subject-matter.

**ANALYSIS**

**Applicability of RDB Act to Co-operative Banks:**

**[33]** The first issue is whether a co-operative bank can be treated as a “bank” under the RDB Act. In Pandurang Ganpati Chaugule the Supreme Court clearly held that a co-operative bank which carries on banking business is a “banking company” within the meaning of Section 5(c) of the Banking Regulation Act, read with Section 56. On that basis, it was held to be a “bank” under the SARFAESI Act. The Court also made it clear that banking business includes recovery of money and that such activity falls under Entry 45 of List I of the Constitution. For this reason, the Court upheld the application of the SARFAESI Act to co-operative banks through statutory amendments and notifications.

**[34]** It is true that Pandurang Ganpati Chaugule was concerned with the SARFAESI Act. However, the Court noted that the definitions of “bank” and “banking company” under the SARFAESI Act are the same as those found in the RDB Act. If that reasoning is applied in the same manner, a co-operative bank would also qualify as a “bank” under the RDB Act. This is the approach adopted in the Washim Urban judgment. That judgment treated Pandurang Ganpati Chaugule as a clear declaration that cooperative banks fall within the meaning of “banking company” and “bank” even for the purposes of the RDB Act. On that basis, it was held that Section 17 of the RDB Act gives jurisdiction to the Debts Recovery Tribunal for recovery claims by co-operative banks, and that Section 18 bars all other forums.

**[35]** The respondent is correct in pointing out that the Supreme Court in Pandurang Ganpati Chaugule did not directly state that the RDB Act applies to co-operative banks. The Constitution Bench was answering a specific question, namely whether Parliament had the power to extend the SARFAESI Act to co-operative banks under Entry 45 of List I. That said, by rejecting a narrow understanding of the word “bank” and by holding that co-operative banks are engaged in full-fledged banking, the

Court indirectly accepted that the expression “bank” in central banking laws is wide enough to cover co-operative banks.

**[36]** In contrast, the earlier decision in Greater Bombay Cooperative Bank Ltd. had taken a different view. That judgment held that the RDBFI Act, now known as the RDB Act, did not apply to co-operative banks. The Court reached this conclusion by closely reading the statutory provisions. It noted that Section 5(c) of the Banking Regulation Act, which is referred to in the RDB Act, did not include co-operative banks. It also observed that Parliament had consciously not amended the RDB Act to include co-operative banks, and that Section 56 of the Banking Regulation Act had only a limited role.

**[37]** Paragraph 120 of Pandurang Ganpati Chaugule shows that the Constitution Bench has openly disagreed with the reasoning adopted in Greater Bombay Co-operative Bank Ltd. decided in 2007. The Court points out that in Greater Bombay, the provisions of the Banking Regulation Act, particularly Section 56, were not examined in detail. It also notes that the main question before the Court at that time was whether recovery proceedings should be filed before the Debts Recovery Tribunal or before the Co-operative Court. The Constitution Bench clearly states that it cannot agree with the conclusions reached in Greater Bombay Co-operative Bank Ltd. because the statutory provisions were not properly understood or applied. It is important to see what the Supreme Court was considering at this stage. The Constitution Bench was rejecting the basic assumption made in Greater Bombay Cooperative Bank Ltd. that co-operative banks are not mainly engaged in banking and therefore fall outside the central banking system. The Court clearly holds that banking is not a side activity for co-operative banks. It is their principal and only business. This finding directly weakens the foundation on which Greater Bombay Co-operative Bank Ltd. was decided. At the same time, the Court does not clearly say that the RDB Act applies to co-operative banks. What it does is remove the basic reasoning used in Greater Bombay Co-operative Bank Ltd. to keep co-operative banks outside central banking laws.

**[38]** Paragraph 121 takes the reasoning further. The Court rejects the view accepted in Greater Bombay Co-operative Bank Ltd. that since State Co-operative Acts already provide a complete system for recovery, Parliament cannot make laws in that area. The Constitution Bench makes it clear that recovery of bank dues is an essential part of banking. Banking squarely falls under Entry 45 of List I. Therefore, Parliament's power to make laws on recovery cannot be denied merely because State law also provides a remedy. The Court then deals with another important argument raised in Greater Bombay Co-operative Bank Ltd. It was argued there that Parliament never amended Section 5(c) of the Banking Regulation Act to include co-operative banks. The Constitution Bench holds that this argument is incorrect. Parliament extended the Banking Regulation Act to co-operative banks through Section 56 and by introducing an entire chapter applicable to them. The Court makes it clear that these wide amendments cannot be ignored or treated as meaningless. The most important

part of paragraph 121 is the Court's observation that if co-operative banks are kept outside the Banking Regulation Act and other laws made under Entry 45, they would not even be able to carry on banking business. Without compliance with licensing and regulatory provisions under the Banking Regulation Act, banking activity itself would become impossible. This shows that co-operative banks necessarily function within the central banking framework.

**[39]** Paragraph 122 completes the chain of reasoning. The Court holds that co-operative banks clearly satisfy the definition of "banking" under Section 5(b) of the Banking Regulation Act. Cooperative banks accept deposits. They allow withdrawals. They give loans. The fact that loans are given mainly to members does not take them outside banking. They perform commercial banking functions and, therefore, fall under Entry 45 of List I.

**[40]** What Pandurang Ganpati Chaugule clearly and finally decides can be stated as follows. First, co-operative banks are mainly and genuinely engaged in banking activities. Second, banking includes recovery of money, and this entire field falls under Entry 45 of List I of the Constitution. Third, Parliament has full authority to make laws relating to banking and recovery of bank dues, even when such laws affect co-operative banks. Fourth, the earlier reasoning in Greater Bombay Co-operative Bank Ltd. which treated co-operative banks as standing outside the central banking framework is incorrect.

**[41]** The judgment in Greater Bombay Co-operative Bank Ltd. v. United Yarn Tex Pvt. Ltd. was based on a combination of constitutional principles, interpretation of statutory provisions, and the overall scheme of the laws involved. To assess how far that judgment still holds good after Pandurang Ganpati Chaugule, it is necessary to identify the main reasons on which Greater Bombay Co-operative Bank Ltd. was decided and then examine how each of those reasons stands after the later Constitution Bench decision.

**[42]** First, the Supreme Court in Greater Bombay Co-operative Bank Ltd. proceeded on the basic assumption that co-operative banks do not fall within the definition of a "banking company" under Section 5(c) of the Banking Regulation Act, 1949. Since this definition is adopted by the RDB Act, the Court held that the RDB Act did not apply to co-operative banks. The Court further held that Section 56 of the Banking Regulation Act, which applies certain provisions of that Act to co-operative societies, does not convert co-operative banks into banking companies for all purposes. This understanding of the statute formed the central reason for excluding co-operative banks from the RDB Act. This position has now been largely unsettled by Pandurang Ganpati Chaugule. The Constitution Bench clearly disagreed with the manner in which Section 56 was understood in Greater Bombay. It held that the application of the Banking Regulation Act to cooperative banks through Section 56 is substantial and meaningful. According to Pandurang Ganpati Chaugule, co-operative banks carry on banking as their main and exclusive activity, and the extensive regulatory amendments

made by Parliament cannot be ignored. To this extent, the assumption in Greater Bombay Cooperative Bank Ltd. that co-operative banks lie outside the central banking system has been clearly rejected.

**[43]** Second, Greater Bombay Co-operative Bank Ltd. relied heavily on principles of constitutional federalism. The Court held that co-operative societies fall under Entry 32 of List II and that State Legislatures have full power to regulate them, including providing complete recovery mechanisms. It reasoned that since State co-operative laws already had self-contained recovery systems, Parliament did not intend to enter this field through the RDB Act. On this basis, the Court held that the jurisdiction of Cooperative Courts under Section 91 of the MCS Act remained untouched. This reasoning has also been weakened by Pandurang Ganpati Chaugule. The Constitution Bench held that banking, including recovery of dues, squarely falls under Entry 45 of List I. It clarified that recovery is not a side or incidental matter but an essential part of banking itself. The Court further held that the existence of State recovery mechanisms cannot prevent Parliament from legislating on banking, even if such legislation incidentally affects State powers. To this extent, the federal balance reasoning adopted in Greater Bombay Co-operative Bank Ltd. no longer carries the same weight.

**[44]** Third, Greater Bombay Co-operative Bank Ltd. placed strong emphasis on legislative intent. The Court noted that Parliament had consciously omitted co-operative banks from the RDB Act and the SARFAESI Act when they were first enacted. This omission was treated as decisive. The Court reasoned that if Parliament intended to cover co-operative banks, it would have expressly said so. This reasoning strongly supported the conclusion that remedies under the RDB Act were not available to co-operative banks. This aspect is only partly addressed in Pandurang Ganpati Chaugule. The Constitution Bench held that Parliament does have the power to include co-operative banks within central banking laws and that such inclusion was validly carried out in the context of the SARFAESI Act through amendments and notifications. However, the Court did not examine the RDB Act in detail. It did not decide whether Parliament has actually exercised this power under the RDB Act so as to clearly and expressly include State co-operative banks. Therefore, while the assumption in Greater Bombay Cooperative Bank Ltd. that Parliament lacked constitutional power is rejected, the separate question of actual inclusion under the RDB Act remains unanswered.

**[45]** Fourth, the decision in Greater Bombay Co-operative Bank Ltd. was delivered after the Supreme Court carefully examined the scheme, purpose, and background of the RDB Act. The Court did not decide the case on technicalities. Instead, it relied on multiple connected reasons to conclude that the RDB Act does not apply to disputes between co-operative banks and their members, and that such disputes should continue under State co-operative laws. The Court gave significant importance to the objects and reasons of the RDB Act. It noted that Parliament enacted the RDB Act to address a specific problem faced by public sector banks and financial

institutions, which were forced to file recovery suits in overburdened civil courts, leading to long delays. The Statement of Objects and Reasons referred to more than fifteen lakh pending cases and to the recommendations of the Tiwari Committee and the Narasimham Committee, both of which stressed the need for special tribunals to ensure speedy recovery. From this, the Court concluded that the RDB Act was meant to transfer bank recovery cases from civil courts to DRTs. It was not intended to interfere with recovery mechanisms already functioning under State cooperative laws. The Court also emphasised that disputes between co-operative banks and their members were already being effectively handled under State Co-operative Societies Acts. Parliament was aware of this system and chose not to disturb it. The Court reasoned that shifting co-operative disputes to DRTs would overburden those tribunals and defeat the very purpose of speedy recovery. On this basis, it held that the RDB Act and State co-operative laws operate in different spheres. The Court further examined Section 31 of the RDB Act and held that the term “court” refers only to civil courts. It clarified that Registrars, arbitrators, and Co-operative Courts under State laws are not civil courts. This showed that proceedings before co-operative authorities were never intended to be transferred to DRTs. The Court also observed that despite being aware of co-operative banks, Parliament had not amended the RDB Act to expressly include them. This omission was treated as deliberate. All these factors together led the Supreme Court in Greater Bombay Co-operative Bank Ltd. to hold that the RDB Act does not apply to co-operative banks.

**[46]** However, Pandurang Ganpati Chaugule does not clearly interpret Sections 17 and 18 of the RDB Act. It does not expressly state that recovery proceedings by co-operative banks must be filed only before the Debts Recovery Tribunal. It also does not clearly declare that Co-operative Courts under Section 91 of the MCS Act lose their jurisdiction. The Constitution Bench was mainly concerned with the validity and applicability of the SARFAESI Act. Its criticism of Greater Bombay Co-operative Bank Ltd. is based on constitutional understanding and statutory interpretation. While it removes the conceptual basis of Greater Bombay, it stops short of clearly declaring that the RDB Act overrides State co-operative recovery laws.

**[47]** In short, Pandurang Ganpati Chaugule does not finally resolve the conflict between the RDB Act and Section 91 of the MCS Act. It does, however, tilt the legal balance strongly in favour of central authority over banking and recovery. This makes the issue significant and in need of a final and authoritative decision.

**[48]** It is this legal position that creates the present difficulty. The foundation of Greater Bombay Co-operative Bank Ltd. has been shaken, but its final conclusion has not been expressly overruled. The reasoning based on the objects and reasons of the RDB Act, the analysis of recovery forums, and the deliberate legislative omission continues to support its conclusion unless Parliament's intention under the RDB Act is clearly clarified. This unresolved situation explains why the issue remains open and why authoritative determination by a larger Bench is required.

**RDB Act vis-a-vis MCSAct:**

**[49]** To understand whether recovery proceedings by a cooperative bank should go before the Debts Recovery Tribunal or the Co-operative Court, it is necessary to read the relevant provisions of both laws together.

**[50]** First, under the RDB Act, Section 2(d) defines the word "bank". It includes banking companies, nationalised banks, State Bank of India, subsidiary banks, regional rural banks, and importantly, multi-State co-operative banks. Section 2(e) then says that the meaning of "banking company" shall be the same as given in Section 5(c) of the Banking Regulation Act. This shows that the RDB Act applies only to those institutions which strictly fall within this definition.

**[51]** Next comes Section 17 of the RDB Act. This provision gives exclusive power to the Debts Recovery Tribunal to decide applications filed by banks and financial institutions for recovery of debts. If a bank covered by the RDB Act wants to recover its money, it must approach the DRT.

**[52]** Section 18 of the RDB Act strengthens this position. It clearly states that once the Tribunal is established, no other court or authority can exercise jurisdiction in matters which fall under Section 17. The only exceptions are the Supreme Court and the High Court under Articles 226 and 227 of the Constitution. This section is meant to prevent parallel proceedings and ensure that recovery cases are decided only by the DRT.

**[53]** However, Section 18 also contains an important proviso. It says that recovery proceedings of multi-State co-operative banks which were already pending under the Multi-State Co-operative Societies Act before the 2013 amendment shall continue. This shows that Parliament was conscious of co-operative recovery mechanisms and made specific saving provisions only for multiState co-operative banks.

**[54]** Section 31 of the RDB Act deals with transfer of pending cases. It provides that any suit or recovery proceeding which could have been filed before the DRT, had the Tribunal existed at that time, shall stand transferred to the Tribunal. Once again, a special exception is carved out for recovery proceedings of multi-State cooperative banks pending under the Multi-State Co-operative Societies Act. This shows that Parliament consciously dealt with multi-State co-operative banks, but did not expressly deal with State co-operative banks.

**[55]** Section 34 of the RDB Act gives the Act overriding effect. It states that the RDB Act will prevail over any other law if there is inconsistency. At the same time, sub-section (2) clarifies that the RDB Act is in addition to certain specified financial laws. This shows that the overriding effect operates only when there is a clear conflict.

**[56]** Now, turning to the MCS Act, Section 91 is the heart of the co-operative dispute resolution system. It mandates that any dispute touching the business of a society, including recovery of debts due from members, must be referred to the Co-

operative Court. The provision begins with a non-obstante clause, meaning it applies notwithstanding anything contained in any other law.

**[57]** Section 91 also makes it clear that claims by a society for recovery of dues from members are "disputes" and must be decided by the Co-operative Court. Section 91(3) further bars the jurisdiction of civil courts in respect of such disputes. This shows that the legislature intended the Co-operative Court to be a specialised forum for resolving such matters.

**[58]** Section 163 of the MCS Act reinforces this position. It expressly bars the jurisdiction of civil and revenue courts in matters which are required to be decided under the Act, including disputes under Section 91. It also declares that orders passed under the Act are final and cannot be questioned in ordinary courts.

**[59]** When these provisions are read together, the position becomes clear. Under the MCS Act, a co-operative bank, being a co-operative society, is entitled to recover its dues from members by approaching the Co-operative Court under Section 91. This is a self-contained mechanism created by State law. Under the RDB Act, only those institutions which strictly fall within the definition of "bank" can invoke the jurisdiction of the DRT. Parliament has expressly included multi-State co-operative banks in the RDB Act. However, State co-operative banks are not expressly mentioned.

**[60]** Sections 18 and 31 of the RDB Act show that Parliament was careful in carving out exceptions and savings only in respect of multi-State co-operative banks. There is no similar express provision dealing with State co-operative banks governed by the MCS Act. Therefore, unless it is clearly established that a State cooperative bank falls within the definition of "bank" under Section 2(d) read with Section 2(e) of the RDB Act, the bar under Section 18 cannot automatically apply to proceedings under Section 91 of the MCS Act.

**[61]** The RDB Act bars other courts only when the matter is one which the DRT is legally empowered to decide. If the co-operative bank itself does not fall within the RDB Act, the bar under Section 18 does not get attracted. Thus, the conflict between the two laws does not arise merely because both provide recovery mechanisms.

A real conflict arises only if the same bank is clearly governed by both statutes. In the absence of an express inclusion of State cooperative banks in the RDB Act, Section 91 of the MCS Act continues to operate in its own field.

**Definitions under the RDB Act, the SARFAESI Act, and the Banking Regulation Act:**

**[62]** The submission that once a co-operative bank is treated as a "banking company" under Section 5(c) of the Banking Regulation Act it must automatically be treated as a "bank" under the RDB Act, and therefore entitled to approach the DRT under Section 17, has to be tested carefully in the light of the principle of statutes in pari materia and the surrounding statutory scheme. At a first glance, the argument

appears attractive. Section 2(e) of the RDB Act adopts the meaning of “banking company” from Section 5(c) of the Banking Regulation Act. Section 2(d) of the RDB Act then includes a “banking company” within the definition of “bank”. On this chain of definitions, it is argued that once Pandurang Ganpati Chaugule has held that a co-operative bank is a banking company under Section 5(c) read with Section 56 of the BR Act, the consequence must follow that it is also a “bank” under the RDB Act and can therefore invoke Section 17 before the DRT.

**[63]** The doctrine of pari materia means that laws dealing with the same subject should, as far as possible, be read together. It well settled that when two statutes are part of the same legal system and aim to achieve a common purpose, the meaning given in one law can help in understanding similar words used in another law. It is applied where two enactments operate in the same area and there is nothing in either law to suggest a different intention. At the same time, there is an equally settled limitation to this doctrine. Laws can be read together only when there is no clear indication to the contrary. The principle cannot be used to overlook conscious legislative choices, differences in structure, or express inclusions and exclusions made by Parliament. Courts cannot ignore what Parliament has deliberately done or deliberately not done. When this limitation is applied to the RDB Act, the difficulty with the submission becomes evident.

**[64]** Although both the RDB Act and the SARFAESI Act take the definition of “banking company” from Section 5(c) of the Banking Regulation Act, Parliament has not treated co-operative banks in the same manner under both statutes. Under the SARFAESI Act, co-operative banks were specifically brought within its scope by notifications and amendments. Under the RDB Act, however, Parliament has expressly included only multi-State co-operative banks and has made special saving and transitional provisions for them in Sections 18 and 31. There is no similar express inclusion of State co-operative banks. If Parliament had intended that all cooperative banks should automatically be treated as “banks” under the RDB Act merely because Section 5(c) of the BR Act is adopted, there would have been no need to amend Section 2(d) to separately include multi-State co-operative banks, nor to insert special provisos preserving proceedings under the Multi-State Cooperative Societies Act. These selective amendments clearly show that Parliament consciously restricted the scope of the RDB Act. Therefore, even though the RDB Act and the SARFAESI Act both deal with bank recovery and broadly operate in the same field, they do not form a single or uniform code. They are related statutes, but their reach is not identical. The doctrine of pari materia cannot be used to remove this distinction. Further, jurisdiction does not arise merely from definitions. The Supreme Court has consistently held that definitions only explain meaning. They do not, by themselves, confer jurisdiction. Jurisdiction under the RDB Act flows from Section 17, read in the light of the purpose and scheme of the Act. In Greater Bombay, the Supreme Court examined this legislative intent in detail and held that the RDB Act was enacted to shift bank

recovery cases away from ordinary civil courts, not to displace specialised recovery forums already functioning under State co-operative laws. This conclusion was based not only on definitions, but on the Statement of Objects and Reasons, the structure of the Act, and the limited scope of the transfer provision under Section 31.

**[65]** The decision in Pandurang Ganpati Chaugule undoubtedly changes the constitutional understanding of co-operative banks. It settles that co-operative banks carry on banking as their principal activity and that Parliament has legislative competence under Entry 45 to enact laws relating to banking and recovery. To that extent, it weakens the conceptual foundation of Greater Bombay. However, Pandurang Ganpati Chaugule does not apply the doctrine of pari materia to hold that definitions under the SARFAESI Act automatically extend the RDB Act to State cooperative banks. It does not examine Sections 17 or 31 of the RDB Act, nor does it hold that Parliament has actually exercised its competence to that extent under the RDB Act. The doctrine of pari materia helps courts understand meaning. It does not permit courts to rewrite one statute so as to make it identical to another. The argument that a “banking company” under the BR Act must necessarily be treated as a “bank” under the RDB Act overlooks the fact that Parliament itself has drawn clear distinctions within the RDB Act. Where Parliament has spoken expressly, courts cannot supply omissions by analogy.

**[66]** Therefore, the submission carries considerable persuasive value. It supports the view that co-operative banks cannot be treated as standing outside the concept of banking under central law. However, it does not conclusively establish that State cooperative banks have an automatic right to invoke Section 17 of the RDB Act, nor that the jurisdiction of Co-operative Courts under Section 91 of the MCS Act stands automatically excluded. Such a conclusion would require a clear and express legislative declaration, which is presently absent. This is why the argument, though strong, cannot be treated as final and why the issue continues to require authoritative determination.

**[67]** However, when this argument is examined in the light of the statutory scheme, some important points arise for consideration.

**[68]** First, although both Acts borrow the same definition from Section 5(c) of the Banking Regulation Act, Parliament has treated co-operative banks differently in the two statutes. Under the SARFAESI Act, Parliament expressly brought co-operative banks within the fold of the Act through notifications and amendments. There is a clear legislative step showing intention to apply SARFAESI to co-operative banks. In contrast, under the RDB Act, Parliament has expressly included only multi-State co-operative banks by amendment. There is no similar express inclusion of State co-operative banks. This distinction cannot be ignored, because it shows that Parliament was aware of co-operative banks and chose to include them expressly where it intended to do so.

**[69]** Second, Pandurang Ganpati Chaugule dealt directly with the SARFAESI Act. The Supreme Court held that co-operative banks fall within the concept of banking and that Parliament was competent to extend SARFAESI to them. While the Court explained the meaning of "banking" and "banking company" with reference to the Banking Regulation Act, it did so in the context of validating SARFAESI. The Court did not examine whether Parliament had, in fact, extended the RDB Act to State co-operative banks.

**[70]** Third, it is also important to understand that definitions alone do not decide which court or tribunal will have jurisdiction. Even when two different laws use the same definition, their actual scope depends on how Parliament has chosen to apply that definition in each law. A definition only explains the meaning of a word. It does not, by itself, decide where a case must be filed or which forum has the power to decide it. This becomes clear when one looks at the structure of the RDB Act. Parliament has not applied the definition of "bank" in a uniform or automatic manner to all kinds of co-operative banks. Instead, it has made specific and careful choices. This is evident from the special provisos and saving clauses found in Sections 18 and 31 of the RDB Act. Both these provisions expressly refer only to multi-State co-operative banks. They protect pending recovery proceedings of such banks under the Multi-State Co-operative Societies Act and allow them to continue even after the RDB Act amendments. There is no similar protection or reference made for State co-operative banks governed by State co-operative laws. This selective treatment shows that Parliament was fully aware of the different categories of co-operative banks. Where it intended the RDB Act to apply, it said so clearly. Where it did not intend such application, it remained silent. Such silence can indicate a conscious legislative choice. Therefore, the presence of these limited provisos strongly suggests that Parliament deliberately included only multi-State cooperative banks within the RDB framework, while leaving State cooperative banks to continue under their respective State laws. This reinforces the position that jurisdiction under the RDB Act cannot be expanded merely by relying on definitions, without clear legislative intent expressed in the statute itself.

**[71]** Therefore, the argument based on identical definitions is attractive but not conclusive. It supports the view that co-operative banks can conceptually fall within central banking laws. At the same time, it does not automatically lead to the conclusion that State co-operative banks are fully governed by the RDB Act in the same manner as they are governed by the SARFAESI Act. In the present facts, this argument supports the Petitioners case that cooperative banks are not outside the idea of "banking" under central law. However, it does not, by itself, settle the further question whether Parliament has actually applied the RDB Act so as to take away the jurisdiction of Co-operative Courts under Section 91 of the MCS Act. That question still depends on legislative intent and on how Sections 17, 18, and the specific inclusions under the RDB Act are to be interpreted.

**Pith and Substance and Legislative Competence:**

**[72]** The petitioner has relied on the doctrine of pith and substance to submit that, in reality, recovery of bank dues is part of banking activity and therefore falls under Entry 45 of List I, which is within the exclusive domain of Parliament. According to the petitioner, Section 91 of the MCS Act is a State law dealing with co-operative societies under Entry 32 of List II. It can operate only in so far as it does not encroach upon the field occupied by central banking laws. The petitioner argues that repayment of loans by members is not merely a co-operative matter but is essentially a banking activity. For this reason, Section 91 can support recovery only so long as it does not conflict with central legislation. In support of this submission, reliance is placed on Pandurang Ganpati chougule, where the Supreme Court observed that the business of banking carried on by co-operative banks is governed by Entry 45 of List I, and that recovery of dues forms part of that banking business.

**[73]** The respondents, on the other hand, contend that the jurisdiction of the Co-operative Court under Section 91 is, in its true nature, a State subject. They submit that Section 91 is a part of the State's power to regulate co-operative societies under Entry 32 of List II and that it provides a valid forum for resolving disputes within the co-operative framework. They point out that while banking as such falls under the Union List, the broader management and functioning of co-operative societies have traditionally remained within the State List. According to them, nothing in the Constitution completely removes this State power. The respondents also draw attention to the fact that Part IX-B of the Constitution, introduced by the Ninety-Seventh Amendment to bring uniformity in co-operative laws across the country, has been struck down by the Supreme Court. As a result, the constitutional position has reverted to what it was earlier. Co-operative societies, except to the extent they carry on banking, remain largely within the control of the States. While Pandurang Ganpati Chaugule did hold that recovery of bank dues is linked to Entry 45, the respondents argue that in the absence of an express provision including State co-operative banks in the RDB Act, Parliament cannot be said to have completely taken away the State remedy under Section 91 merely by implication.

**[74]** The real issue, therefore, is how to fairly balance these two sides. On one side, Parliament's power under Entry 45 of the Union List is clear. Banking, including recovery of bank dues, clearly falls within this area, and Parliament has full authority to make laws on it. On the other side, the States continue to have their own constitutional power under Entry 32 of the State List to regulate co-operative societies. This power includes setting up forums and procedures to decide disputes within the co-operative system. What is important is that Parliament has not made any clear and specific provision in the RDB Act stating that State co-operative banks are included under it or that the jurisdiction of Co-operative Courts under Section 91 of the MCS Act is taken away. This absence of a clear statement in the law creates real uncertainty. The issue cannot be answered without doubt. The Court must therefore carefully

consider the competing arguments on constitutional powers. It is this need to maintain a proper balance, rather than to reach a hurried conclusion, that requires authoritative adjudication by a larger bench.

**[75]** For the reasons stated above, this Court finds that it is not possible to give a final and conclusive answer on whether the decision delivered by the coordinate bench of this Court in Washim Urban Co-operative Bank Ltd. v. Girishchandra is correct. The issue involved goes much beyond the facts of the present case. It raises an important question of law concerning the interpretation of central and State laws, the respective scope of Entries 45 of List I and 32 of List II of the Seventh Schedule to the Constitution, and the effect of later constitutional developments. These issues are not merely academic. They have wide and practical consequences. They directly affect how quickly recovery disputes filed by cooperative banks can be decided. They also have a serious bearing on the finality of awards passed on merits by Co-operative Courts under State law. If the legal position remains unclear, it may lead to uncertainty, delay, and repeated challenges to recovery proceedings. For these reasons, the question requires careful judicial examination and a clear authoritative answer. This Court also finds that the arguments placed by both sides are serious and well founded. Each side has relied on substantial constitutional and legal principles. In such a situation, it would not be proper for this Court, sitting as a coordinate bench, to disagree with the view taken in Washim Urban without the authority of a larger Bench of this Court.

**[76]** In exercise of the power contemplated under Chapter I Rule 8 of the Bombay High Court Appellate Side Rules, 1960, I am of the opinion that the matter can be more advantageously heard by a Bench of two or more Judges. Hence the following question of law is referred to the Hon'ble the Chief Justice for appropriate orders for placing the matter before a larger Bench:

"Whether, and to what extent, recovery proceedings initiated by State co-operative banks are governed by the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and whether the jurisdiction of the Co-operative Court under Section 91 of the Maharashtra Co-operative Societies Act, 1960 stands excluded by reason of Sections 17, 18 and 34 of the said Central Act, particularly in the light of the decisions of the Supreme Court in **Greater Bombay Co-operative Bank Ltd. v. United Yarn Tex Pvt. Ltd.**, 2007 6 SCC 236 and **Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Ltd**, 2020 9 SCC 215."

**[77]** The Registry is directed to place the papers before the Hon'ble the Chief Justice for such further orders as may be considered necessary, including for constitution of a larger Bench to decide the above question.

**[78]** The review petition shall remain pending until the reference made to the larger Bench is finally decided. The review petition shall thereafter be taken up for final disposal and shall be decided in accordance with the law laid down by the larger Bench on the question referred.

**[79]** A copy of this judgment shall be forwarded to the Registry forthwith for compliance

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2026(1)SDJ41

**PUNJAB AND HARYANA HIGH COURT**

(Hon'ble Judge : Sheel Nagu ; Sanjiv Berry)

C W P (Civil Writ Petition) No 18605 of 2025 **dated 17/12/2025**

*HDFC Bank Limited*

**Versus**

*State of Punjab and Others*

**PRIORITY OF CHARGE**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 26, Sec. 14 - Punjab Value Added Tax Act, 2005 Sec. 34, Sec. 35, Sec. 36 - Recovery of Debts and Bankruptcy Act, 1993 Sec. 31 - Priority Of Charge - Petition filed by bank seeking direction to remove lien created by tax department over mortgaged property - Borrower defaulted on loan secured by equitable mortgage duly registered in Central Registry - Bank initiated SARFAESI proceedings and obtained recovery order from Debt Recovery Tribunal - Tax department later created lien citing arrears under Punjab VAT Act - Bank contended secured creditor's charge had statutory priority under Section 26E of SARFAESI Act and Section 31B of RDB Act - Department argued government dues constitute first charge under VAT Act - Court held secured creditor's rights prevail over all government dues after registration of security interest - Lien created subsequent to mortgage cannot override prior charge - Lien ordered to be removed - Petition Allowed

**Law Point : Once security interest is registered under Section 26E of SARFAESI Act, secured creditor's claim takes precedence over all taxes, cesses, and government dues irrespective of subsequent statutory liens created under State enactments**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 26, Sec. 14

Punjab Value Added Tax Act, 2005 Sec. 34, Sec. 35, Sec. 36

Recovery of Debts and Bankruptcy Act, 1993 Sec. 31

**Counsel :**

C S Pasricha, Sushil Kumar Bhardwaj, Saurabh Sudhir, Salil Sabhlok

**JUDGEMENT**

**Sanjiv Berry, J.**

**[1]** The petitioner Bank has preferred the instant writ petition under Article 226/227 of the Constitution seeking writ of mandamus directing respondent No.2 to remove the lien entered vide rapat No. 251 dated 17.03.2025 (Annexure P-8) in the revenue record at the behest of respondent No.3 over the property which is a secured asset in the hands of the petitioner Bank thereby scuttling the rights of the secured creditor which are to be paid prior to that of all other debt/charges secured by mortgage, with a further prayer seeking writ in the nature of certiorari quashing the lien entered vide rapat No. 251 dated 17.03.2025 (Annexure P-8) in jamabandi of the year 2021-2022, as the petitioner Bank is having priority of charge being secured creditor and also seeking issuance of writ of mandamus forbearing respondent No.3 from interfering in any manner with the Petitioner's rights to proceed under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act) to enforce its security interest in the secured asset.

**[2]** In nutshell, the facts of the case are that the respondent No.4 had availed loan facility in the shape of Cash Credit Limit amounting to 12 Rs.ores with PSR facility of Rs. 16.32 lac and Term Loan facility of Rs. 1.80 crores, thereby availing total loan facility amounting to Rs. 13,96,32,000/- by securing the properties by way of mortgage in favour of petitioner Bank. The properties were equitably mortgaged on 18.04.2014 in favour of the petitioner Bank and even the properties were duly registered in Central Registry created under the SARFAESI Act in favour of the petitioner Bank since 03.05.2014, the copy of CERSAI report in this regard is Annexure P-1. The loan account of the borrower respondent No.4 turned NPA on 31.03.2018 on account of the default committed by the them, resulting in initiation of proceedings under the SARFAESI Act including the notices under Section 13(2) dated 24.08.2018 (Annexure P-2) demanding the amount, under Section 13(4) dated 30.10.2018(Annexure P-3) followed by order dated 04.12.2018 under Section 14 of the SARFAESI Act being passed by the Additional District Magistrate, Jagraon (Annexure P-4), modified vide order dated 13.03.2019 (Annexure P-5). In pursuance thereof the physical possession of the properties as mentioned in the para 2(i) and 2(ii) of the petition were taken over by the petitioner Bank on 05.04.2019 (Annexure P6). Thereafter Original Application, OA No.2449/2018, was filed by the petitioner Bank before the DRT-III, Chandigarh on the basis whereof final orders/judgment dated 27.10.2022 (Annexure P-7) was passed which is pending execution before the Recovery Officer in Execution RC No.647/2022. Since no further appeal against the order passed in OA was preferred as such the same had attained finality.

**[3]** It is averred that the petitioner Bank was in the process of liquidating the secured assets by putting them on auction, when it came to its notice that the secured assets had been attached at the instance of respondent No.3 vide rapat No. 251 dated

17.03.2025 (Annexure P-8). It is further averred that the charge created in favour of the petitioner-Bank qua the secured debt has been duly registered in the Central Registry way back on 18.04.2014 (Annexure P-1) on the basis of equitable mortgage, whereas the lien so created by respondent No.3 is much later, i.e. 17.03.2025. Reference is made to Section 26 (E) of the SARFAESI Act and Section 31 of Recovery of Debt and Bankruptcy Act, 1993 (in short RDB, Act) which makes the rights of secured creditors to realize the secured debts having priority over all Government dues and hence prayer for acceptance of the petition and issuance of the requisite writs.

**[4]** Learned counsel representing State on behalf of respondent No.3 contested the petition by filing the written statement assailing the version of the petitioner by submitting that there had been outstanding dues from the borrower respondent No.4 to the respondent No.3 department on account of Punjab Value Added Tax, Act 2005 ( in short Punjab VAT, Act) and as per Section 34 of the Punjab VAT Act "tax or any other amount due or payable by a person under this Act, shall be a debt, due to the State Government and shall be payable or recovered as per the provisions of this Act, which under Section 35 of the said Act is liable to be considered as first charge of the property of such person from the date on which the amount became due and payable. It is stated that such arrears of VAT are recoverable as per as arrears of land revenue under Section 36 of the Act. It is contended that the answering respondent has lawfully created lien over the property of respondent No.4 vide rapat No. 251 dated 17.03.2025 (Annexure P-8). Hence prayed for dismissal of the present petition.

**[5]** Learned counsel for the parties have been heard and record perused.

**[6]** After considering the contentions raised by the rival parties and perusing the record the factual position emerging therefrom is that respondent No.4 had availed certain loan facility by executing equitable mortgage in favour of the petitioner Bank qua the properties mentioned in Para 2(i) and 2(ii) of the petition. The secured assets were duly registered in the Central Registry vide CERSAI report dated 03.05.2014 (Annexure P-1) by the petitioner Bank, and on account of default by the borrower SARFAESI Proceedings were initiated. OA No. 2449/2018 was filed which was finally decided on 27.10.2022 (Annexure P-7), recovery certificate was also issued which is pending execution in RC No. 647/2022, whereby the petitioner Bank intended to recover the outstanding dues by selling of the secured assets duly registered in the CERSAI vide order dated 03.05.2014(Annexure P-1).

**[7]** On the other hand, it is the case of the respondent No.3 that there had been outstanding tax dues from respondent No.3 under the PVAT Act, 2005 and being recoverable as arrears of land revenue a lien vide rapat No. 251 dated 17.03.2025 (Annexure P-8) has been entered in the revenue record being the charge over the property.

**[8]** Before Proceeding further, it will be apt to mention here the relevant Provisions regarding priority of charge incorporated in the SARFAESI Act, 2002 and also RDB, Act, 1993, which reads as under: -

"26E. **Priority to secured creditors. --**Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

**Explanation.--**For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

xxx xxx xxx

**"31-B of RBD Act- Priority to secured creditors.** Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

**Explanation.** For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

**[9]** This Court while assessing the question of priority of charge qua the secured assets, has recently passed the judgment in **CWP No. 26875- 2021 decided on 10.12.2025 titled as State Bank of India vs. Sub Registrar, Sub Tehsil Nighdu, Karnal and Others and CWP No. 6083-2024 decided on 10.12.2025 titled as State Bank of India vs. The Tax Recovery Officer-1, Income Tax Department and others.**

9.1 In arriving at such conclusion, reliance has been placed by this court on the judgments of the Hon'ble Supreme Court in **Dena Bank v. Bhikhabhai Prabhudas Parekh**, 2000 5 SCC 694 (Para 10), **Union of India v. SICOM Ltd.**, 2009 2 SCC 121 (Para 22), **Rana Girders Ltd. v. Union of India**, 2013 10 SCC 746 (Para 21) and **Punjab National bank v. Union of India and Ors.**, 2022 7 SCC 260 (Paras 38-43).

**[10]** The decisions so rendered supra apply with full force to the facts of the present case. In the present case it is not disputed that the charge vide equitable mortgage in favour of the petitioner Bank was created on 18.04.2014, which was duly registered in the Central Registry CERSAI registration on 03.05.2014 (Annexure P-1)

whereas respondent No.3 had created lien over the property vide rapat No. 251 dated 17.03.2025 (Annexure P-8), therefore, it transpires that the charge created in favour of the petitioner bank is much prior in time being duly registered in the Central Registry on 03.05.2014 whereas the charge in favour of the respondent No. 3 was created on 17.03.2025 which is much later.

**[11]** Thus, by applying the ratio laid down in the decisions rendered by this Court in CWP's (supra), on the subject is concerned, this Court has no manner of doubt that the petitioner Bank has a prior charge over the secured assets as reflected in the record, vis a vis the tax dues claimed by respondent No.3 department.

**[12]** Resultantly, this petition preferred by the petitioner-Bank is hereby allowed in the following terms: -

(i) A Writ of Mandamus is issued to respondent No.1 and 2 to remove the lien dated 17.03.2025 in the revenue record entered at the behest of the respondent No.3 over the secured asset and file compliance report within a period of 02 months, before the Registry of this Court, failing which the Registry is directed to list the case as IOIN before appropriate Bench.

(ii) The charge created in the Revenue records vide rapat No.251 dated 17.03.2025 (Annexure P-8) in favour of respondent No.3/The State Tax Officer, (Ward No.32) Ist Floor, Treasury Office, Diet Building, Jagraon, District Ludhiana, Punjab is quashed by a Writ of Certiorari.

(iii) However, the State of Punjab is at liberty to recover its dues pertaining to respondent No.3- the State Tax Officer, after the petitioner Bank satisfies its outstanding dues, or by any other means permissible in law.

**[13]** Resultantly, the instant writ petition stands disposed of in above terms, with no order as to costs.

**[14]** Pending applications, if any, shall stand disposed of accordingly

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2026(1)SDJ45

**PUNJAB AND HARYANA HIGH COURT**

(Hon'ble Judge : Sheel Nagu ; Sanjiv Berry)

Civil Writ Petition No 18248 of 2022 **dated 17/12/2025**

*M/s Sham Lal and Bros and Others*

**Versus**

*Authorized Officer, Punjab and Sind Bank and Another*

**SARFAESI PROCEEDINGS**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 - SARFAESI Proceedings - Petitioners sought quashing of

letters denying benefits of relief package and notices issued under SARFAESI Act - Petitioner firm obtained Cash Credit Limit from Bank and maintained accounts regularly till Covid Pandemic affected business - Despite Government and RBI relief schemes Bank refused benefits and declared account as Non-performing Asset - Petitioners claimed entitlement under MSME circulars and challenged demand and possession notices under Sec.13(2) and 13(4) of SARFAESI Act - Respondent contended petitioners failed to adhere to repayment schedule and were rightly declared NPA - Remedy available under Sec.17 of SARFAESI Act before Debt Recovery Tribunal - Disputed facts involved could not be adjudicated under Art.226 of Constitution - High Court observed that SARFAESI Act provides complete code for recovery and redressal through DRT and interference under writ jurisdiction unjustified - Petition held not maintainable - Writ Petition Dismissed

**Law Point : When statutory efficacious remedy exists under Sec.17 of SARFAESI Act before Debt Recovery Tribunal, High Court should not exercise jurisdiction under Art.226 for examining disputed factual issues related to recovery proceedings.**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13

**Counsel :**

Jyoti Sareen, Anant Bir Singh Sidhu

**JUDGEMENT**

**Sanjiv Berry, J.**

**[1]** By way of the instant petition the petitioners have sought issuance of writ in the nature of certiorari seeking quashing of the letters Annexure P-26 dated 28.06.2021 and Annexure P-30 dated 18.10.2021, issued by respondent No.2 Bank whereby benefits of the relief package have been denied by the Bank to the petitioners and have also sought writ in the nature of mandamus directing the respondents to grant the petitioner the benefits of the scheme under the RBI circular and also to quash the demand notice Annexure P-20 dated 15.04.2021 possession notice Annexure P-27 and 28 dated 04.09.2021 and Annexure P-33 dated 06.08.2022 issued by respondent No.1 against the principles of law and also in violation of the directions given by the RBI from time to time.

**[2]** It is the case of the petitioner in nut shell that petitioner No.1 firm was granted Cash Credit Limit by the respondent Bank in the year 2000. It is averred that the petitioner maintained good track record and had been regularly maintaining the accounts, however, on account of Covid-19 Pandemic the business of the petitioner came to standstill. Various packages were granted by the Government as well as RBI, however, despite the petitioner being lawfully entitled to avail the same, the benefit

thereof was declined by the respondents in an arbitrary and illegal manner, in utter violation of the scheme. It is further alleged that the petitioner No.1 also falls under MSME circular and is entitled to the benefit thereof, which has been wrongly denied vide the impugned letters by the respondent Bank, which has unauthorizedly initiated the proceedings by issuing notice under Section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act), hence the petition.

**[3]** Upon issuance of notice of motion vide order dated 23.08.2022, the respondent Bank was also restrained from taking any coercive steps against the mortgaged properties of the petitioner till next date of hearing. The petition was contested by the respondent Bank.

**[4]** We have heard learned counsel for the parties and perused the record.

**[5]** Learned counsel for the petitioner inter alia contended that the petitioner being duly covered under MSME Scheme had availed the Cash Credit Limit granted by the respondent Bank in the year 2000 and had been regularly maintaining the account with good track record till the year 2020, but due to influx of Covid-19 Pandemic the business of the petitioner came to standstill. She contends that despite the Government and RBI issuing various beneficial schemes for such like units, the respondent Bank declined to grant the benefits thereof to the petitioners by acting in an arbitrary manner and declared the account of the petitioners as Non-performing Asset (NPA) followed by issuance of notice under Section 13(2) and 13(4) of the SARFAESI Act (Annexures P-20, P-27, P-28 and P-30) in a total illegal and arbitrary manner. He contends that the respondent bank had acted in an illegal manner in declaring the account of the petitioner as Non-performing Asset (NPA) and later initiated SARFAESI proceedings by issuance of aforesaid notices, hence the said notices are liable to be set aside.

**[6]** On the other hand, the learned counsel for the respondent Bank has assailed these arguments by contending that the petitioners failed to comply with the schedule structure of maintaining the Cash Credit Limit leading to their account being declared as NPA and initiation of proceedings under SARFAESI Act. He submits that the request of the petitioners for availing benefits of the Scheme was rightly rejected since they were not found eligible for restructuring Scheme of the RBI, in accordance with law and no illegality has been committed by the respondent Bank. He submits that the petitioners in the present petition have primarily challenged the proceedings initiated by the respondent Bank under Section 13(2) and 13(4) of the SARFAESI Act for which Statutory efficacious remedy is already provided under the provision of the Act to approach the Debt Recovery Tribunal for redressal of their grievance and therefore, the petitioner cannot be permitted to pursue the instant petition.

**[7]** Considering the respective submissions addressed by learned counsel for the parties and perusing the record, there is no dispute regarding the factual aspect that the petitioner No.1 through its partners petitioner No.2 and 3, had availed Cash Credit Limit from the respondent Bank in the year 2000. Further, as there had been non

adherence to the schedule of the payment leading to the account of the petitioners being declared NPA on 30.11.2020 by the respondent Bank. Thereafter, the proceedings under Section 13(2) followed by Section 13(4) of the SARFAESI Act, were initiated vide demand notice dated 15.04.2021(Annexure P-20), possession notices dated 04.09.2021 (Annexure P-27 and 28) and dated 06.08.2022 (Annexure P-33).

7.1 The petitioners then preferred objections dated 11.06.2021(Annexure P-21) to the notice under Section 13(2), which were rejected vide letter dated 22.06.2021 (Annexure P-24) by the respondent Bank followed by possession notice under Section 13(4) of the Act (Annexure P-27). The petitioner then filed a complaint/request for restructuring of the accounts, which was however rejected on 18.10.2021 being not eligible followed by another possession notice dated 06.08.2022 (Annexure P-33).

**[8]** From the above it transpires that several issues are involved in the present case involving disputed question of fact which cannot be entertained while exercising the jurisdiction under Article 226 of the Constitution of India especially when the alternative remedy of approaching the jurisdictional DRT under Section 17 of the SARFAESI Act, is available to the petitioners, who have raised all such disputed question of facts in the present petition.

8.1 The SARFAESI ACT, 2002 is a complete code in itself providing for the detailed recovery mechanism coupled with the remedies to the aggrieved person/party by approaching the DRT. The Apex Court has consistently held that the High Courts should refrain from interfering in the matters involving SARFAESI proceedings by invoking power under Article 226 of the Constitution of India. Reference in this context be made to the decisions rendered in Leelavathi N. and Others vs State of Karnataka and others,2025 SCConlineSC 2253; **United Bank of India vs. Satyawati Tondon**, 2010 AIR(SC) 3413 (Para 17, 27) ; **Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir and others**, 2022 5 SCC 345(Paras 10, 21) ; **PHR Invent Educational Society versus UCO Bank and others**, 2024 6 SCC 579 (Paras 22 to 41).

**[9]** Admittedly the petitioner in the present case had not availed the statutory alternative efficacious remedy available to them under Section 17 of the SARFAESI Act, this coupled with the fact that the instant petition involves several disputed questions of fact. Accordingly, in view of the ratio laid down by Apex Court in the decisions supra, we refrain from invoking jurisdiction under Article 226 of the Constitution in the present case.

**[10]** In the light of the above discussion, without commenting on merits, the writ petition stands disposed of relegating the petitioners to avail the appropriate statutory remedy under the SARFAESI Act by filing the requisite application before the concerned Debt Recovery Tribunal (DRT) having jurisdiction and thereafter, if so required, before the Debt Recovery Appellate Tribunal (DRAT).

**[11]** In case the petitioner prefers an application under Section 17 of SARFAESI Act within a period of 30 days from the date of order along with copy of this order, the same shall be considered and decided on its own merits, without being dismissed on limitation alone.

**[12]** Interim relief, so granted, in the present petition, shall continue for a period of 30 days from the date of the order.

**[13]** Disposed of accordingly, with no order as to costs

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2026(1)SDJ49

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH**

(Hon'ble Judge : Sindhu Sharma ; Shahzad Azeem)

W P (C) (Writ Petition (Civil)) No 2342 of 2024, 839 of 2025 **dated 16/12/2025**

*Vikas Bharti & Anr ; M/s Krishna Traders*

**Versus**

*Punjab National Bank And; Punjab National Bank & Ors*

**E-AUCTION SALE**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 - Security Interest (Enforcement) Rules, 2002 Rule 8 - E-Auction Sale - Petitioner obtained loan from bank and mortgaged property as security - Default occurred and account classified as NPA - Bank issued demand notice and proceeded under SARFAESI Act - One Time Settlement sanctioned but borrower failed to pay as per scheme - Bank conducted e-auction and declared respondents successful bidders - Borrower challenged sale alleging illegality of notices and prior OTS - Bank contended borrower defaulted and suppressed facts - Court found petitioner failed to repay despite opportunities and filed repeated petitions - Held borrower cannot claim equity after auction finalisation - Sale proceedings held valid - Connected petition of successful bidder disposed accordingly - Petitions Dismissed

**Law Point : Once borrower fails to comply with One Time Settlement and e-auction sale stands concluded under SARFAESI Act, right to redeem secured assets extinguishes and borrower cannot seek interference through writ jurisdiction**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13

Security Interest (Enforcement) Rules, 2002 Rule 8

**Counsel :**
Mandeep Reen, Parveen Kapahi, P N Raina (Senior Advocate), Sudesh Sharma

**JUDGEMENT**

**Shahzad Azeem, J.**

**[1]** At the outset and in order to keep the record straight, be it noted that WP(C) No. 2342/2024, titled **Vikas Bharti and anr. Vs. Punjab National Bank and ors.** is filed by the successful bidder who participated in pursuance of e-auction sale notice dated 30.07.2024, whereas, e-auction was held in respect of secured assets stood mortgaged against the loan amount availed by the petitioner which is subject matter of challenge in WP(C) No. 839/2025 titled **M/s Krishna Traders Vs. Punjab National Bank and ors.,** therefore, the petitioner is challenging the eauction notice issued by the respondent-bank in respect of the secured assets, whereas, in the petition titled **Vikas Bharti and anr. Vs. Punjab National Bank and ors.,** the petitioners are seeking direction to the respondent-Bank for handing over the physical possession of the auctioned property being successful bidders.

**[2]** It is in the above backdrop, both the petitions were clubbed, therefore, fate of the petition titled **Vikas Bharti and anr. Vs. Punjab National Bank and ors.** is subservient to the outcome of WP(C) No. 839/2025, titled M/s Krishna Traders Vs. Punjab National Bank and ors, hence, we first propose to deal with the petition titled M/s Krishna Traders Vs. Punjab National Bank and ors.

**WP(C) No. 839/2025**

**[3]** The petitioner has invoked the writ jurisdiction of this Court seeking quashment of e-auction sale notice dated 30.07.2024 issued by respondents No. 1 to 3 in respect of residential house along with land measuring 01 kanal, falling under Survey No. 215 min, Khata No. 64 min and Khewat No. 07 situate at Toph Sherkhania, Tehsil and District Jammu [residential house bearing No. 37-A, Bharat Nagar, Talab Tillo, Jammu] and also further seeks quashment of sale intimation letter dated 28.08.2024. The petitioner also seeks direction to the respondent-Bank not to proceed in terms of Notices issued under Section 13 (2) and 13 (4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act].

**FACTS**

**[4]** Succinctly stated, the petitioner has availed a Cash Credit Limit [the CCL] to the tune of Rs. 75 lacks and housing loan to the tune of Rs. 10 lacs from the respondent-Bank and as primary security, the petitioner has mortgaged his property i.e. residential house along with land measuring 01 kanal, falling under Survey No. 215 min, Khata No. 64 min and Khewat No. 07 situate at Toph Sherkhania, Tehsil and District Jammu [residential house bearing No. 37-A, Bharat Nagar, Talab Tillo, Jammu].

**[5]** However, the petitioner defaulted in repayment of installments which resulted in classification of the loan account as Non Performing Asset [NPA] on 30.09.2010 as per the Reserve Bank of India Guidelines and borrower was intimated accordingly.

**[6]** On finding no response from the borrower, the bank was compelled to issue demand notice under Section 13 (2) of the SARFAESI Act followed by notice under Section 13 (4), respectively.

**[7]** Meanwhile, the respondent-Bank said to have approved One Time Settlement (OTS) of the loan amount and intimation in this regard was given to the borrower vide letter dated 14.11.2017 with explicit stipulation, thus:-

"**Please note that if full payment is not received as per under mentioned terms and conditions, bank shall proceed to recover the entire dues after adjusting the payment, if any, received**"

**[8]** One of the terms and conditions of the OTS was that the borrower was enjoined upon to make the payment within a period of three months towards full and final settlement. However, the petitioner failed to pay the amount as per OTS Scheme, resultantly, the bank went onto proceed in terms of Section 13 (8) of the SARFAESI Act, followed by publication of e-auction sale notice in two newspapers, and same finally culminated by way of sale intimation letter dated, 28.08.2024, whereby, respondents No. 4 & 5 were declared as successful bidders and were asked to deposit the bid amount as per the terms and conditions contained therein. However, the respondents No. 4 & 5 though have completed the terms and conditions contained in sale intimation letter dated 28.08.2024, but because of the litigation, same could not be finalized.

**[9]** In the above backdrop, the respondents No. 4 & 5 have also invoked the jurisdiction of this Court by way of WP(C) No. 2342/2024, titled, **Vikas Bharti and anr. Vs. Punjab National Bank and ors.**

**SUBMISSIONS**

**[10]** The bone of contention of the petitioner is that notices under Section 13 (2) and 13 (4) of the SARFAESI Act came to be issued before the OTS Scheme, therefore, the action of the respondent-Bank in initiating the action under Section 13 (8) of the SARFAESI Act is illegal, because, according to the petitioner, the respondent-Bank once, offered to settle the account under the OTS, any action taken prior to that loses its significance and as such, the bank was mandated to proceed from the very inception.

**[11]** The other ground urged by the petitioner is that as per the OTS Scheme, he could not make the payment of total outstanding loan amount, nevertheless, he had paid Rs. 30 lacs, therefore, bank was required to adjust the same and also thereafter, he was willing to settle the amount but without any rhyme and reason, the bank has rejected his offer, as such, according to the petitioner, the action of the bank in auctioning the secured assets is also bad in law.

**[12]** Further submission of the petitioner is that the notices under Section 13 (2) and 13 (4) of the SARFAESI Act have been issued prior to One Time Settlement, as such, amount mentioned therein do not fall within the definition of secured debt, therefore, e-auction sale notice and sale intimation letter are liable to be quashed.

**[13]** Per contra, learned counsel appearing for the respondent-Bank has taken us to the objections filed on behalf of the bank and would submit that the petitioner after availing the loan facility failed to repay the same as per the terms and conditions and when the bank initiated the proceedings under SARFAESI Act, the petitioner has filed number of suits and writ petitions by concealing the material facts, therefore, he played fraud on the Courts and also illegally withheld the loan amount, which obviously, is the public money.

**[14]** The main plank of argument of learned counsel for the respondent-Bank is that the petitioner admittedly failed to repay the loan amount, compelling the respondent-Bank to take recourse to recover the outstanding loan amount under the provisions of SARFAESI Act, which finally culminated in issuance of e-auction notice which has been finalized, but because of the litigation, it could not be completed, therefore, once, e-auction notice is issued and the petitioner failed to repay the amount, in that event, his right to redeem the secured assets also extinguishes, as such, prays for dismissal of the petition.

**[15]** It is equally noteworthy that the respondents have given the details of the notices under Section 13 (2) and 13 (4) of the SARFAESI Act, and subsequent actions which were not only published in the newspapers, but also communicated, through registered post [postal receipts], therefore, we do not deem it necessary to burden this judgment with these details as same are not disputed by the petitioner, particularly in view of the earlier writ petition filed by the petitioner being **WP(C) No. 421/2022 titled M/s Krishna Traders Vs. Punjab National Bank and ors.** wherein, the petitioner has thrown challenge to the notice issued by the respondent-Bank under Section 13 (4) of the SARFAESI Act, which came to be dismissed at motion hearing stage itself.

**[16]** The respondent-Bank has laid much emphasis on the point that the petitioner has filed one after the other civil suits and also availed remedy before this Court by way of writ petitions and now, by concealment of facts again approached the High Court which amounts to abuse of process of law, therefore, the petitioner is required to be burdened with heavy costs also. In this regard, following information is also delineated regarding filing of suits and petitions:-

| Case | Court | DOI | DOD |
|---|---|---|---|
| Writ Petition | High Court | 05.03.2022 | 07.03.2022 |
| Writ Petition | High Court | 15.07.2010 | 16.07.2015 |
| Civil Suit | Sub Judge, Jammu | 06.01.2017 | 10.10.2017 |
| Civil Suit | Sub Judge, Jammu | 02.06.2018 | 22.02.2019 |
| Civil Suit | District Judge, Jammu | 21.01.2021 | 21.01.2021 |

**ANALYSIS**

**[17]** Insofar as the availing of housing loan to the tune of Rs. 10 lacs and CCL to the tune of Rs. 75 lacs by the petitioner is concerned, same is not in dispute. This is also admitted fact that loan account of the petitioner was classified as NPA and thereafter, action under Section 13 (2) and 13 (4), of the SARFAESI Act was taken as the petitioner failed to repay the loan amount. However, despite the petitioner failed to repay the amount even after issuance of notice under Section 13 (4) of the SARFAESI Act, and possession of the secured asset said to have been taken over by the respondent-Bank, the bank could not immediately, proceed in terms of Section 13 (8) of the SARFAESI Act as during the interregnum period, the bank has accepted the proposal for OTS and thus, communicated to the petitioner for one time settlement of loan amount within a period of three months with a specific stipulation that if full payment is not received as per the terms and conditions within a period of three months, the bank shall proceed to recover the entire dues.

**[18]** The petitioner has specifically admitted in the petition that for some reasons, he could not make the payment of the loan amount as per the terms and conditions of the OTS, meaning thereby, once the petitioner has flouted the terms and conditions of OTS Scheme, in that event, he cannot be allowed to raise the plea that the bank for all the time to come, is duty bound to accept the amount even beyond the stipulated period of OTS.

**[19]** It is also not in dispute that the petitioner has challenged the action of the bank taken in terms of Section 13 (4) of the SARFAESI Act by way of WP(C) No. 421/2022, but same was dismissed, therefore, the petitioner now, cannot again question the action of the bank initiated in terms of Section 13 (2) and 13(4) of the SARFAESI Act.

**[20]** Admittedly, the petitioner did not repay the loan amount in terms of notices issued by the bank and also in pursuance of One Time Settlement Scheme within the stipulated period, therefore, the bank has rightly proceeded in terms of Section 13 (8) of the SARFAESI Act, whereby, e-auction sale notice dated 30.07.2024 came to be issued, in that, till the issuance of eauction notice dated 30.07.2024, admittedly, the petitioner failed to tender the secured creditor the outstanding loan amount.

**[21]** Confronted with the above factual narration, only point for consideration that arises is as to whether after publication of auction notice by the respondent-Bank

strictly as per Rule 8 (6) of Security Interest (Enforcement) Rules, 2002 [Rules of 2002), the petitioner's right to redeem the secured assets survives.

**[22]** The point involved in the petition is no more res integra and is settled by Hon'ble Supreme Court in M. Rajendran and ors. Vs. M/s KPK Oils and Proteins India Pvt. Ltd. And ors.,2025 SCC Online SC 2036, a locus classicus on the subject wherein, Hon'ble Supreme Court in an unequivocal words, while interpreting the object underlying Section 13 (8) of the SARFAESI Act held as follows:-

"To put it simply, as per sub-section (8) of Section 13 of the SARFAESI Act, a borrower can tender the amount of due to the secured creditor along with all costs, charges and expenses, at any time, before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be.

A borrower has no unfettered right to tender such amount of dues, as stipulated in Section 13(8), after the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be, because the restriction on the secured creditor, from transferring the secured asset, envisaged under clause(s) (i) and (ii) of the said provision, would only be attracted, if the dues are tendered prior to the publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be. Where the borrower tenders such dues after the publication of the notice stipulated in Section 13(8), the secured creditor is not bound to accept it, and can continue to proceed with the transfer of the secured asset, by way of lease, assignment or sale."

**[23]** Hon'ble Supreme Court went onto explain the object underlying amended Section 13 (8) of the SARFAESI Act, that the amended provisions extinguishes the right of redemption of the borrower in the event he fails to repay his dues and redeem the secured assets before publication of the Auction Notice.

**[24]** In the above case before the Hon'ble Supreme Court, the Auction Notice was published by the bank on 22.01.2021 and the secured assets were successfully auctioned on 26.02.2021. In the circumstances, the Hon'ble Supreme Court has authoritatively held that right to redeem the secured asset stood extinguished on 22.01.2021 on the ground that borrowers have failed to pay the outstanding debt before the publication of Auction Notice dated 22.01.2021.

**[25]** The SARFAESI Act is a special legislation enacted with the avowed object of providing a speedy and expeditious remedy to banks and financial institutions for recovery of public money in respect of non-performing assets without the intervention of civil Courts.

**[26]** Coming back to the case on hand, the e-auction sale notice came to be published on 30.07.2024, therefore, in view of the settled proposition of law, once auction notice is published, right of redemption of the petitioner has extinguished on 30.07.2024 and any amount even if deposited, is immaterial. Admittedly, the petitioner

has failed to repay his dues till the publication of auction notice dated 30.07.2024 and by now, the respondents No. 4 & 5 were not only declared as successful bidders but said to have deposited the consideration amount as per the terms of auction notice with the respondent-Bank.

**[27]** This is equally noteworthy that on going through the factual narration contained in the objections, it appears that every now and then after availing loan and subsequent failure to repay the same, the petitioner appears to have hit every door across all the rungs up to the High Court repeatedly to obstruct the bank from taking action to realize the outstanding loan amount which necessarily paid by the bank out of the public corpus, therefore, it is high time to put the litigation to quietus.

**[28]** It is highly disturbing that a small but recalcitrant class of borrowers, instead of honouring their legitimate contractual obligations, deliberately resort to a multiplicity of frivolous proceedings before civil courts and High Courts, with the sole objective of stalling enforcement measures, thereby defeating the very purpose for which the SARFAESI Act was enacted. Such conduct has been repeatedly condemned by the Courts and terms the same as an abuse of process, warranting note of caution to such habitual litigants.

**[29]** We are of the considered opinion that right of the petitioner to redeem the secured assets stand extinguished with the publication and culmination of auction process, therefore, peripheral pleas raised by the petitioner also do not stand the scrutiny of law.

**[30]** Though we are not proceeding harshly against the petitioner despite his indulgence into multiplicity of litigation, nonetheless, struck a note of caution that litigation will be put to quietus.

**[31]** In the above backdrop, WP(C) No. 839/2025 titled **M/s Krishna Traders Vs. Punjab National Bank and ors.** found to be bereft of merit, accordingly, same is dismissed along with connected CM(s).

**WP(C) No. 2342/2024**

**[32]** In view of the observations and finding returned in WP(C) No. 839/2025, the respondent-Bank is at liberty to complete the process of e-auction and to proceed in terms of sale intimation letter dated 28.08.2024.

**[33]** Disposed of

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2026(1)SDJ56

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

(Hon'ble Judge : M S Sonak ; Advait M Sethna)

Writ Petition; Interim Application No 9380 of 2024, 9388 of 2024, 9385 of 2024, 1494 of 2024; 12395 of 2025, 14793 of 2024 **dated 10/12/2025**

*Kotak Mahindra Bank Ltd; Anbit Finvest Pvt Ltd; Reliance Asset Reconstruction Company Ltd; Vinay Jain*

**Versus**

*State of Maharashtra; Debit Recovery Tribunal-1*

**INSOLVENCY JURISDICTION TRANSFER**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14 - Insolvency and Bankruptcy Code, 2016 Sec. 13, Sec. 96, Sec. 95, Sec. 60 - Insolvency Jurisdiction Transfer - Petitions filed by secured creditors challenging proceedings before DRT initiated under Insolvency Code against personal guarantors of corporate debtor - Petitioners contended such proceedings should lie before NCLT as per Supreme Court ruling - Court referred to Section 60 of IBC holding that NCLT is adjudicating authority for insolvency of personal guarantors when corporate insolvency is pending - Held proceedings before DRT without jurisdiction and required to be transferred to NCLT - Petitions Allowed

**Law Point : Insolvency proceedings against personal guarantors of corporate debtor must be adjudicated before NCLT having jurisdiction over corporate debtor and not before DRT as per Section 60 of Insolvency and Bankruptcy Code, 2016.**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14

Insolvency and Bankruptcy Code, 2016 Sec. 13, Sec. 96, Sec. 95, Sec. 60

**Counsel :**

Shanay Shah, Hamza Lakhani, Nishant Rana, Chinmayee Ghag, Bijal K Gogri, Vinit Jain, Ashutosh Mishra, Gaurav Mhatre, Shazia Ansari, S D Vyas

**JUDGEMENT**

**M. S. Sonak, J.**

**[1]** Heard learned Counsel for the parties.

**[2]** We issue Rule in all these Petitions, given our order of 25 November 2025.

**[3]** The learned Counsel state that substantially similar issues of law and facts arise in all these Petitions and therefore, they could be disposed of by a common judgment and order.

**[4]** The learned Counsel for the Petitioners had submitted that the issue raised in these Petitions is squarely covered by the decision of the Hon'ble Supreme Court in the case of **Lalit Kumar Jain Vs Union of India**, 2021 9 SCC 321. Therefore, by our order of 25 November 2025, we had posted these matters for final disposal at the admission stage. We had already directed the Petitioners to serve a fresh notice upon the Respondents along with the copy of this order.

**[5]** Our order dated 25 November 2025 reads as follows: -

"1. Mr Shah and Ms Gogri, learned counsel for the Petitioners state that the Respondents in these matters have been duly served and an affidavit of service is also filed.

2. The learned counsel for the Petitioners state that the issue raised in these Petitions is covered by the decision of the Hon'ble Supreme Court in the case of **Lalit Kumar Jain vs. Union of India**, 2021 9 SCC 321.

3. Accordingly, we post these matters for final disposal at the admission stage on **10 December 2025** for **"Directions/Disposal"**.

4. The Petitioners should serve a fresh notice upon the Respondents along with a copy of this order.

5. All concerned to act upon an authenticated copy of this order."

**[6]** In compliance with the directions issued on 25 November 2025, the Petitioners have once again served all the Respondents and have even filed their affidavits of service. Mr Vinit Jain appears on behalf of the Debt Recovery Tribunal (DRT), and Ms Vyas appears for the Respondent-State. The other Respondents, despite service, have not appeared.

**[7]** Given our order of 25 November 2025, posting these matters for final disposal at the admission stage on 10 December 2025, we have heard the learned Counsel and proceed to dispose of these Petitions finally.

**[8]** Mr Shah, the learned Counsel for the Petitioner, submitted that there is ample material to suggest that the 2nd Respondent put up the 3rd Respondent only to stall the proceedings initiated by the Petitioner under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). In any event, and without prejudice, He submitted that in terms of the law laid down by the Hon'ble Supreme Court in Lalit Kumar Jain (supra), the insolvency proceedings initiated by the 3rd Respondent are required to be transferred to the National Company Law Tribunal (NCLT).

**[9]** Mr Shah submitted that in Lalit Kumar Jain (supra), upon considering the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) has clarified the legal position and held that NCLT would be in the best position to consider the whole

picture about the nature of assets available, either during the Corporate Debtor Insolvency Process (CIRP) or even later. Accordingly, he submitted that the proceedings initiated by the 3rd Respondent before the DRT would not be maintainable and, in any event, liable to be transferred to the NCLT where the CIRP of the principal borrower is on. Mainly for this reason, He submitted that the Rule in all these Petitions be made absolute by declaring the proceedings before DRT are incompetent and without jurisdiction.

**[10]** Ms Gogri, the learned Counsel for the Petitioner in Writ Petition No. 1494 of 2024, while adopting the arguments of Mr Shanay Shah, submits that the 2nd Respondent in her Petition has initiated the proceedings before the DRT. Further, she pointed out that she was pressing for relief in terms of prayer clause (a) in addition to the other prayers. She points out that prayer clause (a) seeks quashing and setting aside of the DRT's order dated 2nd May 2022 by which the DRT has declared the interim moratorium under Section 96 of the IBC.

**[11]** The contesting Respondents in this case, though served repeatedly, have chosen not to appear. Since notice of final disposal has already been issued, we see no difficulty in proceeding in their absence.

**[12]** The learned Counsel for the DRT and the State Government are not, in that sense, any contesting Respondent. As such, they rightly left the matter for the determination of this Court.

**[13]** For deciding these Petitions, we refer briefly to the facts in Writ Petition No. 9385 of 2024. In this case, the Petitioner is a Secured Creditor who granted a loan of Rs. 14.90 Crores to the principal borrower, PTRAANS Logistics India Pvt. Ltd (now known as Orbiigo Heavy Lifters Pvt. Ltd.). The said loan was guaranteed by Mr. Pravin Jain, Mrs. Kalpana Pravin Jain and M/s. Pravin Jain HUF, by giving their personal guarantees and creating a mortgage over several immovable properties.

**[14]** The Petitioner initiated proceedings under the SARFAESI Act by issuing notice under Section 13(2) on 25th April 2019 (page 153 of the Petition). The amount outstanding as on that date was Rs. 15,00,25.465.47 [principal outstanding - Rs. 14,50,00,000/- + interest receivable, penal interest and other charges Rs. 50,25,465.47].

**[15]** Consequent to the above notice, an action was initiated by the Petitioner before the Chief Metropolitan Magistrate, Esplanade, Mumbai, under Section 14 of the SARFAESI Act. By order dated 1st April 2021 (page 171 of the Petition), the application was allowed for taking physical possession of the mortgage properties.

**[16]** The Petitioners contend that the 2nd and 3rd Respondents initiated collusive proceedings only to stall the proceedings under the SARFAESI Act. They submitted that the date for taking over possession of the assets was fixed on 22 April 2022. However, on 20 April 2022, an insolvency application, Insolvency Application No. 3

of 2022, was filed by Respondent No. 3 against Respondent No. 2 (Kalpana Jain) under Section 95 of the IBC before DRT-1, Mumbai.

**[17]** By an email dated 21 April 2022, the Respondent No. 2 informed the Petitioners' Advocate about the filing of the Insolvency Application before DRT and that an interim moratorium had been initiated against the 2nd Respondent under Section 96 of the IBC.

**[18]** On 2nd May 2022, when the matter was listed before the DRT, the 2nd Respondent, after sending the above-referred email, chose not to appear, either in person or through her Advocate. But the DRT still issued a notice to the Respondents and declared that a moratorium under Section 96 of the IBC commenced on the date of filing of the application, i.e., 20 April 2022.

**[19]** The learned Counsel for the Petitioners has made several submissions to demonstrate how the proceedings initiated by the 3rd Respondent were, in fact, collusive proceedings between the 2nd and 3rd Respondents. However, at this stage, we are not required to consider such issues, as the learned Counsel for the Petitioners, relying upon Lalit Kumar Jain (supra), has submitted that the jurisdiction to even entertain the application under the IBC now lies with the NCLT, and not the DRT.

**[20]** In Lalit Kumar Jain (supra), the Hon'ble Supreme Court, after considering the provisions of the IBC in detail and the interplay between the respective jurisdictions of the NCLT and the DRT, has made the following observations at paragraphs 108, 112 and 113:-

"108. The impugned notification authorises the Central Government and the Board to frame rules and regulations on how to allow the pending actions against a personal guarantor to a corporate debtor before the adjudicating authority. The intent of the notification, facially, is to allow for pending proceedings to be adjudicated in terms of the Code. Section 243, which provides for the repeal of the personal insolvency laws has not as yet been notified. Section 60(2) prescribes that in the event of an ongoing resolution process or liquidation process against a corporate debtor, an application for resolution process or bankruptcy of the personal guarantor to the corporate debtor shall be filed with NCLT concerned seized of the resolution process or liquidation. Therefore, the adjudicating authority for personal guarantors will be NCLT, if a parallel resolution process or liquidation process is pending in respect of a corporate debtor for whom the guarantee is given. The same logic prevails, under Section 60(3), when any insolvency or bankruptcy proceeding pending against the personal guarantor in a court or tribunal and a resolution process or liquidation is initiated against the corporate debtor. Thus if A, an individual is the subject of a resolution process before the DRT and he has furnished a personal guarantee for a debt owed by a company B, in the event a resolution process is initiated against B in an NCLT, the provision results in transferring the proceedings going on against A in the DRT to NCLT

112. The argument that the insolvency processes, application of moratorium and other provisions are incongruous, and so on, in the opinion of this Court, are insubstantial. The insolvency process in relation to corporate persons [a compendious term covering all juristic entities which have been described in Sections 2(a) to (d) of the Code] is entirely different from those relating to individuals; the former is covered in the provisions of Part II and the latter, by Part III. Section 179, which defines what the adjudicating authority is for individuals is "subject to" Section 60. Section 60(2) is without prejudice to Section 60(1) and notwithstanding anything to the contrary contained in the Code, thus giving overriding effect to Section 60(2) as far as it provides that the application relating to insolvency resolution, liquidation or bankruptcy of personal guarantors of such corporate debtors shall be filed before NCLT where proceedings relating to corporate debtors are pending. Furthermore, Section 60(3) provides for transfer of proceedings relating to personal guarantors to that NCLT which is dealing with the proceedings against corporate debtors. After providing for a common adjudicating forum, Section 60(4) vests NCLT "with all the powers of the DRT as contemplated under Part III of this Code for the purpose of sub-section (2)". Section 60(4) thus (a) vests all the powers of DRT with NCLT and (b) also vests NCLT with powers under Part III. Parliament therefore merged the provisions of Part III with the process undertaken against the corporate debtors under Part II, for the purpose of Section 60(2) i.e. proceedings against personal guarantors along with corporate debtors. Section 179 is the corresponding provision in Part III. It is "subject to the provisions of Section 60". Section 60(4) clearly incorporates the provisions of Part III in relation to proceedings before NCLT against personal guarantors.

113. It is clear from the above analysis that parliamentary intent was to treat personal guarantors differently from other categories of individuals. The intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, for whom the adjudicating authority was common with the corporate debtor to whom they had stood guarantee. The fact that the process of insolvency in Part III is to be applied to individuals, whereas the process in relation to corporate debtors, set out in Part II is to be applied to such corporate persons, does not lead to incongruity. On the other hand, there appear to be sound reasons why the forum for adjudicating insolvency processes - the provisions of which are disparate -is to be common i.e. through NCLT. As was emphasised during the hearing, NCLT would be able to consider the whole picture, as it were, about the nature of the assets available, either during the corporate debtor's insolvency process, or even later; this would facilitate the CoC in framing realistic plans, keeping in mind the prospect of realising some part of the creditors' dues from personal guarantors."

**[21]** From the above observations, we are satisfied that in this case, the proceedings should have been filed with the NCLT and not the DRT. In any event, even if the proceedings before the DRT, the DRT should have transferred the same to the NCLT. Still, it was faintly suggested that since no proceedings were pending before the NCLT until 16 February 2024, the DRT was the proper authority having jurisdiction over the matter.

**[22]** In the above regard, it is necessary to refer to Section 60 of the IBC, which reads as follows: -

**"60. Adjudicating Authority for corporate persons.**

- (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall the National Company Law Tribunal having territorial jurisdiction over place where the registered office of the corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or [liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any Court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order

of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

**[23]** Section 60(1), in terms provides that Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons, including corporate debtors and personal guarantors thereof, shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located. In this case, the 2nd Respondent was a personal guarantor. Therefore, the Adjudicating Authority would have been the NCLT, having territorial jurisdiction over the registered office of the corporate person, not the DRT.

**[24]** Mr Shah referred to the decision of the National Company Law Appellate Tribunal (NCLAT) order in **State Bank of India v. Mahendra Kumar Jajodia**, 2022 233 CompCas 36 to submit that even where an application under Section 9 of IBC filed by any operational creditor was not pending before the NCLT, still, it is the NCLT which would have the jurisdiction given the provisions of Section 60 of the IBC. The NCLAT has held that the substantive provision for an adjudicating authority is Section 60(1), when a particular case is not covered under Section 60(2), the application as referred to in Section 60(1) can very well be filed in the NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located.

**[25]** The NCLAT held that the adjudicating authority had erred in holding that since no CIRP or Liquidation Proceeding of the Corporate Debtor was pending, the application under Section 95(1) filed by the Appellant in the said case was not maintainable. The NCLAT held that the application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the application filed by the Appellant was maintainable. It could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor were pending before the NCLT.

**[26]** Mr Shanay Shah submitted that the Hon'ble Supreme Court dismissed the Civil Appeal against the NCLAT's abovereferred order in the case of Mahendra Kumar Jajodia Vs. State Bank of India,2022 ibclaw.in 16 SC.

**[27]** The record establishes that in this matter, an application under Section 9 of IBC was already filed by the operational creditor against the principal borrower, which was admitted on 16 February 2024. (See page 35 of the Petition). This has the effect of a moratorium order being issued against the principal borrower. Therefore, Section 60(2) of the IBC becomes operational and no proceedings before the DRT under Section 95 read with Section 179 would be competent or maintainable. This position has been crystallised by the Hon'ble Supreme Court in Lalit Kumar Jain (supra) in the paragraphs referred to hereinabove.

**[28]** Therefore, we are satisfied that the applications filed by the 3rd Respondent before the DRT were not maintainable or competent. The DRT, given the law laid

down in Lalit Kumar Jain (supra), should have either dismissed the applications for want of jurisdiction or transferred the same to NCLT, at least after the Petitioners herein pointed out the pendency of proceedings before the NCLT and the NCLT's order dated 16 February 2024.

**[29]** Since the DRT had no jurisdiction to entertain the 3rd Respondent's application, even the order made by the DRT on 2nd May 2022 would be without jurisdiction. This order is set aside. But liberty is granted to the second and third respondents to apply for orders before the NCLT.

**[30]** For all the above reasons, we allow these Petitions, set aside the DRT's order dated 2nd May 2022 and direct the DRT to transfer the proceedings pending before it in these matters to the NCLT within four weeks from today.

**[31]** The Rule is made absolute in all these Petitions to the above extent. No costs. All concerned are to act on an authenticated copy of this order.

**[32]** The pending Interim Applications no longer survive and are accordingly disposed of

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2026(1)SDJ63

**MADHYA PRADESH HIGH COURT**

(Hon'ble Judge : Vivek Rusia ; Pradeep Mittal)

Writ Petition No. 11374 of 2013 **dated 09/12/2025**

*Smriti Talkies, Parasia Distt Chhindwara*

**Versus**

*Chandra Kumar Galani and Others*

**AUCTION IRREGULARITY**

Income Tax Act, 1961 Sec. 61, Sec. 60 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 - Recovery of Debts and Bankruptcy Act, 1993 Sec. 30 - Auction Irregularity - Petitioner availed loan and defaulted leading to recovery proceedings - Property auctioned by Recovery Officer for lesser amount despite higher bids and objections during auction - DRT found irregularities in auction and set aside sale but DRAT restored auction holding appeal barred by limitation - Petitioner challenged on ground that appeal filed within statutory period and that auction suffered from procedural lapses - Court found auction conducted in haste without allowing higher bidders to participate and with inadequate reserve price - Also found that appeals before DRT were within limitation under Section 30 of RDDB Act - DRAT erred in dismissing valid appeals and ignoring material irregularities - Order of DRAT set aside and DRT order restored. - Petition Allowed

**Law Point : Appeal under Section 30 of RDDB Act filed within limitation must be entertained; auction vitiated by material irregularities and inadequate reserve price cannot be sustained**

**Acts Referred :**

Income Tax Act, 1961 Sec. 61, Sec. 60

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13

Recovery of Debts and Bankruptcy Act, 1993 Sec. 30

**Counsel :**

Shashank Shekhar Dugwekar (Senior Advocate), Bhoopesh Tiwari, Sanjay Agrawal (Senior Advocate), Ashok Kumar Banke

**JUDGEMENT**

**Pradeep Mittal, J.**

**[1]** The present writ petition has been filed by the petitioner assailing the order dated 20.05.2013 passed by the Debts Recovery Appellate Tribunal, Allahabad, whereby the appellate tribunal set aside the order dated 30.11.2012 passed by the Debt Recovery Tribunal, Jabalpur, and restored the order dated 07.01.2010 passed by the Recovery Officer confirming the auction sale dated 02.09.2009.

**[2]** Facts of the case in short are that the petitioner Smriti Talkies had availed two loans from respondent No.2 Bank, one on 13.06.1997 for a sum of Rs.13 lakhs and another on 25.07.1998 for Rs.3.25 lakhs, aggregating to Rs.16.25 lakhs. On account of default in repayment, the Bank issued a demand notice dated 28/03/03 under Section 13(2) of the SARFAESI Act, 2002 demanding Rs.24,12,102/-.Thereafter, a possession notice dated 12.07.2003 was issued in respect of the secured asset, namely land and building known as Smriti Talkies situated at Khasra No.259/1, Village Dongar Chikhali, Tahsil Parasia, District Chhindwara. In execution proceedings arising out of O.A. Ex. No.92/2004, the Recovery Officer issued an auction sale notice dated 23.07.2009, fixing the auction on 02.09.2009 at 12.00 noon with a reserve price of Rs.18 lakhs. The auction notice did not specify any closure time for the auction. On the date of auction, objections were submitted by M/s Harikishandas Jaikishan Rathi and Shri Bhagwan Prasad Khandelwal, stating that they were unable to submit demand drafts towards earnest money due to technical difficulties in the respective banks, though they were willing to participate and had offered a higher bid. One of the objectors offered Rs.24 lakhs and enclosed demand drafts amounting to Rs.6.8 lakhs. Despite this, the Advocate Commissioner concluded the auction in haste and did not permit the said persons to participate. The auction was finalized in favour of respondent No.1 for Rs.20 lakhs, without permitting any other bidder to participate, even though the auction notice did not prescribe any closing time and the objections were submitted during banking hours. Subsequently, on 24.09.2009, the petitioner

submitted a proposal for one-time settlement of Rs.25 lakhs, enclosing a cheque of Rs.5 lakhs, and sought time to deposit the balance. The respondent No.2 Bank itself, vide letter dated 29.09.2009, addressed to the Recovery Officer, categorically stated that the auction dated 02.09.2009 was conducted in undue haste and requested re-auction, as willing bidders offering higher amounts were not permitted to participate. The petitioner also filed objections before the Recovery Officer on 01.10.2009, contending, inter alia, that the auction price was grossly inadequate, that the market value of the property exceeded Rs.1 crore, and that material irregularities were committed in the conduct of auction. Despite objections raised both by the borrower and the Bank, the Recovery Officer, vide order dated 07.01.2010, rejected the objections and confirmed the sale in favour of respondent No.1, holding that Rule 61 of the Second Schedule to the Income Tax Act, 1961 was not attracted.

**[3]** Aggrieved, both the petitioner and the Bank filed appeals before the DRT, Jabalpur under Section 30 of the RDDBFI Act, 1993, which were registered as Appeal No.2/2010 and Appeal No.3/2010, within the period of limitation. During pendency of the appeals, the DRT, Jabalpur granted interim protection on 14.07.2010, restraining further action pursuant to the confirmation of sale. After considering the pleadings, objections, settlement proposal accepted by the Bank, and the way the auction was conducted, the DRT, Jabalpur, vide order dated 30.11.2012, allowed both appeals and set aside the order dated 07.01.2010, holding that the auction suffered from material irregularities and illegality.

**[4]** The auction purchaser / respondent No.1 thereafter filed Appeal No. R22/2013 and Appeal No. R-23/2013 before the DRAT, Allahabad. The petitioner filed a detailed reply on 28.04.2013, pointing out factual inaccuracies and justifying the DRT's order. However, the DRAT, Allahabad, vide common order dated 20.05.2013, allowed both appeals, set aside the order dated 30.11.2012 passed by the DRT, and restored the order dated 07.01.2010, thereby confirming the auction sale dated 02.09.2009.

**[5]** Learned Counsel for the Petitioner submits that that the impugned order dated 20.05.2013 passed by the Debts Recovery Appellate Tribunal, Allahabad is wholly illegal, arbitrary and unsustainable in law, having been passed without proper application of mind and without due appreciation of the material facts on record. The appellate tribunal has gravely erred in holding that the appeal filed by the petitioner before the Debt Recovery Tribunal, Jabalpur was barred by limitation. Learned counsel submits that the Recovery Officer passed the order confirming the sale on 07.01.2010, and the petitioner preferred Appeal No.2/2010 before the DRT, Jabalpur on 13.01.2010, i.e., within six days. As per Section 30 of the RDDBFI Act, 1993, an appeal against the order of the Recovery Officer is maintainable within thirty days, and therefore there was absolutely no question of limitation. It is urged that the finding recorded by the DRAT, Allahabad in paragraph 23 of the impugned order is factually incorrect and legally untenable. Learned counsel further submits that the impugned

order suffers from internal inconsistency inasmuch as the appellate tribunal held the appeal filed by the Bank to be within limitation, though the Bank had filed its appeal later in time on 18.01.2010.

**[6]** Learned counsel further submits that the DRAT, Allahabad erred in holding that the objections raised by the petitioner could not be considered in view of Rule 61 of the Second Schedule of the Income Tax Act, 1961. It is argued that the said provision has been interpreted in a hyper-technical manner by the Recovery Officer as well as by the appellate tribunal. Learned counsel submits that Rule 61 permits challenge to an auction on the ground of material irregularity, and in the present case, the auction dated 02.09.2009 suffered from grave and patent irregularities. The auction notice did not prescribe any closing time; yet the auction was concluded in undue haste. Two intending bidders submitted written objections on the date of auction itself, one of whom had offered Rs.24 lakhs and produced demand drafts amounting to Rs.6.8 lakhs, far exceeding the earnest money requirement. Despite this, the said bidders were not permitted to participate, and the property was sold for Rs.20 lakhs, causing serious prejudice.

**[7]** It is further submitted that the Debt Recovery Tribunal, Jabalpur, after detailed consideration, had rightly set aside the order dated 07.01.2010 passed by the Recovery Officer by recording a categorical finding that the auction proceedings were vitiated by material irregularities. The appellate tribunal failed to appreciate the correctness and legality of the said order dated 30.11.2012 and mechanically restored the order of confirmation of sale.

**[8]** Learned counsel also submits that the reserve price of Rs.18 lakhs fixed by the Recovery Officer was grossly inadequate and far below the market value of the property, which, as per the Collector guidelines, exceeded Rs.1 crore. Such fixation of reserve price itself amounted to material irregularity, which could not have been overlooked by the appellate tribunal.

**[9]** It is further urged that the settlement proposal of Rs.25 lakhs was accepted by the respondent Bank prior to confirmation of the sale by the Recovery Officer. In such circumstances, and in view of the admitted irregularities in the auction proceedings, the DRT, Jabalpur had rightly interfered with the confirmation of sale. The DRAT, Allahabad failed to consider this vital aspect, rendering the impugned order unsustainable.

**[10]** Lastly, learned counsel submits that the DRAT, Allahabad erred in discarding the objections raised by the two intending bidders on the ground that they had not independently filed appeals. It is argued that their objections were part of the auction proceedings and were required to be considered by the Recovery Officer before confirmation of sale. Since the Recovery Officer failed to do so, the petitioner and the Bank were fully justified in raising those grounds before the DRT, Jabalpur. The appellate tribunal's reasoning in this regard is legally flawed and contrary to settled principles. On the aforesaid grounds, learned counsel for the petitioner submits that the

impugned order dated 20.05.2013 deserves to be quashed and the order dated 30.11.2012 passed by the Debt Recovery Tribunal, Jabalpur deserves to be restored.

**[11]** Perused the record and considered the argument in advanced, it is revealed from the record that the auction notice did not prescribe any closing time; yet the auction was concluded before the 2.20 pm. Two intending bidders submitted written objections on the date of auction at 2.20 pm on 02.09 .2009 itself, one of whom had offered Rs.24 lakhs and produced demand drafts amounting to Rs.6.8 lakhs, far exceeding the earnest money requirement. Despite this, the said bidders were not permitted to participate, on the date 24.09.2009 borrower had deposited outstanding amount 25 lacs in settlement with bank. Auction purchaser was bis only 20 lacs.

**[12]** Learned DRAT, Allahabad noted that the objector of the auction proceeding never challenged the auction proceeding and nor had a party in appeal therefore no causing serious prejudice to borrower. That finding is not correct because the value of the property reached 24 lacs in the bid but due to technical difficulties participant could not take a part in proceeding and they seek time but RO denied them. It is also a causing paradise to the auction proceedings. The learned DRT, Jabalpur has considered the whole circumstances and reject the auction proceedings.

**[13]** Learned counsel invite our attention towards the the Second Schedule Procedure for Recovery of Tax section 60 and 61, which are being given below:

"60. (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of 51[fifteen] per cent per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and

(b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule. Application to set aside sale of immovable property on ground of nonservice of notice or irregularity.

61. Where immovable property has been sold in execution of a certificate, 52[such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf], the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that (a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and (b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate."

**[14]** Above provision is clearly authorized to challenge the auction proceeding by the borrower and other interested person. Borrower had challenged the auction proceeding on the auction date and prayed time to extend the proceeding, but RO denied them. This is a valid ground to causing prejudice the auction proceedings, this is not a case whether the sale has been absolute or not or whether sale certificate issue or not. It is matter that the auction proceeding is not accordance with law. Borrower had requested to cancel the auction proceeding in due time therefore no issue of limitation arise out and with in limitation borrower and bank-initiated proceedings before the DRT, Jabalpur.

**[15]** With above consideration we are the view the learned DART, Allahabad committed error to set aside the order passed by the DRT Jabalpur. Therefore, writ petition is allowed by setting aside the order of DRAT, Allahabad passed in appeal No.R-22/13 and Appeal No.R-23/2013 and restore the order of DRT Jabalpur passed in Appeal No.02/2010 and Appeal No.03/2010.

No order of cost

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2026(1)SDJ68

**DELHI HIGH COURT**

(Hon'ble Judge : Anil Kshetarpal ; Harish Vaidyanathan Shankar)

W P (C) (Writ Petition (Civil)); C M Appl (Civil Miscellaneous Application) No. 6494 of 2016; 4295 of 2025 **dated 06/12/2025**

*Canara Bank (Erstwhile Syndicate Bank)*

**Versus**

*M/s Karishma Enterprises & Ors*

**AUCTION SALE**

Banking Regulation Act, 1949 Sec. 35A, Sec. 21 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 17 - Security Interest (Enforcement) Rules, 2002 Rule 9, Rule 8 - Auction Sale - Petitioner Bank granted credit facility to borrower secured by mortgage of properties - Borrower defaulted leading to NPA classification and issuance of SARFAESI notice - Property auctioned after consent of borrower recorded by DRT - Sale confirmed and title transferred to auction purchaser - Borrowers later challenged sale before DRAT which set aside DRT order despite earlier consent - Court found that borrowers had

voluntarily agreed to sale and later appeal barred by principle of approbation and reprobation - DRAT erred in ignoring borrower's earlier conduct and in granting relief after confirmation of sale - Held sale conducted in compliance with law and consent of borrowers valid - Appeal Disposed

**Law Point : Borrower consenting to auction before DRT cannot later challenge sale; DRAT cannot reopen concluded sale conducted as per SARFAESI Rules with borrower's consent**

**Acts Referred :**

Banking Regulation Act, 1949 Sec. 35A, Sec. 21

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 17

Security Interest (Enforcement) Rules, 2002 Rule 9, Rule 8

**Counsel :**

Anju Jain, Hitesh Sachar, Dev Inder Singh, Deeksha Kingrani, , Pulkit Aggarwal

## JUDGEMENT

**Anil Kshetarpal, J.**

**[1]** The present Petition, filed by the Petitioner, assails the correctness of the order dated 02.03.2016 [hereinafter referred to as "Impugned Order"] passed by the learned Debts Recovery Appellate Tribunal [hereinafter referred to as "DRAT"], Delhi, in Appeal No. 37/2016, titled **M/s Karishma Enterprises & Anr. v. Syndicate Bank & Anr.**

**[2]** The issue that arises for consideration in the present petition is whether the learned DRAT erred in failing to appreciate the prior conduct and explicit consent of Respondent Nos.1 and 2 to the sale of the mortgaged property as duly recorded in the learned Debt Recovery Tribunal's [hereinafter referred to as "DRT"] order dated 16.04.2014 and in disregarding the fact that despite having consented to such directions, the Respondents nevertheless challenged the order in Appeal No. 303/2014, which was ultimately disposed of as not pressed and infructuous by the learned DRAT vide order dated 16.12.2014.

**FACTUAL MATRIX:**

**[3]** In order to comprehend the issues involved in the present case, relevant facts, in brief, are required to be noticed.

**[4]** The Petitioner Bank is a body corporate duly constituted under the Companies Act, 1970, having its head office at Manipal, Karnataka and branch offices, amongst others, at International Business Branch, Connaught Place, New Delhi-110001. The Respondent No.1 is a proprietorship firm, through its Proprietor, Sh. Vijay Kumar, and is the Principal Borrower. The Respondent No.2 is the Mortgagor/Guarantor of the

credit facility granted in favour of the Respondent No.1 and the Respondent No.3 is the auction purchaser of the mortgaged property.

**[5]** In terms of Sanction Letter No. SOD/ODMS dated 19.09.2007, the Petitioner Bank extended a credit facility of Rs. 100 lakhs to Respondent No.1, secured by the guarantee and mortgage furnished by Respondent Nos.1 and 2. To secure the said facility, Respondent Nos.1 and 2 deposited the title deeds of the properties measuring 275 sq. yds., 325 sq. yds., and 400 sq. yds. bearing No. 1/5875 out of Khasra No. 4436/3456/1855/16, situated at Village Chandrawali, in the Abadi of Kabool Nagar, Shahdara, Delhi [hereinafter referred to as "the three mortgaged properties"], with the Petitioner Bank and duly executed the Composite Hypothecation Agreement, the Deed of Guarantee, and the Letter confirming the deposit of title deeds, all dated 12.10.2007.

**[6]** In 2008, M/s Madhav Enterprises, through Respondent No.2, sought an additional credit facility of Rs. 225 lakhs, for which Respondent No.2 extended the existing mortgage and confirmed that the liabilities arising under the facilities sanctioned to Respondent No.1 would continue for the newly sanctioned limits.

**[7]** Subsequently, on 19.09.2009, the Petitioner Bank reviewed and renewed Respondent No.1's credit facility to Rs. 100 lakhs, whereupon Respondent Nos.1 and 2 executed the requisite security documents, including the Composite Hypothecation Agreement, General Agreement, Deed of Guarantee and Undertaking for creation of a second/subsequent mortgage, all dated 25.09.2009. Respondent No.2 further reaffirmed the subsistence of these liabilities through confirmation letters dated 17.03.2010. Thereafter, on 20.12.2010, the Petitioner Bank again renewed the said credit facility of Rs. 100 lakhs, following which, Respondent Nos.1 and 2 executed the corresponding renewal documents on the same date.

**[8]** After availing of the above credit facilities, the Respondent Nos.1 and 2 failed to adhere to the financial discipline and defaulted in making payment of the amount and interest thereon.

**[9]** Further, the Respondent No.1, vide stock statement dated 06.07.2012 for the quarter ending June 2012, reported nil opening stock of raw material and work-in-process, indicating that no manufacturing activity or regular business was being undertaken during the relevant period. By 31.12.2012, the accounts of Respondent Nos.1 and 2 had become highly irregular, with the Overdraft ("OD") and Cash Credit ("CC") limits exceeding the sanctioned limits.

**[10]** Consequently, the Petitioner Bank issued repeated reminders vide letters dated 27.02.2013, 09.03.2013 and 19.03.2013 calling upon the Respondent Nos.1 and 2 to regularize the account and furnish the requisite documents for renewal of limits, failing which action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as "SARFAESI Act"] could be initiated. Despite these opportunities, Respondent Nos.1 and 2 failed to regularize the account.

**[11]** Resultantly, on 31.03.2013, the account of the Respondent No.1 was declared a Non-Performing Asset ("NPA").

**[12]** Thereafter, on 22.04.2013, the Petitioner Bank issued a notice under Section 13(2) of the SARFAESI Act. Pursuant thereto, a Court Receiver was appointed vide order dated 05.08.2013. However, by order dated 30.08.2013, the said appointment was modified and Smt. Madhuri Gupta was appointed as the Court Receiver. In consequence, a fresh notice dated 02.09.2013 was issued scheduling possession for 18.09.2013.

**[13]** Further, in September 2013, Respondent Nos.1 and 2 filed Writ Petition (C) No. 5701/2013 before this Court, challenging the measures undertaken by the Petitioner Bank under the SARFAESI Act. Vide order dated 10.09.2013, the writ petition was dismissed as withdrawn, with liberty granted to the Respondents to pursue their remedy under Section 17 of the SARFAESI Act.

**[14]** Thereafter, in September 2013, Respondent Nos.1 and 2 instituted S.A. No. 325/2013 before the learned DRT assailing the Petitioner Bank's action. By order dated 17.09.2013, the learned DRT restrained the Petitioner Bank and the Court Receiver from proceeding further, subject to the Respondent Nos. 1 and 2 depositing Rs. 20 lakhs within 30 days, including Rs. 5 lakhs within the first week. It was further clarified that any default would entitle the Petitioner Bank, through the Court Receiver, to continue proceedings under the SARFAESI Act in accordance with law.

**[15]** Vide possession notice dated 03.10.2013, the Authorized Officer of the Petitioner Bank, with the assistance of the Court Receiver, took symbolic possession of the mortgaged properties measuring (i) 325 sq. yds. and (ii) 275 sq. yds., and accordingly affixed the possession notices along with photographs at the site. However, despite these steps, the Petitioner Bank could not take possession of the remaining mortgaged property measuring 400 sq. yds., since the same had already been taken over by ARCIL.

**[16]** Subsequently, vide notice dated 10.01.2014, the Petitioner Bank issued a sale notice for the auction of the mortgaged properties. In response, Respondent Nos.1 and 2 filed I.A. No. 376/2014 challenging the said auction notice. Thereafter, vide order dated 16.04.2014, and in light of the submission made on behalf of Respondent Nos.1 and 2 that the sale of one property would be sufficient to satisfy the outstanding dues, the learned DRT disposed of I.A. No. 376/2014 with a specific direction to put only one property to auction.

**[17]** In pursuance of the aforesaid order dated 16.04.2014, the Petitioner Bank accordingly proceeded to auction the property measuring 275 sq. yds. for a total consideration of Rs. 214 lakhs, as against its assessed market value of Rs. 213 lakhs.

**[18]** Meanwhile, Respondent Nos.1 and 2 preferred Appeal No. 303/2014 challenging the order dated 16.04.2014 passed in I.A. No. 376/2014, notwithstanding the fact that the said order had been passed with their consent.

**[19]** Ultimately, vide order dated 16.12.2014, the learned DRAT disposed of Appeal No. 303/2014 as infructuous in view of the fact that the property in question had already been sold, and accordingly directed that the main S.A. No. 325/2013 will be decided in accordance with the law. The relevant portion of the said order is reproduced hereunder:

"During the pendency of the appeal, the property has been sold for a sum of Rs. 2.14 crores. Notice for recovery in this case was for Rs. 1.06 crores. That being the position, a substantial sum of the amount due to the bank has already been recovered. Counsel for the appellants submit that in view of this factual position, he will not press the appeal but would pray that some direction be issued to the Tribunal below to decide issues which the appellants have raised in the S.A. In view of the submissions as made, this appeal is disposed of as having been rendered infructuous..."

**[20]** After the sale of the mortgaged property and the passing of the final order, the learned DRT, vide order dated 13.04.2015, granted Respondent Nos.1 and 2 an additional opportunity to deposit the outstanding dues, should they wish to save their property. The relevant order dated 13.04.2015 is reproduced as hereunder:

"Heard the Ld. Counsel for the applicant at length and this Tribunal has posed question before the Ld. Counsel for the Applicant whether his client wants to save his property by paying the dues of the bank, the Ld. Counsel for the Applicant submits that he will seek instruction from his client. Let applicant bring money or deposit the money with the Respondent Bank, then further against will be heard by this Tribunal."

**[21]** Subsequently, the learned DRT dismissed S.A. No. 325/2013 vide order dated 29.09.2015. Following this dismissal, the Petitioner confirmed the auction sale in favour of the auction purchaser and handed over the title documents along with the sale certificate to Respondent No.3 on 30.09.2015. It is pertinent to note that during the pendency of the S.A., the Petitioner had filed O.A. No. 347/2015 on 30.08.2015 seeking recovery of Rs. 1,81,84,429/-, which was later withdrawn in good faith after disposal of the S.A.

**[22]** Thereafter, Respondent Nos.1 and 2 preferred Appeal No. 37/2016 before the learned DRAT, challenging the dismissal order dated 29.09.2015 passed in S.A. No. 325/2013. The learned DRAT vide the Impugned Order dated 02.03.2016 allowed the Appeal 37/2016 filed by the Respondent Nos.1 and 2 and set aside the above order dated 29.09.2015 passed by the learned DRT in S.A. No. 325/2013.

**CONTENTIONS OF THE PARTIES:**

**[23]** Heard learned Counsel for the parties at length and, with their able assistance, perused the paper book. Learned Counsel have also filed their written submissions, which are on record.

**[24]** Learned Counsel for the Petitioner Bank has submitted as under:

i. The learned DRAT has miscalculated the period of ninety days in declaring the accounts of the Respondent Nos.1 and 2 as NPA.

ii. The classification of NPA was not the sole factor in determining the action taken by the Petitioner Bank but that, in conjunction with other reasons, namely, the magnitude of amount due and outstanding, the reasons which prompted the Respondents Nos. 1 and 2 to default in the repayment schedule, the nature and prospects of their businesses which were necessitated to the action taken under Section 13(4) of the SARFAESI Act.

iii. The learned DRAT has ignored that the issues were settled by it in its earlier order dated 16.12.2014 in Appeal No. 303/2014.

iv. The learned DRAT has overlooked the conduct of the Respondents in flouting their undertaking given to the learned DRT. They have rescinded their consent and have filed frivolous litigation to gain time.

v. The learned DRT vide order dated 13.04.2015 further granted opportunity to the Respondent Nos.1 and 2 to deposit the amount in case they desire to save their property, which had not been exercised by the Respondents has not been considered while passing the Impugned Order.

**[25]** Per contra, learned Counsel for the Respondents has submitted that:

i. Learned DRAT has rightly considered and held that the Petitioner Bank has classified the account as NPA prior to expiry of more than 90 days.

ii. Merely because the learned DRT agreed to the legal submissions made on behalf of the Respondents that even otherwise the entire property cannot be put to sale, if one property can be sufficient to recover the dues of the bank, the same by no stretch of interpretation can be considered as consent.

iii. The finding of the learned DRAT with respect to non- compliance of provisions of Section 13(3A) of the SARFAESI Act, non-compliance of requirement of Rules 8(6) and 9 of the Security Interest (Enforcement) Rules, 2002 [hereinafter referred to as "SARFAESI Rules"] while auctioning the property in question cannot be faulted and are purely in terms of settled law.

**[26]** Learned Counsel for the parties have not made any other submissions.

**ANALYSIS AND FINDINGS:**

**[27]** In the facts of the present case, the foremost issue that arises for determination is whether the Petitioner Bank's decision to classify the accounts of Respondent Nos.1 and 2 as NPAs on 31.03.2013 conformed with the 90-day requirement prescribed under the applicable regulatory framework.

**[28]** It may be noted that, as of 31.12.2012, the Respondents' OD and CC accounts had become irregular, with the outstanding balances exceeding the sanctioned limits. The excess was neither marginal nor temporary. Proceeding on this basis, the Petitioner Bank invoked the governing prudential norms and declared the account as NPA.

**[29]** The legal framework governing this issue is well-established. The Reserve Bank of India's ("RBI") prudential norms on Income Recognition, Asset Classification

and Provisioning ("IRACP"), which have statutory force under Sections 21 and 35A of the Banking Regulation Act, 1949, provide that an OD or CC account becomes an NPA when the outstanding balance remains continuously in excess of the sanctioned limit or drawing power for more than 90 days. This obligation is mandatory and a bank cannot defer or postpone classification once the statutory period of continuous irregularity has elapsed.

**[30]** The expression "more than 90 days" has been consistently understood to require the completion of a full 90-day period before classification. The computation begins from the date immediately succeeding the day on which the account first becomes irregular. Courts have repeatedly held that the counting must be straightforward and arithmetical, without importing equitable considerations. If the irregularity continues unabated through the entire 90-day period, the account stands impaired in the eyes of the regulatory framework, and the Bank must classify it as NPA on the day following such completion.

**[31]** Applying these principles to the facts at hand, the date on which the account first stood clearly irregular is not in serious dispute. As of 31.12.2012, the OD and CC limits had been breached and the account was already in excess. There is no record of the account being brought within sanctioned limits thereafter at any point during the months of January, February, or March in the year 2013. The computation of the 90 days must therefore commence from the day immediately following the said date, namely 01.01.2013. The calendar months of January, February, and March in 2013 contain 31, 28, and 31 days respectively, yielding a total of 90 days from 01.01.2013 to 31.03.2013. On this computation, 31.03.2013 represents the 90th day. Thus, the critical threshold mandated by the IRACP norms stands satisfied by the end of March 2013. The decisive question, however, is not the precise mathematical position of the 90th day, but whether the Petitioner Bank classified the account before the statutory period had elapsed. On the facts, it did not.

**[32]** The Respondents have placed no material to show that the accounts were regularised, interest was serviced, or the account was otherwise brought within sanctioned limits at any point during the relevant period. The burden of showing incorrect classification lies on the borrower once the Petitioner Bank demonstrates the existence of continuous irregularity, and that burden has not been discharged. The contemporaneous bank statements, which reflect a persistent excess throughout the months of January, February, and March 2013, confirm that the factual foundation for NPA classification stood firmly established.

**[33]** Further, the Petitioner Bank declared the account as NPA on 31.03.2013. Even if this date is treated as the 90th day, classification on the very date of completion of the statutory period cannot be termed premature, especially where the irregularity is undisputed and where the declaration is contemporaneous with the expiry of the mandated timeframe. The prudential norms require classification after the account has remained irregular "for more than 90 days". When the 90-day period ends

on 31.03.2013, the Petitioner Bank's act of classification on the same date or immediately thereafter would equally satisfy the regulatory requirement. In any event, the classification on 31.03.2013 falls at the outer limit of the permissible period, leaving no scope for alleging premature action. Assuming arguendo, that the said declaration was premature, there is nothing on record to show that the Appellant, even on the subsequent day, had taken any steps to infuse any monies to evidence an attempt to steer off such a declaration.

**[34]** In view of the foregoing discussion, this Court is of the opinion that the Petitioner Bank adhered to the statutory and regulatory framework, correctly computed the 90-day period of continuous irregularity, and classified the accounts of Respondent Nos. 1 and 2 only upon expiry of the mandated period. The declaration of NPA on 31.03.2013 was accordingly lawful, justified, and in strict consonance with the RBI's prudential norms.

**[35]** Further, in the order dated 16.04.2014, the learned DRT, on the specific submissions and consent of Respondent Nos.1 and 2, recorded that one of the mortgaged properties would be sufficient to secure the recovery of the outstanding dues. The learned DRT accordingly directed that only one property be put to auction. It thus stands established on record that Respondent Nos.1 and 2 had furnished explicit consent to the sale of a mortgaged property.

**[36]** Thereafter, vide order dated 16.12.2014 passed in Appeal No. 303/2014, the learned DRAT directed the auction of one of the mortgaged properties while reserving liberty to the Respondents to bring a better purchaser within 30 days. The order further provided that, in the event the dues remained unpaid, the second property may also be put to auction. During the pendency of the said appeal, the concerned property was sold for a consideration of Rs. 2.14 crores against recovery dues of Rs. 1.06 crores, resulting in substantial recovery. The appeal was, therefore, disposed of as infructuous, with a direction to the learned DRT to adjudicate the issues raised in S.A. No. 325/2013 in accordance with law.

**[37]** Further, even after the sale of the mortgaged property and the passing of the final order, the learned DRT, by order dated 13.04.2015, afforded yet another opportunity to Respondent Nos.1 and 2 to deposit the requisite amount in the event they intended to save their mortgaged property. The record reflects that the Respondent Nos.1 and 2 were repeatedly granted adequate opportunity to comply with their obligations.

**[38]** Upon dismissal of S.A. No. 325/2013, the Petitioner Bank proceeded to confirm the auction sale in favour of Respondent No.3, the auction purchaser. The title documents deposited with the Petitioner Bank were handed over along with the sale certificate on 30.09.2015. It is also relevant to note that during the pendency of S.A. No. 325/2013, the Petitioner Bank had instituted O.A. No. 347/2015 on 30.08.2015 for the recovery of Rs. 1,81,84,429/-, which was subsequently withdrawn in good faith upon the final disposal of the securitisation application.

**[39]** In view of the above factual matrix, this Court finds that the learned DRAT failed to consider the explicit consent of Respondent Nos.1 and 2 to the auction of the mortgaged property, as well as their prior conduct throughout the proceedings. The record clearly demonstrates their participation in the sale process, and the learned DRAT ought to have duly taken these circumstances into account while passing the Impugned Order.

**[40]** Additionally, the notice under Section 13(2) of the SARFAESI Act was issued only on 22.04.2013, i.e., subsequent to the classification of the account as NPA. Despite this intervening period, Respondent Nos.1 and 2 made no attempt whatsoever to regularize their account or to liquidate the overdue amounts. Hence, their continued default, even after the account had slipped into the non- performing category, reinforces the correctness of the Petitioner Bank's action.

**[41]** Further, when the borrower has expressly consented to the sale of the secured asset, the rigour of strict compliance with certain procedural safeguards under the SARFAESI Act and the SARFAESI Rules, particularly Rules 8 and 9, stands materially diluted. The statutory scheme of the SARFAESI Act undoubtedly mandates adherence to the requirements governing valuation, publication of sale notices, fixation of reserve price, and conduct of auction. However, the jurisprudence recognises that these safeguards are primarily intended for the benefit and protection of the borrower. Consequently, where the borrower voluntarily assents to the sale of the secured asset either by written consent, statements made before the learned DRT/DRAT, or by conduct amounting to unequivocal acquiescence, the borrower is deemed to have waived objections relating to minor irregularities in procedure, provided that no prejudice is shown to have been caused.

**[42]** Therefore, such consent operates as a waiver of the insistence on strict procedural compliance, and the borrower cannot subsequently challenge the auction on grounds pertaining to valuation, publication, or related formalities, which were otherwise intended to safeguard his interests. Once the borrower has accepted that the secured creditor may proceed with the sale, the emphasis shifts from procedural exactitude to the substantive fairness of the process and the bona fides of the creditor. Thus, in circumstances where the borrower's consent is explicit and informed, the secured creditor's action cannot be invalidated merely for technical lapses in observing Rules 8 and 9 of the SARFAESI Rules, unless mala fides or demonstrable prejudice is established.

**[43]** Hence, in the facts of the present case, strict adherence to the procedural requirements under the SARFAESI Act and Rules 8 and 9 of the SARFAESI Rules cannot be insisted upon, as the sale of the secured asset was undertaken with the unequivocal consent of the borrowers, as duly recorded in the order dated 16.04.2014. Once such consent was furnished before the learned DRT/DRAT, the borrowers effectively waived their right to later challenge minor procedural deviations, and no material prejudice has been demonstrated. The sale, therefore, stands fortified by the

borrowers' own voluntary submission, and no infirmity can be attributed to the secured creditor on the ground of technical non-compliance.

**CONCLUSION:**

**[44]** In view of the aforesaid, the present Appeal is allowed. The Impugned Order is hereby set aside.

**[45]** The present Appeal, along with the pending application, stands disposed of

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2026(1)SDJ77

**HIGH COURT FOR THE STATE OF TELANGANA**

(Hon'ble Judge : Moushumi Bhattacharya ; Gadi Praveen Kumar)

Writ Petition No 32316 of 2025 **dated 04/12/2025**

*M/s Shaftek Infrastructure Private Limited and Another*

**Versus**

*Union of India*

**SARFAESI PROCEEDINGS**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 17, Sec. 26D - SARFAESI Proceedings - Petitioners challenged bank's recovery under SARFAESI Act alleging non-registration of security interest with CERSAI - Record showed mortgage created and registered under new door number - Petitioners earlier approached DRT and failed to comply with conditional order - Court found registration valid and petition barred by alternate remedy - Action of bank upheld and writ petition dismissed as abuse of process - No costs ordered - Petition Dismissed

**Law Point : Once borrower invoked statutory remedy before DRT and registration of security interest stands proved, parallel writ petition challenging enforcement under SARFAESI Act is not maintainable**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 17, Sec. 26D

**Counsel :**

Kota Lakshmi Sai Sirisha, A Satyanarayana (Senior Counsel), Ch Laxmi Chaya, Ramakanth Reddy, A Venkatesh

**JUDGEMENT**

**Gadi Praveen Kumar, J.**

**[1]** Heard Sri A.Venkatesh, learned Senior Counsel representing Ms.Kota Lakshmi Sai Sirisha, learned counsel for the petitioners, Sri A.Satyanarayana, learned

Senior Counsel representing Smt.Ch.Laxmi Chaya, learned counsel appearing for respondent No.2 Bank and Sri Ramakanth Reddy, learned counsel for respondent Nos.3 and 4.

**[2]** The present Writ Petition is filed assailing the action of the respondent No.2 Bank in initiating proceedings under The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') and issuing of Demand Notice dated 01.07.2024 under Section 13(2) of the Act and subsequent Possession Notice under Section 13(4) of the Act dated 02.09.2024 and thereupon proceeding with the auction and sale of the subject property and notice dated 24.09.2024 as well as notice of taking possession dated 13.10.2025 without complying with Section 26D of the Act, as arbitrary and illegal and a consequential direction to set aside the proceedings initiated by respondent No.2 under SARFAESI Act and handover the possession of the subject land.

**[3]** The facts leading to filing of the present Writ Petition are that petitioner No.1 is engaged in the business of erecting and fabricating works for cell phone towers. Respondent No.2 had offered overdraft facility to petitioner No.1. In the year 2016, petitioner No.1 approached the respondent No.2 Bank for financial assistance, upon which, the Bank extended overdraft facilities sanctioning an amount of Rs.3,75,00,000/- in favour of petitioner No.1. The subject overdraft facility stands secured by collateral, comprising a residential house bearing H.No.11-13-362/2, on Plot No.65, admeasuring 298 sq. yards situated at Alkapuri Colony, Saroornagar, Hyderabad (for short 'the schedule property'), which is the ancestral property of petitioner No.2, who is one of the Directors of petitioner No.1 company. Against the said security property, a suit for partition vide O.S. No. 574 of 2024, is presently pending before the I Additional Senior Civil Judge, Ranga Reddy District, wherein the rights and interests of the co-owners are under adjudication.

**[4]** During the period from 2020 to 2022 due to Covid-19 Pandemic certain financial constraints arose on account of adverse market conditions which temporarily affected the regular flow of business revenue of petitioner No.1 and also due to ill-health of petitioner No.2, the repayment schedule of the loan account was affected and thereafter respondent No.2 Bank classified the account of petitioner No.1 as 'Non-Performing Asset (NPA)' on 28.06.2024.

**[5]** Subsequently, respondent No.2 Bank initiated recovery proceedings under the Act by issuing a Demand Notice dated 01.07.2024 under Section 13(2) of the Act indicating the outstanding amount of Rs.3,00,87,923/-. Thereafter, Possession Notice under Section 13(4) of the Act was issued on 02.09.2024 indicating the outstanding amount of Rs.2,84,24,626/-.

**[6]** Aggrieved by the action of respondent No.2, the petitioners approached the Debts Recovery Tribunal II, Hyderabad (for short 'DRT') by filing S.A. No. 438 of 2024. The learned DRT, by an interim order dated 28.10.2024 passed in I.A. No. 3051 of 2024, granted stay on the condition that the petitioners deposit a sum of

Rs.80,00,000/ in three installments, one within two weeks from the date of the order and the remaining two at intervals of two weeks each. On account of noncompliance of the said conditional order passed by the learned DRT, respondent No.2 Bank conducted auction of the schedule property and sold the same to the highest bidder. Accordingly, respondent No.2 Bank issued another notice dated 13.10.2025 to the petitioners for taking possession of the schedule property.

**[7]** Therefore, the present Writ Petition is filed contending that the proceedings issued by respondent No.2 Bank are in violation of Section 26D of the Act, which imposes a mandatory pre-condition for the enforcement of any security interest.

**[8]** Sri A.Venkatesh, learned Senior Counsel appearing for the petitioners contended that the respondent clearly violated Section 26D of the SARFAESI Act which provides that a security interest has to be created in favour of secured creditor by the borrower and it has to be registered with the Central Registry for commencement of enforcement proceedings with respect to securities by the secured creditor. Learned Senior Counsel has placed reliance on the Asset Based Search Report generated on 18.10.2025, reflecting that the secured asset forming the subject matter was not registered with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI).

**[9]** Learned Senior Counsel further contended that since the security interest was never registered, respondent No.2 Bank is statutorily barred under Section 26D of the Act from exercising any enforcement powers conferred under Chapter III and as such, all actions taken including Demand Notice, Possession Notice, auction process and possession attempt, are all illegal, arbitrary and devoid of jurisdiction.

**[10]** On the other hand, Sri A.Satyanarayana, learned Senior Counsel appearing for the respondent No.2 Bank contended that the Writ Petition itself is not maintainable in view of the Writ Petition invoking of Section 17 of the Act by filing S.A.No.438 of 2024 before the learned DRT which is pending consideration and that the issues raised in the present Writ Petition as well as the issues raised before the learned DRT are one and the same.

**[11]** Learned Senior Counsel further submitted that, the petitioners having suffered an adverse conditional order and having failed to comply with the deposit mandated therein, are not entitled to invoke the extraordinary jurisdiction of this Court, and on this ground alone, the Writ Petition deserves to be dismissed.

**[12]** Learned Senior Counsel further contended that the documents filed by the petitioners referring to the schedule property are different from the one reflected in the Asset Based Search Report of CERSAI dated 18.10.2025, which specifically refers to two properties viz., H.No.11-13- 362/2 (as claimed by the petitioners) and H.No.11-13-60/1/A (as shown in the CERSAI report) as secured asset.

**[13]** Learned Senior Counsel appearing for respondent No.2 categorically denies the allegation with respect to violation of Section 26D of the Act stating that the

Security Interest was duly registered with the CERSAI and the said mortgage was created by deposit of title deeds on 24.03.2016 by petitioner No.2 and was confirmed by executing a registered Memorandum of deposit of title deeds on 29.03.2016. It is contended that the Bank registered the security interest on the property with Central Registry by mentioning the new D.No.11-13-362 corresponding to subject property i.e. in Sy.No.9/1/F part, plot No.65 admeasuring 298 sq. yards, whereas the search conducted by the petitioners was by using old Door Number i.e. 11-13-60/1A, disclosing the result as 'not satisfied', and as such, both the House Numbers are one and the same situated at Alkapuri Colony, Saroornagar, Hyderabad.

**[14]** Respondent No.2 filed Debtor Based Search Report of CERSAI dated 29.10.2025, Valuation report dated 04.09.2024 and Certificate confirming the identity of the property.

**[15]** Learned Senior Counsel appearing for respondent No.2 lastly contended that, in view of the pendency of the proceedings before the learned DRT and the petitioners' failure to comply with the interim order passed therein, the petitioners are barred from invoking the writ jurisdiction of this Court.

**[16]** Sri Ramakanth Reddy, learned counsel appearing for petitioner Nos.3 and 4/auction purchasers submits that they are the successful bidders and pursuant to the auction, they have deposited an amount of Rs,.3,29,18,000/- and accordingly, the Bank has issued Sale Certificate and took possession and as such, the Writ Petition has become infructuous and liable to be dismissed.

**[17]** We have given our earnest consideration to the contentions urged by respective parties.

**[18]** Section 26D of the Act states:

“26D. Right of enforcement of securities. Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of this Chapter, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry.”

**[19]** A perusal of the record reveals that it is not in dispute that the petitioners knocked the doors of the learned DRT on the similar circumstances by instituting S.A.No.438 of 2024, which is pending for consideration.

**[20]** The security asset (schedule property) is situated in Sy.No.9/1/F bearing Plot No.65 admeasuring 298 sq. yards with Door No.11-13-60/1A (old) and new Door No.11-13-362, which was subsequently bifurcated and allotted Door Numbers 11-13-362, 362/1 and 362/2, situated at Alkapuri Colony, Saroor Nagar, Hyderabad. The sale deed bearing Doc.No.14/2016, which is mortgaged on 24.03.2016 with respondent No.2 Bank, reflects old Door Number of the property bearing No.11-13-60/1A, whereas the respondent No.2 Bank registered the security interest/charge created on the property with the Central Registry by mentioning the new D.No.11-13-362 in the

same survey number. The said charge was duly registered with the Central Registry as required under Section 26D of the Act. The documents placed on record by the learned counsel appearing for respondent No.2 specify the same. Therefore, it cannot be said that there is violation of Section 26D of the Act.

**[21]** The record further reveals that the petitioners never raised any objection with respect to the alleged non-registration of charge with the Central Registry at any point of time either at the time of Demand Notice, Possession Notice or Sale Notice. A perusal of the proceedings before the learned DRT in S.A.No.438 of 2024, reveal that the petitioners never raised any objection during the auction proceedings. Since the petitioners have failed to comply with the conditional order passed by the learned DRT while passing the interim orders, the petitioners are estopped from invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

**[22]** Further, the petitioners did not raise any objection at the time of receiving Demand Notice under Section 13(2) of the Act or subsequently and the same indicates that there are no bona fides on the part of the petitioners.

**[23]** The petitioners availed the statutory remedy before the learned DRT, however, failed to comply with the conditional orders and the registration under CERSAI is duly completed. Therefore, we are of the opinion that initiation of the present Writ Petition is clearly abuse of process of law, and the same is not maintainable.

**[24]** Accordingly, W.P.No.32316 of 2025, along with all connected applications, is dismissed. There shall be no order as to costs

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2026(1)SDJ81

**IN THE HIGH COURT AT CALCUTTA**

(Hon'ble Judge : Aniruddha Roy)

I A No G A Com; C S - Com (Civil Suit (Commercial)) No 2 of 2025; 63 of 2025

**dated 03/12/2025**

*Senbo Engineering Limited*

**Versus**

*Bank of Maharashtra*

**ONE TIME SETTLEMENT**

Code of Civil Procedure, 1908 Or. 7R. 11 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 19, Sec. 34 - Insolvency and Bankruptcy Code, 2016 Sec. 63, Sec. 7 - Recovery of Debts and Bankruptcy Act, 1993 Sec. 19, Sec. 17 - One Time Settlement - Defendant bank sought rejection of plaint filed by borrower company claiming concluded OTS contract - Plaintiff asserted bank acted upon settlement and accepted payments - Bank argued

OTS not enforceable right and suit barred by SARFAESI, IBC and DRT Acts - Court observed rejection of plaint warranted only if suit barred by law - Found that plaint disclosed triable issue on existence of concluded contract - Rejection would amount to deciding facts without trial - Bar under SARFAESI and IBC not attracted as plaintiff did not challenge bank's actions under such statutes - Court held plaint maintainable and fit for trial - Application Dismissed

**Law Point : A plaint cannot be rejected under Order VII Rule 11 CPC when it discloses triable issue of concluded contract; bar under SARFAESI or IBC arises only when reliefs directly affect proceedings under such statutes**

**Acts Referred :**

Code of Civil Procedure, 1908 Or. 7R. 11

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 19, Sec. 34

Insolvency and Bankruptcy Code, 2016 Sec. 63, Sec. 7

Recovery of Debts and Bankruptcy Act, 1993 Sec. 19, Sec. 17

**Counsel :**

Dhruba Ghosh (Senior Advocate), Nilay Sengupta, Altamash Alim, Sujit Banerjee, Sunanda Samanta, Sourav Kr Mukherjee, Nirmalya Dasgupta, Falguni Jana, Sohana Pal, Souhardya Mitra

## JUDGEMENT

**Aniruddha Roy, J.**

**[1] In Re: IA NO. GA-COM/2/2025**

**Facts:**

1. This is an application filed by the defendant-bank, inter alia, praying for rejection of plaint and consequential dismissal of the suit.

**[2]** Prayers from the master summons are quoted below :

**(a)** The plaint filed in the present suit, being CS-COM 63 of 2025 (Senbo Engineering Limited V/s Bank of Maharashtra) be rejected and taken off the file;

**(b)** In the alternative, the present suit, being CS-COM 63 of 2025 (Senbo Engineering Limited V/s Bank of Maharashtra), be summarily be dismissed;

**(c)** Stay of all further proceedings in the present action, being CSCOM 63 of 2025 (Senbo Engineering Limited V/s Bank of Maharashtra), till the disposal of the instant application;

**(d)** Ad-interim order in terms of prayer (c)

**(e)** Cost of the instant application to be borne by the plaintiff above named;

**(f)** Such other order and/or orders as this Hon'ble Court may deed fit and proper.

**[3]** The plaint is annexed to the supporting affidavit at page 32 thereto. The summary of the plaint case is that from time to time the plaintiff has availed of advances and financial facilities/loans from the defendant-bank. The plaintiff defaulted. The account of the plaintiff was declared as NonPerforming Asset (in short **NPA**). On October 13, 2017 the defendant-bank had served a notice under sub-Section (2) to Section 13 of the **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002** (for short **SARFAESI Act**). On December 14, 2018 the defendant-bank has served notice in respect of the security interests under sub-Section (4) to Section 13 of the Securitization Act. Plaintiff has not challenged such actions taken by the bank under Securitization Act. On March 5, 2019 the bank has filed an application under Section 19 of the **Debts Due to Banks and Financial Institutions Act, 1993** (for short **Debts Recovery Act**), which has been registered before the jurisdictional DRT as OA 183 of 2019. In 2020 the bank has initiated proceeding under Section 7 of the **Insolvency and Bankruptcy Code, 2016** (for short **IBC**). At this juncture, a one-time settlement proposal (for short **OTS**) was submitted by the plaintiff. As the OTS proposal was submitted and was not considered by the bank, the said proceeding under Section 7 of IBC which was initiated in 2020 was withdrawn. The said first OTS proposal had failed as the bank did not agree. In or about March 2024, the bank has initiated the second proceeding under Section 7 of IBC, the same is still pending before NCLT. On December 27, 2024 **at page 141** to the supporting affidavit, the plaintiff has submitted its second OTS proposal. By a letter dated **January 21, 2025** at **page 148** to the supporting affidavit the bank has allegedly rejected the said second OTS proposal. Further plaint case is that, from time to time under the said first OTS proposal, though not fructified, plaintiff has made substantial payment. Similarly, under the said second OTS proposal from time to time negotiations took place and the plaintiff has made substantial payment to the bank, which was accepted by the bank. As per asking of the bank the plaintiff has also enhanced its offer and made further payment under the second OTS proposal. Further negotiation took place by and between the plaintiff and the bank, as would be evident from plaintiff's letter dated **February 5, 2025** at **page 151** to the supporting affidavit and the bank had rejected the OTS proposal by its letter dated **February 13, 2025** at **page 153** to the supporting affidavit.

**[4]** In this conspectus of facts, the plaintiff contends that a concluded contract has been arrived at by and between the parties on account of one-time settlement of the dues of the bank and the bank cannot resile therefrom. Both the parties have acted upon such agreement between the parties. The plaintiff has altered its position upon being represented by the bank and paid the bank substantially. The bank, now cannot reject the one-time settlement proposal proposed by the plaintiff.

**[5]** In view of the above, the plaintiff has instituted the instant suit praying for the reliefs :-

"**(a)** A decree of declaration that the acceptance of consideration by the defendant bank against the enhanced offer of OTS proposed by the plaintiff has resulted into a concluded contract;

**(b)** A decree of specific performance of the contract in respect of the concluded contract between the plaintiff and the defendant thereby directing the defendant bank to accept the remainder amount of Rs.54 crores within 31st December, 2025 in lieu of full and final discharge of all the liabilities of the plaintiff company against the defendant bank;

**(c)** A decree of permanent injunction restraining the defendant bank from taking any coercive steps against the plaintiff company which frustrates the concluded contract of OTS between the plaintiff and the defendant;

**(d)** Decree for delivery up and cancellation of the Letters of the plaintiff dated 5th February 205 and 18th February 2025 and the defendant's letters dated 21st January 2025, 13th February 2025 & 19th February 2025;

**(e)** Receiver;

**(f)** Injunction;

**(g)** Judgment upon admission;

**(h)** Attachment before judgment;

**(i)** Costs;

**(j)** Any further reliefs or reliefs as this Hon'ble Court may deem fit and proper."

**[6]** The defendant has applied for rejection of the plaint.

**[7]** Pursuant to the direction of the Court the parties to the instant application have filed and exchanged their affidavits.

**Submissions :**

**[8]** Mr. Sourav Kr. Mukherjee, learned counsel being ably assisted by Mr. Nirmalya Dasgupta, learned counsel appearing for the defendant/applicant referring to the averments made in the plaint and the reliefs claimed therein, at the outset, submits that the present suit is nothing but a ploy to resist the claims of the bank on account of default on the part of the plaintiff in respect of the financial assistance provided to it by the bank. The records would show that the OTS proposed by the plaintiff had not fructified.

**[9]** Mr. Sourav Kr. Mukherjee, learned counsel further submits that, the prayers made in the plaint specifically **prayers (c) and (d)** are clearly in prohibition of the provisions made under Section 34 of the SARFAESI Act, 2002. Learned counsel further submits that the OTS proposal submitted by the plaintiff was not in terms of any Reserve Bank of India guidelines (for short RBI guidelines) neither in terms of any statutory scheme. Therefore, it is not incumbent or binding upon the bank to accept such OTS proposal, in the event, the bank authority thinks it fit not to be

feasible or accepted by the bank. The OTS proposal submitted by the plaintiff was rejected by bank.

**[10]** Mr. Sourav Kr. Mukherjee, learned counsel appearing for the defendantbank submits that a defaulted borrower cannot claim OTS as a matter of right. An OTS cannot be enforced by way of filing a suit for specific performance. Inasmuch as the bank twice by its communications dated January 21, 2025 at page 148 and February 13, 2025 at page 153 to the supporting affidavit had rejected the OTS proposals of the plaintiff, as they were not acceptable to the authority. It is ultimately for the bank to take a conscious decision in its own interest and to secure/recover the outstanding debt. No bank can be compelled to accept a lessor amount under any OTS. The rejection of OTS proposal at the end of the bank was in its commercial wisdom. No borrower, as a matter of right, prays for grant of benefit of OTS. In support, Mr. Sourav Kr. Mukherjee has relied upon the following decisions :

(a) In the matter of: **Bijnor Urban Cooperative Bank Limited Bijnor and Ors. Vs. Meenal Agarwal and Ors**, 2023 2 SCC 805.

(b) In the matter of: **State Bank of India Vs. Arvindra Electronics Private Limited**, 2023 1 SCC 540.

**[11]** Mr. Sourav Kr. Mukherjee appearing for the defendant-bank submits that in view of prayers made in the plaint, steps taken by the bank in exercise of power under Section 13 of the SARFAESI Act, 2002, have also become affected. He submits that there is a clear bar under Section 34 of the SARFAESI Act, 2002, to file such a suit. In support, he has relied upon a decision of the Hon'ble Supreme Court In the matter of: Authorised Officer, **State Bank of India Vs. Allwyn Alloys Private Limited and Ors**, 2018 8 SCC 120.

**[12]** Mr. Sourav Kr. Mukherjee further submits that the bank has also initiated proceeding under Section 7 of IBC which is pending before NCLT. Section 63 of IBC imposes a clear bar on the jurisdiction of civil court. In view of the reliefs claimed in the plaint, he submits that the insolvency proceeding initiated by the bank would also be affected. In view of the bar under Section 63 of IBC, the plaint filed in the instant suit should be rejected. Similarly, he submits that the proceeding initiated before the jurisdictional DRT for recovery of defaulted amount against the plaintiff borrower shall also be affected because of the reliefs claimed in the instant plaint. The instant suit is also barred under Section 17 of the DRT Act, 1993. In view of the above, Mr. Sourav Kr. Mukherjee, submits that the plaint should be rejected.

**[13]** Mr. Dhruba Ghosh, learned Senior Advocate appearing for the plaintiff has solely relied upon a judgment of the Hon'ble Supreme Court In the matter of: **Bank of Rajasthan Limited Vs. VCK Shares and Stocks Broking Services Limited**, 2023 1 SCC 1 and made his submissions to oppose the application filed by the defendant-bank.

**[14]** Mr. Dhruba Ghosh, learned Senior Advocate appearing for the plaintiff submits that before the said judgment of the Hon'ble Supreme Court **In the matter of: Bank of Rajasthan Limited (supra)** was delivered, the borrower had the only remedy to raise its counter-claim against the claim of the bank before DRT if a proceeding is initiated by the bank under Section 19 of the DRT Act, 1993. Even though, there has been no provision for transfer of borrower's suit to the tribunal but suits filed by the borrowers over the country were transferred before the tribunal and were treated to be the counter-claim of the borrowers. After the said judgment **In the matter of: Bank of Rajasthan Limited (supra)** the law has changed to the effect that the borrowers can either file a counter-claim before DRT in a proceeding filed under Section 19 of the DRT Act, 1993 or maintain an independent civil suit before a jurisdictional civil court.

**[15]** Mr. Dhruba Ghosh, learned Senior Advocate then refers to the plaint and relied upon various paragraphs therefrom and the reliefs claimed therein. He submits that DRT does not have any jurisdiction for passing a decree for declaration or for passing a decree for specific performance of any contract, as claimed by the plaintiff in the instant plaint. According to him on a plain reading of the plaint it would be evident that, there had been a concluded contract between the parties with regard to one-time settlement of the alleged debts of the borrower-plaintiff but the bank resiled from it and hence, the plaintiff has claimed specific performance of contract, as the OTS has achieved the character of a concluded contract. If the plaint succeeds, then automatically the defendant bank would have to be obliged to accept payment from the plaintiff under the said OTS and the alleged debts of the plaintiff would be settled once for all. Therefore, the instant suit is maintainable. The plaintiff may succeed, may loose the suit, at the trial but the plaint has to travel through the stage of trial.

**[16]** On facts, Mr. Dhruba Ghosh, learned Senior Advocate submits that the first OTS could not be made through. However, the second OTS proposal submitted by the plaintiff was acted upon and accepted by the bank, as the bank has accepted payments from time to time thereunder from the plaintiff. As per demand of the bank, the plaintiff has enhanced its offer and paid the amount on such enhanced offer and the bank has accepted the same. He submits that a concluded contract had arrived at by and between the parties on account of OTS and since the bank has resiled therefrom, the instant suit has been filed praying for specific performance of the concluded contract with consequential reliefs.

**[17]** On this scope of IBC Mr. Dhruba Ghosh, learned Senior Advocate submits that the jurisdiction of NCLT, while adjudicating an insolvency proceeding under IBC, is very limited only to the extent to ascertain whether any default is there. If the default is established then the further process for insolvency proceeds according to the provisions laid down under IBC. Insolvency proceeding is not a debt collecting proceeding. In support, he has relied upon a decision of the Hon'ble Supreme Court In the matter of: **ES Krishnamurthy and Ors. Vs. Bharath Hi-Tecch Builders Private Limited**, 2022 3 SCC 161.

**[18]** Referring the reliefs claimed in the plaint Mr. Dhruba Ghosh, learned Senior Advocate submits that the plaintiff has not challenged the steps taken by the bank under the SARFAESI Act neither the steps taken under IBC. In fact, the proceeding for recovery of debt initiated by the bank under Section 19 of the DRT Act is also pending and is being proceeded with. The plaintiff has also not challenged initiation of the said debt recovery proceeding pending before the DRT. Therefore, the plaint is neither barred under Section 34 of the SARFAESI Act nor under Section 63 of the IBC or under any provisions of the DRT Act.

**[19]** Accordingly, Mr. Dhruba Ghosh, learned Senior Advocate appearing for the plaintiff submits that the application filed by the defendant praying for rejection of the plaint is misconceived, not tenable in law and should be dismissed. The plaint must stands for trial.

**Decision:**

**[20]** After considering the rival submissions of the parties and on perusal of the materials on record, this Court at the outset reiterates the law prevails on rejection of plaint. To adjudicate an application praying for rejection of plaint, it is the only duty caste upon the Court to read the plaint as it is, by taking the statements made therein as true, correct and sacrosanct including the reliefs claimed therein. If on a meaningful and plain reading of the plaint, the Court finds without holding any detail fact-finding enquiry on it, that the plaint is barred by law and no triable issue is required to be seen, the Court is empowered to reject the plaint summarily at any stage of the proceeding.

**[21]** On a plain and meaningful reading of the instant plaint together with the reliefs claimed therein, it appears to this Court that, the plaint case is that the borrower plaintiff is admittedly a defaulter. On harmonious reading of the provisions under **Rule 11 to Order VII of Code of Civil Procedure, 1908 (for short CPC)** this Court is also of the firm and considered view that even if a particular point of law is not raised by the defendant in an application for rejection of the plaint, if the civil court on a plain reading of the plaint comes to a finding that the suit is barred by law, the power, authority and jurisdiction of the Court is plenary to reject the plaint without even the point being taken by the defendant. Similarly, in case of an undefended suit, the Court can summarily reject the plaint, if on a plain reading of the plaint, the Court is of the view that the suit is barred by law.

**[22]** The borrower plaintiff proposed one-time settlement twice. The first one had failed. Insofar as the second one is concerned, mutual discussions and negotiations took place by and between the plaintiff and the defendant bank from time to time. Pursuant to such negotiations and discussions, the plaintiff has raised its offer according to the demand of the bank. Amounts paid by the plaintiff from time to time which were accepted by the defendant bank including the amount under the enhanced offer, as was enhanced pursuant to demand of the bank. Even then, the bank has allegedly resiled from its promise and rejected the OTS, as the same was not acceptable to its authority. In the conspectus of these facts the borrower plaintiff has

filed the instant suit praying for specific performance of an alleged concluded contract with regard to OTS along with other consequential reliefs.

**[23]** The instant plaint with its reliefs, as it is framed, may not offend the steps taken by the bank under the SARFAESI Act or IBC or the proceeding pending under Section 19 of the DRT Act. However, on a plain and meaningful reading of the plaint, this Court proceeds to examine whether the plaintiff has a right to enforce an alleged contract of OTS in law.

**[24]** Admittedly, plaintiff is a defaulter borrower. By virtue of furnishing OTS proposal the plaintiff intends to settle its defaulted account at a lessor sum. Had this proposal been accepted by the bank. Conclusively and without any rejection, the plaintiff could have paid it and could become debt free. In the facts of the instant case, twice the OTS proposals had been rejected by the bank and last of such rejection was on **February 13, 2025 at page 153** to the supporting affidavit, as the proposal was not acceptable to the bank authority. The rejection clearly shows a conscious decision of the bank while rejecting the OTS. It is ultimately for the bank to take a conscious decision in its own interest and to secure/recover the outstanding debt. No bank can be compelled to accept lessor amount under any OTS proposal. When the loan is disbursed by the bank and the borrower defaulted, the outstanding amount due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom. In absence of any RBI scheme and/or any other statutory scheme, the OTS is an arrangement between the bank and its defaulter borrower without any statutory flavour, as in the instant case. Without the statutory flavour an OTS is a policy decision of the bank in its commercial wisdom. No defaulted borrower can, as a matter of right, prays for grant of benefit of such onetime settlement. It is pertinent to note that in the facts of the instant case, plaintiff submitted its offer for OTS not under any statutory scheme but on its own pursuant to the discussions and negotiations held with the bank, as the plaint case is. Therefore, no right has been created in favour of the plaintiff to enforce the said OTS by way of specific performance or otherwise.

**[25]** If the plaintiff cannot claim any right to enforce the said OTS, the claim for specific performance is not maintainable. Inasmuch as, the relief for specific performance is equitable in nature. Hon'ble Supreme Court **In the matter of: Bijnor Urban Co-operative Bank Limited (supra)** had observed as under :

**"11.** While passing the impugned judgment and order, the High Court, in response to the submissions on behalf of the Bank that, there are all possibilities of recovery of the loan amount and the efforts are being made to recover the amount by initiating proceedings under the SARFAESI Act and that the properties mortgaged can be auctioned, has observed that the proceedings under the SARFAESI Act have remained pending for seven years and the Bank has been unable to recover its dues and therefore the hope of recovery is illusory. This conclusion is not supported by any material on record. Merely because the proceedings under the SARFAESI Act have remained

pending for seven years, the Bank cannot be held responsible for the same. No fault of the bank can be found. What is required to be considered is a conscious decision by the Bank that the Bank will be able to recover the entire loan amount by auctioning the mortgaged property and a due application of mind by the Bank that there are all possibilities to recover the entire loan amount, instead of granting the benefit under the OTS Scheme and to recover a lesser amount. It is ultimately for the Bank to take a conscious decision in its own interest and to secure/recover the outstanding debt. No bank can be compelled to accept a lesser amount under the OTS Scheme despite the fact that the Bank is able to recover the entire loan amount by auctioning the secured property/mortgaged property. When the loan is disbursed by the bank and the outstanding amount is due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom.

**12.** Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

**13.** If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/installment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme.

**14.** The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

**15.** In view of the aforesaid discussion and for the reasons stated above, we are of the firm opinion that the High Court, in the present case, has materially erred and has exceeded in its jurisdiction in issuing a writ of mandamus in exercise of its powers under Article 226 of the Constitution of India by directing the appellant-Bank to positively consider/grant the benefit of OTS to the original writ petitioner. The impugned judgment and order passed by the High Court is hence unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside.

**16.** The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."

**[26]** The reliefs claimed in the plaint **In the matter of: Bank of Rajasthan Limited (supra)** is quoted as under :

**"5.** A crucial development took place on 18.03.1998 when the appellant sold the pledged shares of BFL Software Ltd. for a total sum of Rs.5,77,68,000/- to adjust the amounts against the dues in view of the authorisation available with them as a part of the loan transaction. The respondent, as a sequitur, filed Civil Suit no.129 of 1999 before the High Court of Calcutta on 09.03.1999 praying, inter alia, for the following reliefs:

i) A declaration that the sale of shares of BFL Software Ltd. was void;

ii) a decree for return of pledged shares in respect of overdraft facility account, and in default to pay Rs.48.95 crores; and

iii) a declaration that no sum was payable by the Respondent to the Appellant in respect of the term loan dated 27.07.1994 and Overdraft Account dated 19.09.1995 and that the Appellant bank was not entitled to a decree for a sum of Rs.8,62,41,973.36 from the Respondent."

**[27]** From the above, it would be evident that, the reliefs claimed in the instant plaint and the reliefs claimed **In the matter of: Bank of Rajasthan Limited (supra)** plaint are totally different by their nature and character. From the reliefs claimed in the plaint **In the matter of: Bank of Rajasthan Limited (supra)** it is clear that, there was a clear right to sue in favour of the plaintiff and the plaint was not barred by law otherwise. Whereas on a plain reading of the instant plaint and reliefs claimed therein, it is clearly evident that the reliefs claimed in the instant plaint are barred by law, as the plaintiff cannot enforce an OTS, as already discussed above. Therefore, the instant plaint, as framed in its present form, is clearly barred by law.

**[28]** Therefore, even if, there is no jurisdictional bar to maintain a civil suit before a jurisdictional civil court but if on a plain and meaningful reading of the plaint, it appears to Court that, the plaint as it is framed in its existing form is otherwise barred by law, the same should be and liable to be rejected under the provisions of Rule 11 to Order VII of Code of Civil Procedure.

**[29]** In view of the forgoing reasons and discussions, the plaint filed in the instant commercial suit being **CS-COM/63/2025** stands **rejected** and is directed to be **taken off** the file.

**[30]** The suit register shall be rectified accordingly by the department.

**[31]** Accordingly, the instant application being **IA NO. GA-COM/2/2025** stands **disposed of** without any order as to cost

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2026(1)SDJ91

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

[From KOLHAPUR BENCH]

(Hon'ble Judge : S G Chapalgaonkar)

Writ Petition No 7905 of 2023 **dated 01/12/2025**

*Sangli Zilla Parishad Employees, Co-operative Credit Society, Limited*

**Versus**

*Ninaidevi Sahakari Sakhar Karkhana Limited; Dalmia Bharat Sugar and Industrict Limited*

**IMPLEADMENT OF AUCTION PURCHASER**

Code of Civil Procedure, 1908 Or. 6R. 17 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 - Impleadment of Auction Purchaser - Petitioner sought to implead auction purchaser in execution of award against borrower society - Auction conducted under SARFAESI Act - Purchaser contended liability limited to secured assets and not to business dues of borrower - Court observed petitioner not secured creditor and award did not create

charge on property - Transfer under SARFAESI covered assets, not ownership of business - Purchaser not successor in interest - Executing court rightly refused impleadment - Petition Dismissed

**Law Point : Auction purchaser under SARFAESI Act acquires assets without liability for prior business debts unless ownership of business as going concern transferred; impleadment in execution unjustified**

**Acts Referred :**

Code of Civil Procedure, 1908 Or. 6R. 17

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13

**Counsel :**

Umesh Mankapure, Parth Pitambare, Pankajsinh Deshmukh, Om Mangave, Siyal Magdum, Suryajeet P Chavan, Girish Godbole (Senior Advocate), Rahul Desai, Prasad Nagargoje, Vaishali Shelar, Shruti Tulpule, Pradeep Salgar

**JUDGEMENT**

**S. G. Chapalgaonkar, J.**

**[1]** Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.

**[2]** The petitioner impugns order dated 09.08.2021 passed by Civil Judge Senior Division, Islampur below Exhibit 64 in Special Darkhast No.2/2012, whereby application of petitioner/decree holder under Order VI Rule 17 of Code of Civil Procedure seeking permission to add respondent no.2 as party to execution proceeding has been declined.

**[3]** The petitioner is Co-operative Credit Society. The petitioner had advanced huge amount to respondent no.1. Since respondent no.1 defaulted in repayment, Dispute No.320/2009 was filed by petitioner before Co-operative Court against respondent no.1. On 30.09.2010, Co-operative Court passed award for Rs.11,71,648/- alongwith interest @ 16% per annum in favour of petitioner. Eventually, petitioner moved Execution Application No.2/2012 before Civil Judge Senior Division, Islampur for recovery of awarded amount from respondent no.1.

**[4]** While execution filed by petitioner was pending before Court, Maharashtra State Co-operative Bank initiated recovery proceeding against respondent no.1 by issuing notice under Section 13(2) of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). Thereafter, possession of secured assets of respondent no.1 was taken. In auction proceeding of secured assets, respondent no.2 purchased secured assets. Eventually, sale certificate has been issued in favour of respondent no.2. The respondent no.2 received possession of movable and immovable properties under panchanama dated 08.09.2014. In this backdrop, petitioner moved an application under

Exhibit-64 for impleading respondent no.2/auction purchaser as party in execution proceeding.

**[5]** The respondent no.2 caused appearance in pursuance to notice of application seeking their impleadment and contested application on the ground that purchaser accepted liability in respect of dues in relation to property purchased in auction and not business of respondent no.1. Hence, they cannot be burdened with any dues recoverable from respondent no.1. The Executing Court after hearing respective parties passed elaborate order dated 09.08.2021 rejecting petitioner's prayer for impleadment of respondent no.2 as party to execution and virtually held that respondent no.2 owes no liability to discharge dues of respondent no.1 owing to purchase of their Society in auction process.

**[6]** Mr. Umesh Mankapure, learned Advocate appearing for petitioner would submit that Co-operative Court has passed award dated 30.09.2010 in favour of petitioner for recovery of dues worth Rs.9,33,137/- alongwith interest @ 16% per annum. The award is put to execution in Regular Darkhast No.2/2012. The respondent no.2 purchased assets of respondent no.1 pursuance to auction initiated by Maharashtra State Co-operative Bank in year 2014 and took over possession of assets of respondent no.1. According to Mr. Mankapure, respondent no.2 is put to obligation towards all dues existing and future of respondent/Society. By inviting attention of this Court to wording of tender notice and sale certificate, he endeavours to impress upon this Court that purchaser has accepted all encumbrances presently on property and which may arise in future and agreed to pay the same as per tender conditions. Mr. Mankapure would further submit that entire business of respondent no.1 is now run by respondent no.2. All the assets of Society are possessed by respondent no.2. Therefore, for purpose of execution of award, respondent no.2 ought to have been impleaded as party in execution proceeding. The Executing Court while deciding application seeking impleadment of respondent no.2, erroneously ventured in question as to entitlement of petitioner to recover awarded amount from respondent no.2 and rejected application on erroneous count.

**[7]** Per contra, Mr. Girish Godbole, learned Senior Advocate appearing for respondent no.2 would submit that respondent no.2 being auction purchaser of assets in auction under Section 13 of SARFAESI Act, cannot be held liable for any liabilities or dues of business of respondent no.1. The liabilities of respondent no.2 are limited towards attachable to secured assets/sale proceeds. It does not contemplate liability arising out of business of respondent no.1. He would point out that respondent no.1 is still in existence having certain assets. The efforts of respondent no.1 to put responsibility of their dues on shoulder of auction purchaser is objectionable. In support of his contentions he relies upon exposition of law by Supreme Court in cases of **State of Karnataka and Another Vs. Shreyas Papers (P) Ltd. and Others**, 2006 1 SCC 615, **Rana Girders Limited Vs. Union of India and Others**, 2013 10 SCC 746 and Division Bench judgment of this Court in case of **National Steel and Agro**

**Industries and Another Vs. State of Maharashtra and Others**, 2015 2 AIRBomR 805.

**[8]** Having considered submissions advanced by learned Advocates appearing for respective parties, contentious issue that arises for consideration in this Writ Petition is as to whether petitioner has made out case to permit impleadment of respondent no.2 as party in execution proceeding initiated by him for recovery of awarded amount against respondent no.1 being auction purchaser of assets of respondent no.1/Judgment Debtor.

**[9]** Undisputedly, petitioner has put to execution award passed against respondent no.1 for recovery of dues under award. The dues are pertaining to advances made by petitioner to respondent no.1. While execution of award was in progress against respondent no.1, Maharashtra State Co-operative Bank i.e. Secured Creditor possessed assets of respondent no.1 and auctioned the same under provisions of SARFAESI Act. The tender notice for sale shows that bids were invited for sell of properties of respondent no.1 as per description mentioned therein. The note in auction notice reads thus:

"The Bank intends to sale the assets detailed above as "AS IS WHERE IS, AS IS WHAT IS AND WHATEVER THERE IS WHICH IS WITHOUT ANY WARRANTY, GUARANTEEF WITHOUT ANY RECOURSE ASSURANCE AND UNDERTAKING OR REPRESENTATION OF ANY KIND WHATSOEVER, The AD does not take or assume any responsibly for any shortfall of the movable/immovable asset for procuring any permissions in or to any dues, statutory or otherwise Viz Provident Fund Sales Tax Central Excise Worker's Dues Property Electricity Charges Water Charges etc., of any authority established by law. Such dues any both existing & future.......to the property will have to be borne paid by the purchaser. The encumbrances marked in 7x12 Extracts so need to be borne paid by the Purchaser whatever is application as per law."

**[10]** The respondent no.2 being successful bidder, received possession of assets. The sale certificate depicts that purchaser has accepted all encumbrances presently on property, which may arise in future and agreed to pay the same as per tender condition accepted by him. The sale certificate incorporates list of encumbrances/dues, which includes Electricity, Sales Tax, Professional Tax, Provident Fund, workers' salary, sugarcane purchase tax and other liability not quantified as on date of valuation of assets. Undisputedly, operation of sugarcane factory was closed much prior to date of auction and what was auctioned was assets of respondent no.1. Pertinently, registration of respondent no.1 is still in existence.

**[11]** Undisputedly petitioner is not Secured Creditor or there was no charge of dues of petitioner on assets of respondent no.1. The Supreme Court in case of **Shreyas Papers (P) Ltd. and Others** (supra) while dealing with provision under Section 15(1) of Karnataka Sales Tax Act, 1957 observed in paragraph No.15 as under:

"A careful reading of Section 15(1) of the KST Act shows that the consequences contemplated therein, namely, foisting of the liabilities of the defaulting transferor onto the transferee, would come into effect only if the "ownership of the business" is transferred. Although, Mr. Hegde strenuously urged that "business" could not be separated from the assets of the business, we are unable to accept this contention. Business is an activity, directed with a certain purpose, more often towards producing income or profit. Ownership of assets is merely an incident rather than a characteristic of business. Hence, the mere transfer of one or more species of assets does not necessarily bring about the transfer of the "ownership of the business" for "ownership of a business" is much wider than mere ownership of discrete or individual assets. In fact, "ownership of business" is wider than the sum of the ownership of a business' constituent assets. Above all, transfer of "ownership of business" requires that the business be sold as a going concern. In our view, therefore, Section 15(1) is intended to operate only when there is complete transfer of "ownership of business" so as to render the transferee as a successor-in-interest of the transferor. Only in such an eventuality does Section 15(1) make the transferee liable for the transferor's sales tax liabilities."

**[12]** Similar view is reiterated by Supreme Court in case of **Rana Girders Limited** (supra) while dealing with liability of auction purchaser to pay outstanding dues of Central Excise of erstwhile owners and observed in paragraph no.21 as under:

"A harmonious reading of the judgments in Macson and SICOM would tend us to conclude that it is only in those cases where the buyer had purchased the entire unit i.e. the entire business itself, that he would be responsible to discharge the liability of Central Excise as well. Otherwise, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the Statute, claiming "first charge for the purchaser". As far as Central Excise Act is concerned, there was no such specific provision as noticed in SICOM as well. Proviso to Section 11 is now added by way of amendment in the Act only w.e.f. 10.9.2004. Therefore, we are eschewing our discussion regarding this proviso as that is not applicable in so far as present case is concerned. Accordingly, we thus, hold that in so far as legal position is concerned, UPFC being a secured creditor had priority over the excise dues. We further hold that since the appellant had not purchased the entire unit as a business, as per the statutory framework he was not liable for discharging the dues of the Excise Department."

**[13]** The aforesaid exposition of law would make it clear that if auction purchaser has purchased entire business as ongoing concern, it would be responsible to discharge liability of erstwhile owner. However, purchase in case of assets of dormant business, auction purchaser is not liable to discharge liability arising out of business of erstwhile owner. In present case, careful reading of stipulation in tender notice and sale certificate would show that auction purchaser has agreed to discharge all liabilities, dues of authorities and departments in respect of secured assets and if payable in law,

attachable to secured assets, sale proceeds. It is, therefore, important to find out whether dues claimed by petitioner were attachable to secured assets.

**[14]** Admittedly, petitioner Credit Society had advanced amount to respondent no.1, which has been defaulted. Therefore, petitioner approached Co-operative Court seeking award for recovery of amount. In absence of charge of aforesaid dues on assets of respondent no.1, respondent no.2 auction purchaser cannot assume such liability. The Executing Court has rightly observed that petitioner was not diligent while process of auction was undertaken by Maharashtra State Cooperative Bank under provisions of SARFAESI Act and now trying to shift liability on auction purchaser. The dues of petitioner can never be classified as dues to property. Essentially, such dues are pertaining to business of respondent no.1. In result, there is no reason to entertain application for impleadment of respondent no.2 in execution of award initiated by petitioner against respondent no.1 for recovery of dues. In result, this Court finds no substance in contention of petitioner.

**[15]** Although Mr. Mankapure, learned Advocate appearing for petitioner raises procedural objection that Executing Court while dealing with prayer for amendment/impleadment of respondent no.2 in execution proceeding could not have delve into aspects of liability, such objection cannot be countenanced for reason that respondent no.2 is not party to transaction between petitioner and respondent no.1. He is sought to be impleaded being auction purchaser of assets of respondent no.1. If petitioner wants to implead him as party in execution of award passed against respondent no.1, it was necessary to examine if petitioner can make out any case for impleading him as party. While doing so, question of liability of respondent no.2 arising out of auction purchase of assets is also required to be examined.

**[16]** In result, no fault or jurisdictional error can be found in approach of Executing Court. Hence, Writ Petition stands rejected.

**[17]** Rule stands discharged

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2026(1)SDJ96

**THE HIGH COURT OF JUDICATURE AT MADRAS**

(Hon'ble Judge : Manindra Mohan Shrivastava ; G Arul Murugan)

C R P (Civil Revision Petition); C M P (Civil Miscellaneous Petition) No 5237 of 2025; 26403 of 2025 **dated 29/10/2025**

*M/s Lucky Footwear Components; V Tabraze Basha; V Aslam Basha*

**Versus**

*Authorized Officer, Indian Bank, District- Tirupattur; Manager, District- Tirupattur; Amarnath Reddy*

**SARFAESI PROCEEDINGS**

Wealth Tax Act, 1957 Sec. 34AB - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 - Security Interest (Enforcement) Rules, 2002 Rule 9 - SARFAESI Proceedings - Borrowers challenged auction sale conducted by bank under SARFAESI Act alleging defect in notice, improper valuation and non-consideration of objections - Bank contended compliance with procedure and rejection of objections - Observed that borrowers failed to prove prejudice or violation of mandatory provisions - Found that sale conducted as per Rules and valuation valid - Dismissal of securitisation application and appeal upheld - Petition Dismissed

**Law Point : Once sale notice and valuation under Rule 9 properly issued and borrowers failed to show prejudice, court will not interfere in SARFAESI auction proceedings under Article 227.**

**Acts Referred :**

Wealth Tax Act, 1957 Sec. 34AB

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13

Security Interest (Enforcement) Rules, 2002 Rule 9

**Counsel :**

N Muralikumaran, Aishwarya Sridhar, T Sundar Rajan, S Charuhasan, S Vanithalakshmi, P C Harikumar

**JUDGEMENT**

**Manindra Mohan Shrivastava, J.**

**[1]** Heard.

**[2]** This petition under Article 227 of the Constitution of India has been filed against the order dated 26.09.2025 passed by the Debt Recovery Appellate Tribunal, by which the Appellate Tribunal confirmed the order of dismissal of SA filed by the petitioners/borrowers.

**[3]** Default on the part of the petitioners/borrowers to repay the loan resulted in initiation of proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') against the petitioners. Notice under Section 13(2) of the SARFAESI Act was issued followed by measures taken under Section 13(4), which led to the symbolic possession taken and also sale of the secured asset through auction by the bank.

3.1. These proceedings were challenged by the petitioners by filing a Securitisation Application before the Debts Recovery Tribunal. The application of the petitioners was rejected. Aggrieved, the petitioners filed appeal before the Debt Recovery Appellate Tribunal, though unsuccessfully, giving rise to the instant petition.

**[4]** The submissions made by learned counsel for the petitioners are as below:

A) The sale notice dated 25.07.2022 was defective for the reasons that -

(i) it is in contravention of 15 clear days as provided in Rule 9 of the Security Interest (Enforcement) Rules, 2002;

(ii) the description of the property is not proper as the superstructure has not been clearly described in the sale notice; and

(iii) the valuation report, which was made basis to fix the minimum reserve price, was prepared more than one year before, which violated the guidelines under NPA Management Police 2022-23 Version 1.0 issued by the respondent/bank.

B) The respondent also contravened the provision contained in Section 13(3A) of the SARFAESI Act in not deciding the petitioners' objection to notice under Section 13(2).

C) The petitioners' account was wrongly classified as NPA, as

(i) an amount of Rs.1,37,718/-, which was paid by the petitioners, was not taken into consideration while working out the amount in default and thereby, resulting in wrong classification of the petitioners' account as NPA; and

(ii) the petitioners were illegally deprived of the benefit of additional loan facility at the rate of 20% of the loan during moratorium period on account of Covid-19 as per the bank policy.

D) The petitioners have paid a huge amount of Rs.78 lakhs and are even willing to pay the balance amount as claimed by the bank in the OA filed before the Debts Recovery Tribunal.

**[5]** Learned counsel for the respondent/bank replies to the contentions by submitting that the bank replied to the so-called objection under Section 13(3A) on 31.07.2021. His submission is that a close look of the contents of letter dated 23.06.2021 would show that it was not in the nature of any objection, but only a prayer to grant some relaxation and further extension of time was made. As there was no objection as such, there was no requirement of law to decide any objection.

5.1. He would next submit that the submissions with regard to the defect in the notice are liable to be ignored, for the reason that -

(a) the valuation report is dated 31.07.2021 whereas the sale notice was published in the newspaper on 26.07.2022. The occasion to describe the reserve price arose while issuing the sale notice and not on the date of sale.

(b) the bank got the valuation of the property made by an approved valuer duly registered under Section 34AB of the Wealth-Tax Act, 1957, whereas the petitioners' case relies upon the valuation made by a licensed building surveyor, who is not an approved valuer and therefore, only on this ground, it cannot be said that the building was under-valued.

(c) the sale notice clearly describes the property as commercial cum industrial building with RCC roof including description and measurements of the plots, and, therefore, it cannot be said that there was no proper description.

5.2. He would next submit that various objections with regard to the petitioners' account being wrongly classified as NPA by not including Rs.1,37,718/- as paid amount were never raised before the Debts Recovery Tribunal and are being raised for the first time. The bank has clearly stated before the Tribunals below that additional loan facility at the rate of 20% would not be available to those who are classified as SMA-2, as they are not eligible under the guidelines. It was clearly averred that the petitioners were in the category of SMA-2 and therefore, they were not eligible. This assertion was not countered by filing any rejoinder before the Debts Recovery Tribunal and therefore, it cannot be allowed to be raised at this stage.

**[6]** Learned counsel appearing for the auction purchaser supports the submissions made by learned counsel for the bank and submits that he has paid huge amount of Rs.67 lakhs pursuant to the auction, which was held way back on 10.08.2022 and the sale certificate has also been issued on 25.08.2022.

**[7]** We have considered the rival submissions made by learned counsel for the parties and perused records.

**[8]** We gave both the parties a detailed hearing taking into consideration that though after sale, the petitioners, in all, have paid Rs.78 lakhs and also offered that they are willing to pay the balance amount, as is claimed by the bank in the OA filed before the Tribunal for recovery of the remaining debt liability, after adjusting the sale price.

8.1. In order to explore the possibility of resolution of the dispute, before going into adjudication, we noticed and also sought response of the auction purchaser as to whether he would be satisfied if the amount paid by him to the bank is returned to him with the current rate of interest. Since the petitioners had offered to settle the entire loan account, though at a belated stage, this option was given to the auction purchaser. However, learned counsel appearing for the auction purchaser does not accept and would submit that he would be contesting the matter.

**[9]** The auction notice, though, was dated 25.07.2022, it was published on 26.07.2022. The auction was fixed on 10.08.2022. If we exclude the date of publication of notice dated 26.07.2022, the auction was scheduled on 15 th day.

9.1. Rule 9 of the Security Interest (Enforcement) Rules, 2002 framed under the provisions of the SARFAESI Act, regulates the procedure for auction. Sub Rule (1) of Rule 9 being relevant is extracted herein below for ready reference:

**9. Time of sale, Issue of sale certificate and delivery of possession, etc.** - (1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published

in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

9.2. A plain reading of the aforesaid provision delineates in the first instance that no sale of immovable property shall take place before the expiry of 30 days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to subrule (6) of rule 8 or notice of sale has been served to the borrower. The proviso thereto, however, reduces this period in the contingency where sale is required to be conducted again. It clearly provides that if the sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and the sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale. Therefore, in case where the sale is not successful at the first instance, but is a case of subsequent sale, meaning thereby that earlier attempts made to sell the property through auction failed, in that eventuality, the period would be only 15 days. Moreover, the object of the said provision appears to be to put the borrower to notice of a minimum period of 15 days so that before auction, the borrower could repay the entire loan liability. Use of the expressions "serve, affix and public notice of sale" are clearly manifest of the intention of the rule-making authority that it is intended to give at least 15 days time to the borrower, so that the borrower could settle the loan amount before the property is actually put to sale.

9.3. In the present case, the sale notice was published in the newspapers on 26.07.2022 and the date of auction was fixed on 10.08.2022, that is, 15 th day. We are unable to accept the submission of learned counsel for the petitioners that it should be clear 15 days. The context in which the rule-making authority has provided 15 days notice, is only intended to serve as a reasonable time to the borrower to satisfy the loan amount. Moreover, present is not a case where the petitioners/borrowers have come out with a case that it had reached the bank to deposit the entire amount on 10 th August itself and even then, the bank proceeded to auction the secured asset on 10.08.2022. Therefore, the first objection must fail.

**[10]** The second objection that the description of the property in the sale notice is not proper, is required to be rejected at the threshold because the description of the property for sale given in the sale notice is as under:

"In tirupathur district, Ambur tk, Ambur SRO, Commercial cum Industrial building with RCC Roof situated at SF No.115 & 116, Plot no.285, 286, 287 & 288 Thuthipet Village, Ambur, Thirupattur of extent 12500 sq.ft. Boundaries: North by: Plot No.284, South by: Plot No.289 of Mr.Shameel's. East by: Street. West by: canal of horse. Owner of the property: Mr.V.Aslam Basha & Mr.Tabreez Basha."

10.1. It is abundantly clear that the description of the property has sufficient details. It clearly describes the place where the property is situated and that it is commercial cum industrial building with RCC roof situated at SF No.115 and 116 along with details of all other plots and also the measurements including the boundaries. It also describes who is the owner of the property. We fail to understand as to what more descriptive details could be given of the property which is proposed to be auctioned under the notice. Therefore, the contention in this regard is also liable to be rejected.

**[11]** The issue with regard to the correctness of the valuation of the property need not detain us much. Present is not a case where the bank got the property valued by one who was not authorised or was not having sufficient experience as required under the law to undertake valuation of the property. It is not even a case that while valuing the property, the superstructure/building of the property has been ignored. The case of the bank that the secured asset was valued by approved valuer of the bank, who is a registered valuer under Section 34AB of the Wealth-Tax Act, 1957, has not been disputed by the petitioners. The case of the petitioners seems to be that according to their own valuer, the value of the property is much more. The petitioners rely upon the report of the approved surveyor, who does not appear to be an approved valuer registered under Section 34AB of the Wealth-Tax Act.

11.1. Be that as it may, while exercising jurisdiction under Article 227 of the Constitution of India, this Court, in the absence of any perversity, would not assume role of an appellate authority on facts to re-appreciate the evidence on record and arrive at its own conclusion on facts by substituting one possible view in place of the other. The view which has been taken by the Tribunal is based on admissible evidence in the form of valuation of the property made by an approved valuer. Therefore, out of the two valuation reports placed before the Tribunal, if the Tribunal has accepted the valuation made by approved valuer, registered under the provision of Wealth-Tax Act, in our considered opinion, it cannot be said to be patently illegal or perverse so as to interfere in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

**[12]** One of the submissions made by the learned counsel for the petitioners is that the valuation actually done was based on the valuation report, though dated 31.07.2021, it was based on an inspection carried out on 27.03.2021 and therefore, the date on which the auction notice was issued, that is, 25.07.2022, there was significant enhancement in the property valuation and for that reason, the auction should be held illegal.

12.1. Firstly, the prescription that the valuation should be within a period of one year is part of the guidelines alone. It is not prescribed under any law. If that be so, only on the ground of technical violation of the guidelines, we would not be inclined to set aside the sale unless a clear prejudice is shown. Moreover, it is not the case that the auction was based on valuation done long back. The building was valued under the

report dated 31.07.2021. Even though inspection was made on 27.03.2021, the valuation report has been prepared by the approved valuer on 31.07.2021. Therefore, the valuation, for all legal and practical purposes, is on 31.07.2021. The auction notice, in any case, was issued on 25.07.2022. Therefore, viewed from any angle, no irregularity or illegality is found in issuance of sale notice and holding of auction.

**[13]** One of the objections taken by the petitioners/borrowers to the proceedings drawn by the respondent/bank, including the measures taken under Section 13(4) of the SARFAESI Act, is that its objection made to the notice under Section 13(2) was not decided. This appears to be factually incorrect. Firstly, if we look into the contents of the so-called objection dated 23.06.2021, it does not contain any objection as such, but it only prays for grant of extension of time and also for waiving of penalty and interest. It is not a case where the petitioners have challenged the quantum of liability on the ground that the total amount, which was worked out by the bank as liable to be paid by the petitioners, was incorrect or that the classification of the petitioners' account as NPA, for some reason, was not proper, correct or against the guidelines. Therefore, the contents of the letter are more in the nature of seeking some more indulgence rather than raising any substantial objection. In our view, the contents of the letter dated 23.06.2021 do not constitute "objection" within the meaning of the provision contained in sub-section 3A of Section 13 of the SARFAESI Act. It was, in any case, replied by the bank vide its letter dated 31.07.2021 giving details with regard to the petitioners' liability.

**[14]** One of the submissions made by the petitioners before the Debts Recovery Tribunal was that the petitioners' account was wrongfully classified as NPA. However, there is no foundational fact given in the application, much less that an amount of Rs.1,37,718/- was illegally not included. In reply, the bank came out with a stand that as the petitioners' loan account was classified in the category of SMA-2 borrower. How the petitioners' account was wrongfully classified as NPA has not been very clearly stated.

**[15]** The case of the petitioners is that they were entitled to additional loan facility of 20% of the loan amount on account of it being a Covid period.

15.1. Irrespective of the said claim of the petitioners, once the petitioners, who are classified as SMA-2 borrowers, the said benefit could not be claimed by the petitioners.

**[16]** In sum and substance, the challenge to classification of petitioners' account as NPA on the ground that an amount of Rs.1,37,718/- was not taken into consideration was not raised. After the bank submitted a reply by stating that the petitioners were classified as SMA-2 and therefore, not eligible, it was not refuted by filing any rejoinder affidavit before the Tribunal. Therefore, at this belated stage, in a petition under Article 227 of the Constitution of India, this issue cannot be allowed to be raised.

**[17]** The legal position in the matter of scope of judicial review has been clearly stated by the Supreme Court in the case of Celir LLP vs. Mr.Sumati Prasad Bafna & Ors.,2024 SCC 1187 ::2025 1 MLJ 193, wherein the Supreme Court has laid down that claim of redemption after sale of the property cannot be allowed and unless prejudice is shown, technical grounds may not be made a basis to declare the sale invalid. In this regard, the pertinent observations made by the Supreme Court are reproduced as below:

"218. Any sale by auction or other public procurement methods once already confirmed or concluded ought not be set-aside or interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or underbidding. Mere irregularity or deviation from a rule which does not have any fundamental procedural error does not take away the foundation of authority for such proceeding. In such case, courts in particular should be mindful to refrain entertaining any ground for challenging an auction which either could have been taken earlier before the sale was conducted and confirmed or whether no substantial injury has been caused on account of such irregularity.

219. In the present lis, apart from the want of statutory notice period, no other challenge has been laid to the 9 th auction proceedings on the ground of it being either collusive, fraudulent or vitiated by inadequate pricing or underbidding, thus, the auction cannot be said to suffer from any fundamental procedural error, and as such does not warrant the interference of this Court, particularly when the plea sought to be raised to challenge the same could have been raised earlier."

In the result, we do not find any merit in this petition. Petition is, accordingly, dismissed. There shall be no order as to costs. Consequently, the interim application stands closed

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2026(1)SDJ103

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

(Hon'ble Judge : Mohammed Nias C P)

O P (D R T) (Original Petition (Debt Recovery Tribunal)) no 183 of 2025 **dated 24/10/2025**

*Mini Zakir, W/o Muhamed Zakir*

**Versus**

*M/s Phoenix Arc Private Limited; M/s Kaerl Tech Projects (P) Ltd*

**PRE-DEPOSIT COMPUTATION**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 18, Sec. 5 - Pre-deposit Computation - Petitioner

challenged orders rejecting waiver of pre-deposit and dismissal of appeal under SARFAESI Act - Petitioner obtained housing loans secured by land and default occurred - Bank assigned asset to first respondent under Sec. 5 - Appeal filed before DRAT with waiver request asserting deposit exceeding fifty percent of demand - DRAT directed further deposit of forty percent and Dismissed appeal for non-compliance - Contention raised that future interest after Sec. 13(2) notice cannot be included in 'debt due' for pre-deposit - Respondent maintained petition not maintainable as amounts paid under interim orders cannot be treated as statutory deposit - Debate existed between High Courts whether future interest forms part of debt due - Kerala High Court followed view that interest accrued after notice under Sec. 13(2) forms part of debt due - Held that DRAT order directing deposit based on possession notice amount is within statutory discretion - Petition Dismissed

**Law Point : For pre-deposit under Sec. 18(1) of SARFAESI Act, "debt due" includes interest accrued after Sec. 13(2) notice and till filing of appeal, since statutory definition of debt under Sec. 2(g) RDDB Act covers liability inclusive of interest.**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 18, Sec. 5

**Counsel :**

Zakeer Hussain, K A Sanjeetha, Aby George, Nidhi Sam Johns, Lijo Joseph, A Kevin Thomas, Celia Santhosh, A V Thomas

## JUDGEMENT

**Mohammed Nias C.P., J.**

**[1]** The question that arises for consideration is whether, for the purpose of computing the 'debt due' under the proviso to Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as the SARFAESI Act for short), future interest accruing after the issuance of notice under Section 13(2) of the SARFAESI Act is liable to be included?

**[2]** The petitioner challenges Ext. P22 and P23 orders of the Debt Recovery Appellate Tribunal rejecting his application for waiver of predeposit and consequently dismissing the statutory appeal. The petitioner is the appellant in Appeal No. AIR 1561 of 2023 on the file of the DRAT, Chennai, which was preferred against the order dated 29.09.2023 in S.A. No. 40 of 2017 on the file of the DRT-I, Ernakulam, wherein the petitioner was the applicant and the respondents herein were arrayed as defendants.

2.1. The petitioner had availed a housing loan of Rs. 50 lakhs and an additional housing loan of Rs. 35 lakhs from South Indian Bank, with 44 cents of land offered as security. The 2nd respondent, a private limited company in which the petitioner's

husband is a Director, had availed an overdraft facility of Rs. 2,50,00,000/- from the same bank, secured by 75.5 cents of land and a building. On default of the company's loan, the bank clubbed the petitioner's liability with that of the company and issued an Ext.P1 demand notice dated 27.02.2015 for Rs. 3,64,68,465/-, followed by Ext.P2 possession notice dated 18.08.2015. Thereafter, S.A. No. 40 of 2017 was filed before the DRT, along with I.A. No.443 of 2017, seeking to restrain dispossession from the petitioner's residence. In the meantime, the financial asset was assigned to the 1st respondent under Section 5 of the SARFAESI Act, and the 1st respondent was substituted as the defendant in Ext.P5. By Ext. P11 order dated 29.09.2023, the DRT dismissed the Securitisation application.

2.2. Challenging Ext.P11 order of the DRT, the petitioner preferred Ext.P12 appeal, under Section 18 of the SARFAESI Act, before the DRAT, along with Ext.P13 unnumbered stay petition and Ext.P14 I.A. No.499/2023 seeking waiver of pre-deposit. Meanwhile, when the Advocate Commissioner issued notice for taking physical possession, the petitioner filed O.P.(DRT) No.456/2023 and, pursuant to the interim order therein, effected payments of Rs. 10 lakhs and Rs. 15 lakhs evidenced by Exts. P15 and P16. The petitioner, by Ext.P21 additional affidavit dated 13.02.2024, placed before the DRAT that after Ext.P1 demand notice and Ext. P2 possession notice, she had deposited a total of Rs. 1,70,00,000/-, and sought waiver of further pre-deposit to enable adjudication of the appeal on merits.

2.3. The DRAT, however, by Ext.P22 order dated 07.04.2025 in I.A. No.499/2023, directed the petitioner to deposit Rs. 1,57,63,026/-, being 40% of the amount demanded in Ext.P2 possession notice, i.e., Rs.3,94,07,566/-, within a period of six weeks in two equal instalments of which first instalment of Rs.78,81,513/-, within three weeks and the second instalment of Rs.78,81,513/- within three weeks thereafter, failing which the appeal would stand dismissed. This order, it is contended, is contrary to Section 18(1) of the SARFAESI Act, under which the maximum obligation is 50% of the debt demanded or determined, with a discretion to reduce to not less than 25%. Since the petitioner had already remitted Rs. 2,25,00,000/-, including Rs. 75,00,000/- after filing Ext.P12 appeal, she had in fact deposited more than 50% of the amount demanded. The petitioner asserts that there was, therefore, no obligation to make any further deposit, and that the Tribunal had no authority to re-work the figure for deposit dehors the statute. Nevertheless, when the matter came up on 26.05.2025, despite submissions that more than 50% had already been paid and a request for time, the DRAT, by Ext.P23 order, dismissed Ext.P14 waiver application and consequently rejected Ext.P12 appeal.

**[3]** In the counter affidavit filed by the 1st respondent, M/s Phoenix ARC Pvt. Ltd., contends that the Original Petition under Article 227 of the Constitution is not maintainable, as there are no extraordinary circumstances warranting interference by this Court, particularly when the petitioner has huge outstanding dues exceeding Rs. 13 crores.

3.1. It is submitted that the amounts claimed to have been deposited by the petitioner cannot be treated as compliance with the mandatory predeposit under Section 18(1) of the SARFAESI Act. Payments made pursuant to conditional interim orders of the DRT and this Court, as well as amounts paid under the failed OTS, were all duly appropriated to the loan account and adjusted while computing the present outstanding. Such payments were never intended to qualify as a statutory deposit for the purpose of appeal.

3.2. The respondents point out that Rs. 50 lakhs referred in Exts.P3 and P4 were paid even before S.A. No.40/2017 was filed, and after giving full credit for those amounts, the outstanding as on 31.08.2025 remains at Rs. 13,05,37,294.81/-. The petitioner cannot now recharacterise these payments as a deposit under Section 18 of the SARFAESI Act.

3.3. It is further urged that the payments made under the OTS scheme cannot be relied on, as the OTS was revoked for default. Under the OTS terms, such payments stood appropriated, and the petitioner herself accepted the outstanding of Rs. 11,25,45,215/- as on 31.07.2024. The petitioner cannot, therefore, claim any benefit of those amounts towards the statutory pre-deposit. The respondents submit that Ext. P22 order was passed after considering the petitioner's argument that she had paid around Rs. 2 crores. Hence, it is an order on merits and cannot be reopened in supervisory jurisdiction.

3.4. It is stated that the DRAT in fact extended leniency by directing pre-deposit of only Rs. 1.57 crores based on the possession notice figure of 2015, though nearly ten years have passed and the dues have swelled to more than Rs. 13 crores. The petitioner cannot claim prejudice when such a concession was already granted. The respondents also highlight that the petitioner did not challenge Ext.P22 immediately, thereby acquiescing to the order, and only approached this Court after Ext. P23 appeal was dismissed.

3.5. The conduct of the petitioner is alleged to be an abuse of process, as she has consistently used interim orders of the DRT and this Court to stall recovery proceedings since 2015, while enjoying the benefit of conditional stays. Payments made under such orders were appropriated only towards the debt and cannot be equated with statutory compliance under Section 18.

**[4]** Heard Smt. K.A. Sanjeetha, the learned counsel for the petitioner and Sri. A.V. Thomas, learned Senior Counsel, instructed by Adv. Nidhi Sam Johns, for the first respondent.

**[5]** The definitions of “debt” in the SARFAESI Act and the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter “RDDB Act”) are extracted below:

**“Section 2 (ha) of SARFAESI Act defines Debt as** ”debt” shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and includes

(i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;

(ii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset;

**Section 2 (g) of the RDDB Act defines Debt as -** "debt" means any liability (inclusive of interest) which is claimed as due from any person or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)] by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities."

**[6]** Three High Courts, in the decisions enumerated in Table A below, have taken the view that interest accruing after the issuance of notice under Section 13(2) of the SARFAESI Act cannot be reckoned while computing the 'debt due' for the purpose of Section 18(1) of the SARFAESI Act.

**TABLE A:**

| Sl. No | Name of the Case | Reasoning |
|---|---|---|
| 1 | **Madras High Court** (DB) in Mrs Mekala Raj v. DRAT Chennai,2017 SCC Online Mad. 16033 | The Court held that the statutory deposit under the second proviso to Section 18(1) SARFAESI must be reckoned with reference to the debt claimed in the **Section 13(2) notice**, and not by including future interest. "Reading of the proviso to Section 18 of the SARFAESI Act, 2002, makes it clear that appeal shall not be entertained, if a person aggrieved, deposits with the Appellate Tribunal, the amount of debt claimed by the secured creditors or determined by the Debt Recovery Tribunal, whichever is less and Section contemplates the amount claimed, **which is referable to the notice issued, under Section 13(2) of the SARFAESI Act, 2002 and it cannot be stretched to** |

| Sl. No | Name of the Case | Reasoning |
|---|---|---|
| | | **meet the amount accrued, after issuance of notice under Section 13(2) of the Act.** By addition of interest on the amount claimed, Proviso has to be taken literal meaning and there cannot be any substitution as argued by the learned counsel for the second respondent/Tamil Nadu Mercantile Bank, Chennai." |
| 2 | **Chattisgarh High Court** (DB) in Mohan Products Pvt. Ltd. v. SBI (W.A. No. 362/2019: MANU/CG/0390/2020) | The Court held that "debt due" in the second proviso to Section 18(1) means only the amount already payable and claimed in the Section 13(2) notice (principal + interest accrued till that date). Future or unaccrued interest after issuance of the notice cannot be treated as "debt due," since the provision refers to what is "claimed" as due, not what is "claimable." Including future interest would amount to rewriting the law. The Court, while deciding the pre-deposit issue, placed reliance on **Mekala Raj v. Presiding Officer, DRAT (Madras HC)**, **Sivakumar Textiles v. DRAT (Madras HC)**, and **Poonam Manshani v. J&K Bank (Delhi HC)**, all of which held that the statutory deposit under the second proviso to Section 18(1) SARFAESI must be reckoned with reference to the debt claimed in the **Section 13(2) notice**, and not by including future interest. The Court also relied upon **Narayana Chandra Ghosh v. UCO Bank, 2011 4 SCC 548**, particularly para 10, which clarified that the deposit is linked to the "debt due" as stated in Section 13(2) demand. However, the Court expressly disagreed with the Bombay High Court担 view in **M/s MRB Roadconst Pvt. Ltd. v. Rupee Co-op Bank**, which had treated "debt" as including future interest, holding that such an interpretation was inconsistent with the legislative intent to make the right of appeal real and not illusory. |
| 3 | **Madras High Court** (DB) in **Sivakumar Textiles v. Debt Recovery Appellate Tribunal, Chennai** | "Whilethesaidprovisoemploysthewords'amountofdebtduefromthe borrowerasclaimedbythesecuredcreditors',itmustnecessarilyrelate backtotheclaimmadebythesecuredcreditorinthenoticeun |

| Sl. No | Name of the Case | Reasoning |
|---|---|---|
| | **& Ors.**, 2012 AIR(Mad) 57 | derSection 13(2). Otherwise, the legislature would have restricted the wording by using 'the amount of debt due from him', without including the further wording 'as claimed by the secured creditors'. In the event the amount of debt due from the borrower is alone mentioned in the proviso, such claim may be as per Section 13(2) notice or an amount that could have been mentioned under Section 13(4) or an amount that could have been claimed by the secured creditors while opposing an application for waiver. However, when the legislature had used the words '**the amount of debt due from the borrower as claimed by the secured creditor', it would have no other meaning exce??t the amount claimed in the notice under Section 13(2).”** |
| 4 | **Delhi High Court** (DB) in **Poonam Manshani v. J and K Bank and Anr.**, 2010 AIR(Del) 28 | “Firstofall,theAppellateTribunalignoredtheinterestcomponentand went by the amount claimed under the notice under **Section 13(2)**. Secondly, the Appellate Tribunal was of the view that only 25% of the demanded amount be deposited by way of pre-deposit under **Section 18**. The third aspect of the matter, which was considered by the Appellate Tribunal, was that the amount of Rs 8.60 crores, which was recovered from the borrower, cannot be adjusted in favour of the petitioner, who is a guarantor inasmuch as, according to the Appellate Tribunal, the guarantor (the petitioner herein) would have to stand on her own legs. She cannot claim any advantage of the amount recovered by the Bank from the sale of one property of the borrower. 9. We are not interfering with the first two aspects of the Appellate Tribunal's consideration, but we find that insofar as the third aspect of the matter is concerned, the Appellate Tribunal has misdirected itself.” |

**[7]** Three High Courts, in the decisions enumerated in Table B below, have taken the view that interest accruing after the issuance of notice under Section 13(2) of the SARFAESI Act is to be reckoned while computing the 'debt due' for the purpose of Section 18(1).

**Table B:**

| Sl. No | Name of the Case | Reasoning |
|---|---|---|
| 1 | **Kerala High Court (DB)** in Union Bank of India v. R.Dhanalakshmi (W.A No. 233/2020) | Relying on MRB Roadconst and Sekar Stores, Home Mart and others, it has reasoned that **"when the second proviso to Section 18(1) of Act, 2002 clearly specifies that 50% of the amount of debt due from the borrower, as claimed by the secured creditors, includes interest, as defined so under Section 2(ha) of Act, 2002 read with Section 2(g) of Act, 1993, and the language is so plain, there is no room for any further interpretation as to the quantum of the amount to be arrived at while directing to make the pre-deposit. That apart, when the interest rate is specified in the notice along with the consolidated figure contained in the claim, it is a continuing debt due till the entire amount, inclusive of the interest, is paid, and there is no indication at all in the provision in question to exclude the interest from the debt due."**<br>The Division Bench held that "debt due" under Section 18(1) SARFAESI is defined with reference to Section 2(g) RDDB Act, which expressly includes interest. The pre-deposit is to be computed not only on the principal and accrued interest shown in the Section 13(2) notice but also on the further interest accrued thereon until the date of filing the appeal before DRAT. Otherwise, the statutory mandate would be defeated and the secured creditor担 claim artificially frozen at the 13(2) |

| Sl. No | Name of the Case | Reasoning |
|---|---|---|
| | | figure. |
| 2 | **Bombay High Court** (DB) in M/s MRB Roadconst Pvt. Limited v. Rupee Co-op Bank Limited, 2016 2 AIRBomR 256 | The Court held that under Section 18(1) SARFAESI, “debt” as defined in Section 2(ha) SARFAESI, read with Section 2(g) of the RDDB Act, expressly includes interest. Therefore, the pre-deposit is to be calculated not only on the principal sum in the Section 13(2) notice but also on the interest accrued till the date of filing of the appeal. If the 13(2) notice itself claims future interest, that also forms part of the debt due. To hold otherwise would contradict the plain statutory language. DRAT was correct in considering outstanding dues (principal + interest) as on the appeal date, after giving credit for payments already made.<br><br>**“This would not only include the amount mentioned in the section 13(2) notice but also interest accrued thereon till the date of filing of the appeal under section 18 of the SARFAESI Act. To our mind, this is the only interpretation that is possible of the 2nd proviso to section 18 of the SARFAESI Act.”** |
| 3 | **Madras High Court (DB)** in Sekar Stores Home Mart and Ors. v. The Authorized Officer, Pridhvi Asset Reconstruction & Securitisation Company Ltd. (MANU/TN/6032/2018) | The Division Bench held that for the purpose of computing pre-deposit under Section 18(1) SARFAESI, the term “debt”栀efined in Section 2(g) RDDBFI Act as “any liability (inclusive of interest)”桇ust be given its full meaning. Consequently, the “amount of debt due” includes not only the sum quantified in the Section 13(2) notice but also the future interest accrued till the date of |

| Sl. No | Name of the Case | Reasoning |
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| | | filing the appeal. To restrict the deposit only to the figure in the Section 13(2) notice would violate the plain and unambiguous language of Section 18(1).<br><br>"For the view which I propose to take, I am supported by a Division Bench Judgment of Bombay High Court in M.R.B. Road Construct. Pvt. Ltd. v. Rupee Co-op Bank Ltd. Para 17 to 19 of the Judgment, which is relevant for the present purposes, reads as under:--<br>"17. On an ex-facie reading of the said definition, it is clear that the word "debt" has been given an extremely wide meaning and means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution during the course of any business activity undertaken by such bank or financial institution under any law for the time being in force, otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application."<br><br>11. On a perusal of Section 13(2) notices dated 11.01.2013, it could be seen that the respondent-Bank had claimed a sum of Rs. 11.72 crores as on 31.03.2012 together with interest. The petitioners have not taken into consideration the interest payable by them towards the loan amount. Even after a lapse of six years, the petitioners have not |

| Sl. No | Name of the Case | Reasoning |
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| | | discharged their liability in entirety.<br><br>12. The ratio laid down by the Division Bench of the Bombay High Court and Allahabad High Court applies to the facts and circumstances of the present case. **Therefore, the orders passed by the Debt Recovery Appellate Tribunal directing the petitioners to make a pre-deposit of 25% of the amount claimed in Section 13(2) notices cannot be held as onerous or unreasonable."** |

**[8]** While the learned counsel for the petitioner placed reliance on the decisions referred to in Table A, the learned counsel for the respondent, on the other hand, relied upon the judgments enumerated in Table B.

**[9]** The learned counsel for the petitioner, Smt. K. Sanjeetha argues that though the Division Bench of this Court in **Union Bank of India v. R. Dhanalakshmi** (W.A. No. 233/2020) reversed the decision of the single bench, which held that future interest after the issuance of Section 13(2) notice cannot be reckoned, the Division Bench did so, relying on M/s MRB Roadconst Pvt. Limited v. Rupee Co-op Bank Limited,2016 2 AIR(BomR) 256 judgment of the Bombay High Court. The learned counsel argued that the judgment of the Supreme Court in **Narayana Chandra Ghosh v. UCO Bank**, 2011 4 SCC 548, though referred to was not discussed in the Division Bench judgment of this Court, and therefore the same has not correctly laid down the law. It is argued that the judgment of the Madras High Court in **Sivakumar Textiles v. Debt Recovery Appellate Tribunal, Chennai & Ors.**, 2012 AIR(Mad) 57, and that of the Mohan Products Pvt. Ltd. v. SBI (MANU/CG/0390/2020) of the Chhattisgarh High Court had considered all the relevant judgments and laid down the correct law, holding that interest after the issuance of notice under Section 13(2) cannot be counted.

**[10]** Senior Counsel Sri. A.V. Thomas, for the 1st respondent, argued that the issue is no longer res integra as the Apex Court decided in Sidha Neelkanth Paper Industries Pvt Limited v. Prudent ARC Ltd.,2023 SCC Online SC 12 as follows:

"13. As per Section 2 (ha) of the SARFAESI Act, "debt" shall have the same meaning assigned to it in clause (g) of Section 2 of the Act, 1933. As per 2(g) of the Act 1933, "debt" means any liability inclusive of interest which is claimed as due from any person by a bank or a financial institution during the course of any business activity undertaken by the bank or the financial institution, in cash or otherwise,

whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on the date of the application. That the "debt" means any liability, inclusive of interest.

As per Section 18 of the SARFAESI Act, any person aggrieved by any order made by the DRT under Section 17 may prefer an appeal within thirty days to an appellate Tribunal (DRAT) from the date of receipt of the order of the DRT. Second proviso to section 18 provides that no appeal shall be entertained unless the "borrower" has deposited with the Appellate Tribunal fifty percent of the amount of "debt due" from him, as claimed by the secured creditors or determined by the DRT, whichever is less and only and only then, an appeal under Section 18 of the SARFAESI Act is permissible against the order passed by the DRT under Section 17 of the SARFAESI Act. Under Section 17, the scope of enquiry is limited to the steps taken under Section 13(4) against the secured assets. Therefore, whatever amount is mentioned in the notice under Section 13(2) of the SARFAESI Act, in case steps taken under Section 13(2)/13(4) against the secured assets are under challenge before the DRT, will be the 'debt due' within the meaning of the proviso to Section 18 of the SARFAESI Act. In case of a challenge to the sale of the secured assets, the amount mentioned in the sale certificate will have to be considered while determining the amount of pre-deposit under Section 18 of the SARFAESI Act. However, in a case where both are under challenge, namely, steps taken under Section 13(4) against the secured assets and also the auction sale of the secured assets, in that case, the "debt due" shall mean any liability (inclusive of interest) which is claimed as due from any person, whichever is higher.

14. In a case where the borrower also challenges the auction sale and does not accept the same and also challenges the steps taken under Section 13(2)/13(4) of the SARFAESI Act with respect to secured assets, the borrower has to deposit 50% of the amount claimed by the secured creditor along with interest as per Section 2(g) of the Act, 1993 and as per Section 2(g), "debt" means any liability inclusive of interest which is claimed as due from any person.

17. the borrower has to deposit 50% of the amount of "debt due" as claimed by the bank/financial institution/assignee along with interest as claimed in the notice under Section 13(2) of the SARFAESI Act and the borrower is not entitled to claim adjustment/appropriation of the amount realised by selling the secured properties and deposited by the auction purchaser when the auction sale is also under challenge."

**[11]** Following the judgment of the Hon'ble Supreme Court in **Sidha Neelkanth Papers Industries Pvt. Ltd.** (supra), three High Courts have subsequently applied and followed the said principle while interpreting the expression "debt due" under Section 18(1) of the SARFAESI Act. The Delhi High Court in **Golden Netsoft Pvt. Ltd. v. HDFC Bank Ltd.** (MANU/DE/2299/2024), the Gujarat High Court in **Shree Ram Rayon v. Authorised Officer and Chief Manager, Tamilnad Mercantile Bank Ltd.**

(MANU/GJ/0239/2023), and the Bombay High Court in **Sony Mony Developers Pvt. Ltd. v. Asset Care and Reconstruction Enterprises** (MANU/MH/8082/2024) examined the issue and affirmed the broader interpretation of "debt due" adopted in the decision of the Apex Court in **Sidha Neelkanth** (supra).

**[12]** Upon a cumulative reading of the statutory provisions and the above precedents, I am of the view that the decisions in **Sidha Neelkanth Papers Industries Pvt. Ltd.** (Supra) and the subsequent judgments that relied and followed Sidha Neelkanth, **Golden Netsoft Pvt. Ltd. v. HDFC Bank Ltd.**, **Shree Ram Rayon v. Tamilnad Mercantile Bank Ltd., and Sony Mony Developers Pvt. Ltd. v. Asset Care and Reconstruction Enterprises -** consistently affirm that the expression "debt due" under the proviso to Section 18(1) of the SARFAESI Act necessarily includes the entire liability claimed by the secured creditor, inclusive of accrued and future interest up to the date of appeal. The term "debt", as defined in Section 2(g) of the RDDB Act, is of the widest amplitude, covering any liability inclusive of interest claimed as due from the borrower, and when read with Section 18(1) of the SARFAESI Act, it mandates that the pre-deposit must reflect the borrower's entire subsisting liability, comprising both principal and interest, either as claimed by the secured creditor or as determined by the DRT, whichever is less. There is no exclusion in the statute of future or accrued interest, and, therefore, the computation of "debt due" must necessarily reflect the total liability as on the date of filing of the appeal before the DRAT and not be confined to the amount specified in the Section 13(2) notice. Such an interpretation alone aligns with the legislative intent that a borrower approaching the appellate forum must do so bona fide, with the deposit reflecting the true and continuing debt, inclusive of interest accrued till that date.

**[13]** The judgment of the Apex Court in **Sidha Neelkanth** (supra) does not exclude such interest; rather, when read as a whole, it supports the computation of "debt due" as on the date of appeal, encompassing both principal and accrued interest. Thus, the statutory definition and the ratio of **Sidha Neelkanth** (supra), firmly establish that for purposes of the mandatory pre-deposit under Section 18(1), the "debt due" must include not merely the sum mentioned in the Section 13(2) notice but also the interest accrued thereon till the date of filing of the appeal, as the borrower's liability under the Act is a continuing one until full discharge of the debt.

**[14]** In **Sidha Neelkanth** (supra), the Hon'ble Supreme Court had considered and reversed the Delhi High Court Judgment, **Prudent ARC Limited v. Sidha Neelkanth Paper Industries and Ors** (MANU/DE/2284/2020), insofar as it had held that the "debt due" does not include future interest. In the above judgment of the Delhi High Court, it is held that the borrower has to deposit 50% of the amount of "debt due" as claimed by the bank/financial institution/assignee and that while computing the "amount of debt due", the amount of the debt claimed by the secured creditor in its notice issued under Section 13 (2) of the Act, shall be relevant and any future interest need not be taken into consideration for purposes of determining, "the amount of debt

due as claimed by the secured creditor” in cases where the DRT has not determined the liability of a borrower. The Hon'ble Supreme Court has therefore held in **Sidha Neelkanth** (supra) that the Delhi High Court has erred in excluding the amount payable towards interest while considering the “debt due”. As per Section 2 (g) of the Act, 1993, “debt” means liability inclusive of interest as claimed by the bank/financial institution.

**[15]** Having regard to the statutory definition and the ratio in Sidha **Neelkanth** (supra) and other precedents, the term 'debt due' under the proviso to S.18(1) of the Act necessarily includes the interest accruing even after the issuance of notice under S.13(2) of the Act.

**[16]** In view of the above conclusion and noticing that the amount directed to be paid does not exceed 50% of the debt, no interference is warranted with the orders impugned in this original petition.

However, as a measure of indulgence, three weeks' time from today is granted to the petitioner, as a last chance, to comply with the deposit directed by the Appellate Tribunal on 07.04.2025. Needless to say that if the deposit is made as directed above, the appeal shall be heard on merits and appropirate orders will be passed by the Tribunal.

Subject to the above, the Original Petition is dismissed.

**APPENDIX OF OP (DRT) 183/2025**

**PETITIONER EXHIBITS**

**Exhibit P1** **TRUE COPY OF THE DEMAND NOTICE DATED 27/02/2015 ISSUED BY THE SOUTH INDIAN BANK, NILAMBUR BRANCH.**

**Exhibit P2** **TRUE COPY OF THE POSSESSION NOTICE DATED 18/08/2015 ISSUED BY THE SOUTH INDIAN BANK, NILAMBUR BRANCH.**

**Exhibit P3** **TRUE COPY OF THE STATEMENT OF ACCOUNT DATED 17/04/2018 ISSUED BY THE SOUTH INDIAN BANK, NILAMBUR BRANCH SHOWING THE DEPOSIT OF RS.5 LAKHS.**

**Exhibit P4** **TRUE COPY OF THE STATEMENT OF ACCOUNT DATED 02/03/2017 ISSUED BY THE SOUTH INDIAN BANK, NILAMBUR BRANCH SHOWING THE DEPOSIT OF RS.45 LAKHS.**

**Exhibit P5** **TRUE COPY OF THE SA NO.40/2017 DATED 03/03/2017 (WITHOUT ANNEXURES) FILED BEFORE THE DRT-I, ERNAKULAM.**

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| **Exhibit P6** | **TRUE COPY OF THE INTERIM ORDER DATED 09/03/2017 IN SA NO.40/2017 OF DRT-I, ERNAKULAM.** |
| **Exhibit P7** | **TRUE COPY OF THE STATEMENT OF ACCOUNTS DATED 20/03/2017 ISSUED BY THE BANK SHOWING THE DEPOSIT OF RS.21,00,000/- ON 15/3/2017.** |
| **Exhibit P8** | **TRUE COPY OF THE DEMAND DRAFT NO.582598 DATED 20/3/2017 FOR RS.29,00,000/- IN THE NAME OF THE BANK.** |
| **Exhibit P9** | **TRUE COPY OF THE DEMAND DRAFT NO.000835 DATED 3/4/2017 FOR RS.15,00,000/- IN THE NAME OF BANK.** |
| **Exhibit P10** | **TRUE COPY OF THE DEMAND DRAFT NO.004615 DATED 19/4/2017 FOR RS.35,00,000/- IN THE NAME OF BANK.** |
| **Exhibit P11** | **TRUE COPY OF THE ORDER DATED 29/09/2023 OF DRT-I, ERNAKULAM IN SA NO.40/2017.** |
| **Exhibit P12** | **TRUE COPY OF THE APPEAL AIR NO.1561/2023 DATED 19/10/2023 (WITHOUT DOCUMENTS) ON THE FILE OF THE DRAT, CHENNAI.** |
| **Exhibit P13** | **TRUE COPY OF THE STAY PETITION IN AIR NO.1561/2023 DATED 19/10/2023 ON THE FILE OF DRAT, CHENNAI.** |
| **Exhibit P14** | **TRUE COPY OF THE IA NO.499/2023 IN AIR NO.1561/2023 TO WAIVE PRE-DEPOSIT ON THE FILE OF DRAT, CHENNAI.** |
| **Exhibit P15** | **TRUE COPY OF THE DD NO.002438 DATED 25/01/2024 FOR RS.10,00,000/-.** |
| **Exhibit P16** | **TRUE COPY OF THE DD NO.000986 DATED 30/01/2024 FOR RS.15,00,000/-.** |
| **Exhibit P17** | **TRUE COPY OF THE RECEIPT DATED 14/03/2024 ISSUED BY THE MALAPPURAM DISTRICT COOPERATIVE BANK LTD SHOWING THE TRANSFER OF RS.20 LAKHS TO THE 1ST RESPONDENT.** |
| **Exhibit P18** | **TRUE COPY OF THE RECEIPT DATED 22/04/2024 ISSUED BY THE MALAPPURAM DISTRICT COOPERATIVE BANK LTD SHOWING THE TRANSFER OF RS.10 LAKHS TO THE 1ST RESPONDENT.** |

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| **Exhibit P19** | **TRUE COPY OF THE RECEIPT DATED 22/04/2024 ISSUED BY THE AXIS BANK SHOWING THE TRANSFER OF RS.10 LAKHS TO THE 1ST RESPONDENT.** |
| **Exhibit P20** | **TRUE COPY OF THE CHEQUE DATED 31/05/2024 OF AXIS BANK LTD SHOWING THE TRANSFER OF RS.10 LAKHS TO THE 1ST RESPONDENT.** |
| **Exhibit P21** | **TRUE COPY OF THE ADDITIONAL AFFIDAVIT DATED 13/02/2024 IN WAIVER APPLICATION IA NO.499/2023 IN APPEAL AIR NO.1561/2023 (WITHOUT ANNEXURES) .** |
| **Exhibit P22** | **TRUE COPY OF THE ORDER DATED 07/04/2025 IN I.A.NO.499/2023 IN AIR NO. 1561/2023 OF THE DRAT, CHENNAI.** |
| **Exhibit P23** | **TRUE COPY OF THE ORDER DATED 26/05/2025 IN IA NO.499/2023 IN APPEAL AIR NO.1561/2023 OF THE DRAT, CHENNAI.** |

**RESPONDENT EXHIBITS**

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| **Exhibit R1(a)** | **TRUE COPY OF THE OTS LETTER DATED 13.09.2024** |
| **Exhibit R1(b)** | **TRUE COPY OF JUDGMENT DATED 09.10.2023 IN OP(DRT) 403 OF 2023 OF THIS COURT** |
| **Exhibit R1(c)** | **TRUE COPY OF JUDGMENT DATED 31.10.2023 IN OP(DRT) 456 OF 2023 OF THIS COURT** |
| **Exhibit R1(d)** | **TRUE COPY OF ORDER DATED 15.01.2024 IN OP(DRT) 456 OF 2023 OF THIS COURT** |

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2026(1)SDJ118

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

(Hon'ble Judge : Hasmukh D Suthar)

Special Criminal Application (Quashing); Criminal Miscellaneous Application (For Vacating Interim Relief) No. 1496 of 2025; 1 of 2025 **dated 09/10/2025**

*Vijaykumar Shobhalal Shah & Anr*

**Versus**

*Bank of Baroda Thro Roopesh Gupta & Anr*

**APPOINTMENT OF COURT COMMISSIONER UNDER SARFAESI**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13 Sec. 14 Sec. 17 - Appointment of Court Commissioner

under SARFAESI - Petitioners challenged order authorising Civil Registrar as Court Commissioner for taking possession of secured assets under Sec. 14 SARFAESI - Contended appointment without jurisdiction as such post not subordinate officer - Respondent bank argued Registrar subordinate to Magistrate and competent - Court observed Sec. 14(1A) empowers Magistrate to authorise subordinate officer and appointment of advocate or staff permissible - Registrar being part of court establishment held subordinate employee capable of executing order - No prejudice shown to petitioners - Remedy lies before Debt Recovery Tribunal under Sec. 17 - Petition not maintainable and devoid of merit - Petition Dismissed

**Law Point : Magistrate empowered under Sec. 14(1A) SARFAESI Act to authorise subordinate officer including court staff as Commissioner-Such appointment valid and challenge lies before DRT not High Court under Art. 227.**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 14, Sec. 17

**Counsel :**

Arjun R Sheth, Nalini S Lodha, Manan Mehta

**JUDGEMENT**

**Hasmukh D. Suthar, J.**

**[1]** By way of this petition, the petitioners have prayed to quash and set aside the impugned order dated 09.01.2025 passed by learned 12th chief Judicial Magistrate, Surat, in Criminal Misc. Application No. 21401/2024.

**[2]** Heard learned advocates for the respective parties.

**[3]** The learned advocate for the petitioners submits that the impugned orders passed by the learned Court below is without jurisdiction, illegal and without application of mind; that the learned Court below does not have power to appoint a Court Commissioner under Section 14(1A) of the SARFAESI Act, 2002; learned Court below can authorize any subordinate to take possession of the assets, but cannot appoint Court Commissioner and therefore, committed error of jurisdiction; when the Civil Registrar as mentioned in the order is appointed as Court Commissioner, he/she ceases to be subordinate officer of ld. Additional Chief Judicial Magistrate and there is no provision of appointment of Court Commissioner in either BNSS, 2023 or in the SARFAESI Act, 2002.

**[4]** Learned advocate for the petitioners submits that the petitioners being guarantors against the credit facility for the borrower M/s. Hi-Tech Sweet Water Technologies Pvt. Ltd. For the cash credit and term loan granted by the respondent Bank. Thereafter, on 05.08.2024, the respondent Bank issued notice under Section 13(2) of the Act, 2002 and further proceeded to take measure under the Act, 2002. Also, the respondent No.1 Bank filed an application on 13.12.2024 under Section 14 of

the Act, for taking possession of the mortgaged assets of the company as stated in the application before the learned CJM, Surat, in Criminal Misc. Application No.J/21401/2024.

**[5]** Learned counsel for the petitioners has also relied on the decision of the Hon'ble Apex Court in case of **NKGSB Cooperative Bank Ltd. Vs. Subir Chakravarty**, 2022 10 SCC 286 and **Standard Chartered Bank Vs. Noble Kumar**, 2013 9 SCC 620, and submitted that, the learned Magistrate has appointed Civil Registrar as Court commissioners which is not permissible. Hence, the order passed by learned Court below is bad in law and the same is required to be quashed and set aside.

**[6]** The learned advocate for respondent Bank has opposed the petition and submitted that respondent is a banking financial institution, which had filed an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”) before the learned Chief Judicial Magistrate, Surat, wherein the impugned order was passed in the capacity of addl. Chief Judicial Magistrate.

**[7]** Learned counsel for respondent bank has submitted that the Court Commissioner appointed by the learned Magistrate is subordinate to him. Even in para 38 of **NKGSB Cooperative Bank Limited (supra)** , it is clearly stated that if any peon or clerk is unable to handle the situation, then such appointment is not permissible. Here this is not a case where a person appointed is unable to handle the situation. Further, the petition is also not maintainable under Article 227 of the Constitution and only with a view to protract or stall the recover proceedings, it is filed. Hence, decision of **NKGSB Cooperative Bank Ltd. (supra)** would not helpful to the petitioners.

**[8]** The learned APP has adopted the submissions of the learned advocate for respondent bank and further submitted that the SARFAESI Act provides a complete code and a separate mechanism. Any order passed under Section 14 of the Act is required to be challenged before the Debt Recovery Tribunal under Section 17 of the Act. Hence, the present petition is not maintainable and deserves to be dismissed.

**[9]** Having heard the learned advocates for the respective parties, perused the record, and considered the arguments canvassed by the advocates, it appears that the learned advocate for the petitioners has challenged the order passed by learned Additional Chief Judicial Magistrate, contending that the said order is without jurisdiction. It is further submitted that the learned Court has erroneously appointed Civil Registrar as “Court Commissioners” under Section 14(1A) of the Act, on the ground that such appointment of Civil Registrar is also impermissibleThe very concept to appoint Commissioner is alien to the scheme of the Act.

**[10]** The provision of Section 14(1A) of the SARFAESI Act read as under:

“14(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,--

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.]

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

The SARFAESI Act, 2002 has been enacted for the benefit of banks and financial institutions with a view to ensuring speedy recovery of public dues by enabling them to take physical possession of secured assets and auction the same, without intervention of any Court of law.

**[11]** Section 14 of the Act confers power upon the secured creditor to seek assistance from the Chief Metropolitan Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, for obtaining possession and control of the secured assets. As per Section 14(1-A) of the Act, the designated authority is empowered to authorize any officer subordinate to him to take possession of the secured assets. The Hon'ble Apex Court has also settled the issue that it would be permissible to appoint an advocate as a "Court Commissioner" for the purpose of taking possession of the secured assets and handing over the same to the secured creditor. In **NKGSB Cooperative Bank Limited v. Subir Chakravarty**, 2022 10 SCC 286, the Hon'ble Supreme Court held that an advocate is an officer of the Court and, thus, subordinate to the CJM/CMM/DM. Accordingly, it would be open to the CJM/CMM/DM to appoint such a Commissioner to assist in the execution of an order passed under Section 14(1A) of the Act.

**[12]** Insofar as the appointment of Civil Registrar is concerned, the term "Court Commissioner" has been used, and even in the order dated 09.01.2025, the Court has appointed Court Commissioners. However, the concept of appointing a Court Commissioner is not explicitly provided for under the Cr.P.C. Essentially, a person has been appointed on behalf of the Court. The learned counsel for the petitioners has raised a technical issue, arguing that 'Civil Registrar' has been appointed as Court Commissioner. Upon the establishment of Civil Courts and Additional District Courts, and after the amendment of the Gujarat Subordinate Staff Appointment and Recruitment Rules, the designation of "Civil Registrar" has not been defined and work assigned accordingly to subordinate staff. The term "Civil Registrar" is used here to indicate a class of employee in common parlance. This person is employed under the establishment of the court. This appointment has been made by the concerned Magistrate on behalf of the Chief Judicial Magistrate (CJM)/ACJM, and the person so

appointed is subordinate to him. Therefore, it is clear that a subordinate staff member has been appointed as 'Court Commissioner'. Merely the use of word “Civil Registrar” appears to be in a generic reference. She is subordinate employees of the Court, who is competent to manage and handle various situations at the spot, which aligns with the intention of the legislature. Even in paragraph 38 of **NKGSB Bank (supra)**, this aspect has been elaborated. Hence, a purposive interpretation of the provision is warranted. This is not a case where a peon or any unqualified person having no knowledge of law has been appointed. Rather, this person/individual, as subordinate court staff, has been recruited through a proper selection process and has cleared the requisite in service examination at both lower and higher level. She is fully capable of handling such matters and is well conversant in the provisions of law, including the CPC and Cr.P.C. Therefore, mere use of the word “Civil Registrar” for a class by the learned Magistrate does not in any manner cause prejudice to the petitioners or such individuals did not make impugned order illegal.

**[13]** While, this Court posed a specific query to the learned counsel for the petitioners regarding whether any prejudice has been caused to the petitioners by the use of the word “Civil Registrar,” he failed to respond the same. Rather to respond the said query, learned counsel for the petitioners stated that this Court has never passed any order in favor of the borrower(s). Such a reply is nothing but a mere brow-bitting as this Court has passed only one order in SARFAESI Act's matter of learned counsel appearing for the petitioners. Such attitude is not befitting to the learned advocate. However, this Court refrains from making any further comments on this aspect.

**[14]** Further, it is apposite to state that, while exercising power under Section 14 of the SARFAESI Act, the learned Magistrate has no jurisdiction to adjudicate disputes between the secured creditor and the debtor. The functions and powers under Section 14 are ministerial in nature, not adjudicatory. This position has been reiterated by the Hon'ble Supreme Court in **Balkrishna Rama Tarle (Dead) through LRs & Anr. v. Phoenix ARC Private Limited & Ors.**, 2023 1 SCC 662 , and in Kotak Mahindra Bank Limited v. Girnar Corrugators Pvt. Ltd.,MANU/SC/0013/2023.

**[15]** Even, as per Section 17 of the Act, any person aggrieved by the measures taken under Section 14 must challenge the same before the Debts Recovery Tribunal. No remedy is available under Section 528 of the Cr.P.C. In this regard, reference may be made to the judgments of the Hon'ble Apex Court in: (i) Phoenix ARC Pvt. Ltd. v. Ganesh Murthy,2023 LiveLaw(SC) 513 ; (ii) Authorized Officer, Indian Bank v. D. Visalakshi,MANU/SC/1303/2019; (iii) South Indian Bank Ltd. v. Naveen Mathew Philip; (iv) **Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir**, 2022 5 SCC 345; (v) **State Bank of Travancore v. Mathew K.C.**, 2018 3 SCC 85; (vi) **United Bank of India v. Satyawati Tondon**, 2010 8 SCC 110. In view of the above, the judgment in **Standard Chartered Bank (supra)** would not render any assistance to the learned advocate for the petitioner. It is also pertinent to note that Section 14(1A)

of the SARFAESI Act was enacted with effect from 15.01.2013, i.e., subsequent to the decision in **Standard Chartered Bank (supra)**.

**[16]** So far as the argument regarding concept of appointment of a Court Commissioner under the Cr.P.C is concerned, the same are not acceptable on two grounds. Firstly, the concept of appointing a Court Commissioner is not alien to the Cr.P.C., inasmuch as Sections 285 and 286 of the Cr.P.C. [corresponding to Sections 320 and 321 of the BNSS] specifically provide for issuance and execution of commissions. Hence, the appointment of a Court Commissioner cannot be said to be foreign to the scheme of the Cr.P.C. Secondly, the appointment of a Court Commissioner is in the nature of a delegated power, whereby the learned Court below authorizes the Commissioner to perform certain acts on its behalf. Sections 286 of the Cr.P.C. / 321 of the BNSS provide for execution of such commissions, and the purpose of appointing a Commissioner is only to exercise the powers of the Court on its behalf. The Hon'ble Apex Court in **NKGSB Cooperative Bank Limited v. Subir Chakravarty (supra)** has recognized that even an advocate can be appointed as a Court Commissioner to assist in taking possession of secured assets, Rule 8 of the SARFAESI Act also permits same and provision of secured assets or immovable property by “authorized officer”.

**[17]** In the present case, the Court Commissioner has been appointed from among the staff of the Court, i.e., an employee subordinate to the establishment of the learned Magistrate who is an authorized officer. The Court, while making such appointment, has duly considered that the said officer is capable of handling the situation at the spot and of dealing with any objection that may arise. Keeping the aforesaid aspects in mind, the learned Magistrate has used word clerks of Civil Court, Bardoli, as Court Commissioners to assist the secured creditor in taking possession of the secured assets under Section 14(1-A) of the SARFAESI Act. The said order dated 09.01.2025 is, therefore, just, legal and proper, having been passed with specific directions.

**[18]** Merely because the learned Magistrate has used the expression “Court Commissioner,” the learned advocate for the petitioners has failed to point out as to how the same causes any prejudice to the petitioners. The fact remains that delegation of powers to the staff subordinate to the Chief Judicial Magistrate is duly recognized under law. If the learned Magistrate had instead used the word “Civil Registrar”, is authorized/appointed to take possession of the secured assets,” the substance and effect would remain the same. The order passed by the learned Magistrate authorizes the said officer to take possession of the secured assets, which is a purely ministerial act. Merely delegating such ministerial duties does not, in any manner, cause prejudice to the petitioners. No sustainable argument has been canvassed by the learned advocate for the petitioners to demonstrate otherwise. The very object of appointing a Court Commissioner is recognized under the Cr.P.C., BNSS, as well as the Code of Civil Procedure, wherein the Court is empowered to appoint a Commissioner to carry out a variety of ministerial and administrative duties. The concept of appointment of a Court

Commissioner is, therefore, not alien but a customary and recognized feature under procedural law. Accordingly, the argument canvassed by the learned advocate for the petitioners is devoid of merit and not acceptable.

**[19]** So far as **Standard Chartered Bank (supra)** is concerned, the decision was rendered prior to the amendment of Section 14(1)(A) of the SARFAESI Act, 2002, which was subsequently inserted and amended in the Act. In paragraphs 20 to 25 of decision of **Standard Chartered Bank (supra)** , the object of the Act has been discussed. Therefore, both decisions would not provide any assistance to the petitioners. So far supervisory jurisdiction is concerned, no error has been committed by the learned Magistrate. With regard to other two impugned orders dated 22.01.2025 and 31.01.2025, only the amount has been amended. Such correction amounts to a typographical error, and the learned counsel for the petitioners has failed to demonstrate any prejudice caused to the petitioners. The issue relates solely to the attachment of the property and not to the recovery proceedings.

**[20]** Further, the learned advocate for the petitioners has relied upon the judgment of the Hon'ble Apex Court in **Asset Reconstruction Company Ltd. v. Bishal Jaishwal**, 2021 6 SCC 366 , and submitted that when an order is passed contrary to law, a writ petition is maintainable. It is an undisputed proposition that if an order is passed contrary to law, the petition would be maintainable. However, the facts of the present case are entirely different. It is not the case here that any order has been passed by the learned Court below without jurisdiction or authority. On the contrary, all relevant parameters were duly considered while passing the impugned order.

**[21]** Even one more aspect requires consideration. In the present case, respondent bank cannot be said to be at fault. He has filed the litigation before the proper jurisdictional Court, and the Court has passed the order. Merely because the concerned Court mentioned the designation as “clerks” is an error attributable to the Court itself, for which respondent bank cannot be made responsible. The legal maxim “Actus Curiae Neminem Gravabit” which means that an act of the Court shall prejudice no man, or that neither party should suffer due to the delay or mistake of the Court fully applies to the facts of this case. The Legislature could never have intended that an error on the part of the Court in mentioning the designation would render the order without jurisdiction or prejudice the rights of the parties. It is also a settled principle that procedural lapses should not defeat substantive justice. Non-compliance with procedural requirements relating to pleadings, memoranda of appeal, or applications for substitution or other reliefs should not entail automatic dismissal or rejection unless the relevant statute expressly mandates so. Procedural defects or irregularities which are curable should not be allowed to defeat substantive rights or cause injustice. Procedure is meant to be a handmaiden of justice and should never be converted into a tool for denying justice or perpetuating injustice by an oppressive or punitive application. The Hon'ble Supreme Court has observed that “to perpetuate an error is no heroism; to rectify it is the compulsion of judicial conscience.” (See: **Mayuram v.**

**CBI**, 2006 5 SCC 752 , para 11). It has further been held that once the Court concludes that a wrong order has been passed, it is the solemn duty of the Court to rectify its mistake rather than perpetuate the same (See: **State of Orissa v. Mamata Mohanty**, 2011 3 SCC 436 ). It is equally well settled that no person should suffer on account of the inaction or fault of the Court. (See: **Jang Singh v. Brij Lal**, 1966 AIR(SC) 1631).

**[22]** In view of the above, merely mentioning the wrong designation in the order does not invalidate the order, as the same Court had the requisite power. It is settled law that when the authority is vested with power, the exercise of such power under a wrong designation will not render the order illegal. In the present case, the action taken by the authority is within its jurisdiction and cannot be invalidated merely on account of an incorrect designation being mentioned. If the authority has jurisdiction to take a particular action or pass an order, then an incorrect reference to a provision or omission of the correct designation does not render the action without jurisdiction, unless the authority itself lacks jurisdiction over the matter. As discussed earlier, the learned Magistrate had the power to pass an order under Section 14 of the SARFAESI Act, and therefore, the argument canvassed by the learned advocate for the petitioners is not acceptable. The exercise of power under Section 14 of the SARFAESI Act is administrative and quasi-judicial in nature, and the interpretation thereof must be guided by the purpose and object of the legislation.

**[23]** Now, one more aspect is required to be considered. Respondent No.1 has neither challenged the order nor approached the Court for correction of the designation. It is needless to say that if any error is brought to the notice of the Court, then to perpetuate an error is no heroism. Whether by way of challenge or even without formally setting aside the order, the Court has the inherent power to rectify such defects, and there is no bar to correct defective orders even in the absence of a challenge thereto. In this regard, reference may be made to **Om Prakash Gupta v. Satish Chandra**, 2025 AIR(SC) 1201, and **Minu Kumari v. State of Bihar**, 2006 4 SCC 359 , wherein the Hon'ble Supreme Court has held that:

"The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (i) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in

course of administration of justice on the principle “quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest” (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

**[24]** It is also not mandatory for the Court to issue any writ or exercise its powers under Articles 226 and 227 of the Constitution of India in cases involving minor procedural defects. In this regard, reference may be made to **Anurag Bhatnagar v. State of NCT of Delhi**, 2025 INSC 895. In the present case, the minor procedural defect pertains only to the mention of designation in the order. No substantial prejudice or irregularity is found in the order, and the petitioners have failed to demonstrate any prejudice caused to them on account of this defect.

**[25]** This Court is of the considered view that, though an alternate remedy is available under Section 17 of the SARFAESI Act, the petitioners have directly approached this Court only with a view to thwart the recovery proceedings initiated by respondent No.1. It is well settled that when an efficacious alternate remedy is available, the writ petition is ordinarily not maintainable. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in **United Bank of India v. Satyawati Tondon & Ors.**, 2010 8 SCC 110, wherein it has been categorically held that the High Courts should not ordinarily entertain a petition under Article 226 of the Constitution of India if an effective remedy is available under the statute. The petitioners fail to point out or show any prejudice caused to them due to mere mentioning of wrong designation “Civil Registrar” in the order only using the word “Court Commissioner”. However, it is kept open for the learned CJM, Bardoli, if deems fit, to issue fresh appointment order of Court staff with their respective designation.

**[26]** Accordingly, impugned order dated 09.01.2025 passed by learned 12th chief Judicial Magistrate, Surat, in Criminal Misc. Application No. 21401/2024 does not suffer from any jurisdictional error so as to warrant interference. The petition is, therefore, dismissed.

Accordingly, connected Misc. Application/s stands also disposed of

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2026(1)SDJ127

**PUNJAB AND HARYANA HIGH COURT**

(Hon'ble Judge : Sheel Nagu ; Sanjiv Berry)

C W P (Civil Writ Petition) No. 37177 of 2019 **dated 16/09/2025**

*Authorised Officer, IDBI Bank Ltd and Another*

**Versus**

*District Magistrate Panipat and Others*

**SARFAESI ORDER RECALL**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14 - SARFAESI Order Recall - Petition filed seeking enforcement of earlier SARFAESI order for possession of secured asset - District Magistrate initially passed order under Sec. 14 of SARFAESI - Later recalled based on civil court decree from borrower's relative - District Magistrate has no statutory power to review or recall order once passed under SARFAESI - Recalling order found without jurisdiction - Powers under Sec. 14 are ministerial and not quasi-judicial - Such powers do not include authority to consider civil disputes or third-party claims - Any subsequent review held invalid and beyond scope of statute - High Court set aside recall and directed enforcement of original order - Writ Petition Allowed

**Law Point : District Magistrate has no power under SARFAESI Act to review or recall an order passed under Sec. 14 once it is issued for taking possession of secured assets**

**Acts Referred :**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14

**Counsel :**

Tajender K Joshi, Deepak Balyan, Ashwani Talwar, Divij Datt

**JUDGEMENT**

**Sanjiv Berry, J.**

**[1]** By way of the present petition, the petitioners have sought issuance of writ of mandamus directing the respondent No.1 to provide proper assistance to the petitioners for taking physical possession of the mortgaged assets as per Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Act, 2002 (hereinafter referred to 'SARFAESI Act, 2002').

**[2]** As per the case of the petitioners, in nut shell is that the respondent No.1 a private Company, through its Directors respondent No.2 and 3 had approached the petitioner Bank for financial assistance of 2? crores, which was sanctioned vide letter

dated 07.11.2009. On default by the borrowers, the petitioner Bank availed remedies under the 'SARFAESI Act, 2002' wherein the respondent No.1 District Magistrate Panipat had passed order dated 22.09.2017under Section 14 of the 'SARFAESI Act, 2002'. Later on petitioner came to know that the District Magistrate had recalled the order dated 22.09.2017 passed under Section 14 of the 'SARFAESI Act, 2002' vide subsequent order dated 05.09.2019 on the basis of a Civil Court decree dated 27.10.2017(Annexure P-9) passed by the Court of Civil Judge (Jr. Div.) Panipat, produced by the sister of respondent No.3 of which the District Magistrate had no power or jurisdiction.

**[3]** Learned counsel representing the parties have been heard.

**[4]** The contention of the learned counsel for the petitioner inter alia is that once the order under Section 14 of the 'SARFAESI Act, 2002' has been passed by the respondent No.1, there is no occasion left for respondent No.1 to recall the order on the basis of production of any decree by 3rd party. He submits that the said decree is infact a collusion between the respondent No.3 and his sister just to scuttle the petitioner Bank proceeding with the 'SARFAESI ' proceedings to secure the physical possession of the secured asset.

**[5]** After considering the rival contentions and perusing the record, the issue which arises in the present petition is as to 'whether the District Magistrate after having passed the order under Section 14 of the 'SARFAESI Act, 2002' is having any power to recall or review its own order". The answer thereto is in negative. There is no such provision under 'SARFAESI Act, 2002' available for the District Magistrate to review or recall its own order passed under Section 14 of the 'SARFAESI Act, 2002'.

**[6]** It will be apt to reproduce the relevant provisions contained in Section 14 of the 'SARFAESI Act, 2002' which reads as under:-

"**14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset**.-(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in subclause (ii)above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets1 [within a period of thirty days from the date of application]:

[Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.]

[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.]

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate 1 [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority"

**[7]** The Hon'ble Apex Court in **Balkrishna Rama Tarle (D) through L.Rs. and another vs. Phoenix ARC Pvt. Ltd. and others**, 2022 AIR(SC) 4756, had categorically held that there is no element of quasi judicial function or application of mind by the Magistrate while passing the order on an application moved by the secured creditor under Section 14 of the SARFAESI Act, 2002' as the Magistrate is just to decide the correctness of the information given in the application and nothing more. The relevant para of the judgment reads as under:-

"**8.1** However, for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. As observed and held by this Court in the case of NKGSB Cooperative Bank Ltd. (supra), the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the advocate commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that

the step to be taken by the CMM/DM under Section 14 of the SARFAESI Act, is a ministerial step. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasijudicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. **Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets."**

**[8]** Further, the Coordinate Division Bench of this Court in Shriram Housing Finance Ltd. vs. State of Haryana and others,2022 2 RCR(Civ) 510 had also observed that once the order under Section 14 SARFAESI Act, 2002' has been passed by the District Magistrate, then subsequently the District Magistrate cannot stop the enforcement of the order by an subsequent order for whatsoever reasons.

**[9]** In **Asset Reconstruction Company (India) Ltd. vs. State of Hayana**, 2018 189 PunLR 443 the Division Bench of this Court had discussed the similar question, the relevant para of the judgment reads as under:-

"(27) The powers exercisable by a District Magistrate under Section 14 are creation of a Statute. Those powers are required to be exercised within the four corners of the said provision. In the case in hand, the then District Magistrate, Sonepat rightly exercised such power and passed the order dated 08.02.2016 thereby directing his subordinate officer, namely, Naib Tehsildar-cum-Executive Magistrate to take possession of the secured assets and hand over the same to ARCIL. It could not be disputed by the learned State counsel or senior counsel for the borrowers that there is no provision under the SARFAESI Act under which the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, can review, recall or modify his order. The successor District Magistrate, therefore, had no jurisdiction whatsoever either to entertain the borrower's application dated 12.06.2016 or to pass the impugned orders dated 14.06.2016 and 24.10.2016. These orders are totally without jurisdiction and void ab initio, for it is well settled that the power to review is not an inherent power and it must always be conferred by law either expressly or by necessary implication. The socalled reasons assigned by the successor District Magistrate, even if assumed to be correct, did not and cannot clothe him with a nonexistent power to review the order passed by him or his predecessor. [Ref. (i) **Patel Narshi Thakershi & Ors. vs. Shri Pradyumansinghji Arjunsinghji**, 1971 3 SCC 844; (ii) **Kewal Chand Mimani (D) By Lrs. Vs. S.K. Sen & Ors.**, 2001 6 SCC 512]."

(28) It would be apt to cite a Division Bench decision of Allahabad High Court in **Writ-C No.30899 of 2016 (Kotak Mahindra Bank Ltd. vs. State of UP & 4 others) decided on 21.10.2016**, where an identical question came up for consideration and the High Court viewed as follows:-

Be that it may, we are of the considered opinion that the District Magistrate has absolutely no jurisdiction to review his order dated 24.06.2013 passed under the Act, 2002 specifically when the order was subjected to challenge before the Debt Recovery

Tribunal and such application was dismissed by a reasoned order holding therein that the borrower had not approached the Tribunal with clean hands. If they were not satisfied they had the remedy of approaching the Appellate Tribunal under Section 18 of the Act, 2002. We are, therefore, more than satisfied that such order of the District Magistrate cannot be permitted to stand on record. The order of the District Magistrate dated 27.04.2016 and dated 30.06.2016 are hereby quashed."

We are respectfully in agreement with the view taken by the Allahabad High Court. Consequently, it is held that the District Magistrate, Sonepat had no authority or power to review the order dated 08.02.2016 and his subsequent orders being without any authority of law, cannot sustain."

**[10]** Considering the aforesaid provision, it is crystal clear that there is no power vested with the Magistrate to review or recall its own order passed under Section 14 of the 'SARFAESI Act, 2002' be it for any reason whatsoever. Admittedly, in the present case, the District Magistrate- respondent No.1 on the application moved by the secured creditor passed the order dated 22.09.2017 in order to assist the secured creditor for taking the possession of the secured asset. However on application allegedly moved by the sister of respondent No.3 intimating respondent No.1 regarding civil Court decree dated 27.10.2017 (Annexure P-9), the respondent No.1 had recalled the aforesaid order dated 22.09.2017 lawfully passed earlier, by passing the subsequent order dated 05.09.2019 of which he had no legal power to adjudicate in any manner as the recourse open for such applicant was to approach the Debt Recovery Tribunal duly constituted under 'SARFAESI Act, 2002' for redressal of her grievances if any, in accordance with law. In this manner, the respondent No. 1 has acted without jurisdiction in passing the order dated 05.09.2019 thereby recalling the earlier order under Section 14 of the Act duly passed by him. Therefore, the subsequent order dated 05.09.2019 passed being without jurisdiction is liable to be setaside, and is accordingly set-aside.

**[11]** Consequently, the instant petition filed by the Creditor Bank is allowed, thereby setting-aside the subsequent order passed by respondent No.1 dated 05.09.2019, being without any jurisdiction and as a result thereof, the order dated 22.09.2017 passed by respondent No.1-District Magistrate under Section 14 of the 'SARFAESI Act, 2002' shall come into force which is ordered to be implemented in accordance with law.

**[12]** Miscellaneous applications, if any shall also stands disposed of

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