

**IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD**

**Appeal Dy. No. 139/2024**

Smt. Kiran Singh, W/o Rajesh Kumar Singh, R/o 38, Katka,  
Jhunsi, Distt-Allahabad.

.....Appellant

Versus

1. Bank of Baroda, R.O.S.A.R.B., Allahabad, 211001 through authorized officer.
2. The Branch Manager, Bank of Baroda, Branch-Katra, Distt. Allahabad, 211002.
3. Mr. Mangal Prasad, S/o Late Hari Lal, R/o H. No. 1-229, Kendranchal Colony, Sulemsarai, Dhoomanganj, Distt. Allahabad (borrower)-211011.
4. Munna Lal Gaur, S/o Late Ram Nath Gaur, R/o P2 Type, 2/79, Kendranchal Colony, Sulemsarai, Allahabad (guarantor)-211011.
5. Mohd. Ayub Siddiqui, S/o Mohd. Yaqoob, R/o H.no. 100-A, Dondipur, Distt. Allahabad. (Auction Purchaser)-211003.

.....Respondents

**Advocates, who appeared in this case:**

For the appellant Shri Arif iqbal, Advocate  
For the respondents-Bank Shri Maneesh Mehrotra, Advocate  
For the respondent-auction purchaser Ex-parte

**JUDGMENT**

**Date of Pronouncement: 29.04.2026**

**JUSTICE R. D. KHARE, CHAIRPERSON**

1. The present appeal has been filed under section 18 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") against the judgment dated 21.12.2023, whereby the Securitization Application No. 173/2019 filed by the appellant has been dismissed.
2. Brief facts of the matter are that appellant is neither borrower nor guarantor or mortgagor to the loan advanced by the respondent-Bank to the respondent no. 3, to which respondent no. 4 stood as guarantor, but she is a third party, who had purchased the property in question from one N. K. Pandey through a registered sale

deed dated 12.09.2012 and till then she was in possession of the property in question till the dispossession by the Bank on 26.11.2022. Since the borrowers did not maintain the financial discipline, therefore, account was classified as NPA and after issuance of demand notice dated 20.09.2018, the respondent-Bank issued possession notice on 21.12.2019 and affixed the same on the property of the appellant, therefore, the said notice was challenged by the appellant by filing S.A. No. 173/2019 before the Tribunal below.

3. It appears that during pendency of the aforesaid S.A., the respondent-Bank after obtaining the valuation report of the mortgaged property of the respondent no. 3 sold the property in question to the respondent no. 5 and also handed over the possession of the property in question on 26.11.2022, which was challenged by the appellant before the Tribunal below by way of amendment application and the same was allowed and the S.A. was amended accordingly. The Tribunal below vide order impugned has dismissed the S.A. of the appellant holding that the S.A. applicant does not fall within the purview of aggrieved person by any of the SARFAESI actions undertaken by the respondent-Bank and the respondent-Bank has undertaken the SARFAESI actions against the property, which was mortgaged with it. Being aggrieved by the said order, the appellant has filed the present appeal.
4. Learned counsel for the appellant submitted that the appellant is neither borrower nor guarantor or mortgagor to the credit facility granted by the respondent-Bank to the respondent no. 3, but the respondent-Bank has proceeded for its recovery against the property of the appellant. It was further contended that the appellant

had purchased the property in question from one N. K. Pandey by way of sale deed dated 12.09.2012 and till then, she remained in possession till the dispossession on 26.11.2022 by the Bank. Learned counsel has referred to page no. 18 to 30, which are copies of sale deed of the appellant. It was further contended that as per the said sale deed, the description of the property is House No. SL-1, Rudra Niketan Colony, Mauja, Katka, Pargana, Jhunsi, Tehsil-Pulpur, Zila-Allahabad, which is constructed at Arazi No. 31, Mauja Katka, Pargana-Jhunsi, Tehsil-Pulpur, Zila-Allahabad. It was also contended that the said sale deed shows the area of the purchased property as 20' X 30' = 600 sq.ft., boundary of which is East Makan No. SL-2, West Makan No. MH-1, North-Temple of Shiv Ji and South-Road 20 ft.

5. It was also contended that in the valuation report dated 25.02.2019, copy of which is placed from page no. 84 to 91, description of the mortgaged property is different from the description of the property mentioned in the demand notice and possession notice of the Bank.
6. Learned counsel further submitted that pursuant to the order dated 23.12.2019 of the CJM, Allahabad, an inspection report dated 06.02.2020 was filed by the respondent-Bank before the said Court and on the basis of the same, learned Court had observed vide order dated 19.03.2020 that the registered sale dated 27.09.2003 of the respondent no. 3 is mortgaged with the respondent-Bank, which contains the boundary of the mortgaged property as under:-

*"East: land of Gopal Singh  
West: Shri Ram Pande  
North: Part of Arazi  
South: Proposed Road"*

7. It was further contended that the learned Court in its order dated 19.03.2020 also clarified that according to the inspection report dated 06.02.2020 submitted by the

Bank, there exists two different properties and their boundaries are totally different from each other.

8. Learned counsel further submitted that the Tribunal below vide order dated 29.04.2023 had appointed an Advocate Commissioner for verification/site inspection of the property in question with boundaries and after verification, the Advocate Commissioner submitted a report dated 26.05.2023 stating therein that no boundary of Shri Ram Pandey and Mangla Prasad existed in the appellant's sale deed. Thus it was contended that the Tribunal below without considering the Advocate Commissioner's Report, Revenue Record regarding the property in question and other supporting evidence has passed the order impugned. It is therefore prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed.
9. Learned counsel for the respondent-Bank submitted that the appellant and the respondent no. 3 are hand in gloves with each other and the appellant has been set up by the respondent-borrower. It was further contended that the respondent-Bank granted a housing loan of Rs.2.90 lakhs on 29.09.2003 to respondent No. 3-borrower and to secure the same, he created equitable mortgage over his immovable property by depositing original title deed dated 27.09.2023 in respect of the property situated at Arazi No. 31, Mauza-Katka, Pargana & Jhunsi, Tehsil-Phulpur, Distt. Allahabad. Area 66 sq.yds or 55.44 sq.mts. It was therefore, contended that the alleged property of appellant has no concern with the property of respondent no. 3, which is mortgaged with the Bank, against which the respondent-Bank has initiated the recovery proceedings.

10. It was further contended that the respondent-Bank had earlier issued demand notice u/s 13(2) of the SARFAESI Act dated 20.09.2018, but the said notice was subsequently withdrawn by the Bank and a fresh demand notice was issued on 18.12.2018.
11. It was also contended that the property mortgaged in favour of respondent-Bank is duly identified as per the boundaries mentioned in the sale deed. Moreover, the mortgage was created on 29.09.2003 by depositing sale deed dated 27.09.2003 and the appellant alleges to have purchased the property by means of sale deed dated 12.09.2012, so the appellant being a subsequent purchaser cannot get a clear title. However, the respondent-Bank has no concern with the alleged property of appellants, which is clear from the chain of deeds filed by the appellant.
12. It was further contended that the respondent-Bank had issued demand notice dated 18.12.2018, possession notice dated 21.02.2019 and auction sale notice and sale certificate dated 22.10.2020 mentioning therein description of property as under:-

*"Land & Building situated at Arazi No. 31 measuring 66 sq.yds. i.e. 55.44 sq.mts out of total area of 0.6580 hectares situated at Mauza-Katka, Pargana-Jhunsi, Tehsil-Phoolpur, Distt.-Allahabad*

*Bounded As:*

*North: Part of Arazi*

*South: Proposed Road*

*East: Land of Gopal Singh*

*West: Land of Shri Ram Pandey"*

13. Learned counsel further submitted that the appellant filed Criminal Complaint u/s 156(3) of Cr. P.C. before the CJM, Allahabad, which was dismissed vide order dated 19.03.2020 holding that the property of the appellant,

which she had purchased vide sale deed dated 12.09.2012 is different from the property mentioned in deed dated 27.09.2003.

14. It was lastly contended that the Tribunal below had passed the order impugned on the basis of pleadings and evidence on record and there is no illegality or infirmity in the same, thus it does not call for any interference by this Tribunal. It was, therefore, prayed that the appeal filed by the appellant may be dismissed with heavy costs.
15. It appears that despite service of notice upon respondent no. 5, no one has put in appearance on behalf of said respondent-auction purchaser. On behalf of respondent nos. 3 & 4 one Shri Mohitosh Singh, Advocate had appeared before this Tribunal on 28.05.2024, 30.09.2024, but thereafter, he did not appear on behalf of them, therefore, the said respondents were directed to be proceeded ex-parte vide order dated 10.11.2025.
16. Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the appellant is neither borrower nor guarantor or mortgagor to the credit facility granted by the respondent-Bank in favour of the respondent no. 3, but she is a third-party.
17. The main controversy involved in the present case is, as to whether the respondent-Bank has sold the mortgaged property of respondent no. 3-borrower or the property of the appellant?
18. In order to decide the aforesaid question, the sale deed of the appellant and the respondent no. 3, which is stated to be mortgaged with the Bank as well as the sale

certificate issued by the Bank in favour of the respondent no. 5-Auction Purchaser are necessary to be examined.

19. It is to be seen that the appellant had purchased the property in question from on N. K. Pandey through a sale deed dated 07.09.2012, copy of which is placed at page no. 16 to 30 of the paper book. As per the said sale deed, the property of the appellant is bearing House No. SL-1, Rudra Niketan Colony, Mauza Katka, Pargana Jhunsi, Tehsil Phoolpur, Distt.-Allahabad", which is constructed at part and parcel of Arazi No. 31. The map of the land is at page no. 30 of the said sale deed, which shows the boundary of the property in question as East-House No. SL-02, West-House No. MH-01, North-Temple of Shiv Ji, South-20 ft. Road and as per the sale certificate issued by the Bank in favour of the respondent no. 5-auction purchaser, the said property has not been sold by the bank. However, it is further to be seen that the respondent no. 3-borrower was granted a housing loan of Rs.2.90 lakhs on 29.09.2003 by the respondent-Bank, and in order to secure the same, the respondent no. 3 created an equitable mortgage of his immovable property by depositing original title deed dated 27.09.2003 regd. No. 5153/2003 i.e. Land and building situated at Arazi No. 31, Mauza-Katka, Pargana Jhunsi, Tehsil-Phoolpur, Dist. Allahabad with the Bank. Copy of the said sale deed is placed at page no. 70 to 83 of the paper book. As per the said sale deed, the boundary of the said property is as North-part of the said land, South-Proposed Road, East-Land of Gopal Singh, West-Land of Shri Ram Pandey. In this regard, the valuation report dated 25.02.2019, pursuant to which the mortgaged property as stated by the Bank has been sold to the respondent no. 5, is at page no. 84 to 91. As per column 4.B., the boundary of the mortgaged property is, north-other

property, South-20 ft wide road, East-House no. SL-02 of Mrs. Sushila Pandey, West-House No. ML-01 of Mr. P. N. Tiwari. From both the sale deed and the said valuation report, it is clear that both the properties are part and parcel of Arazi No. 31, Mauza Katka, Pargana Jhunsi, Tehsil Phoolpur, Distt. Allahabad and the boundary of both the properties also shows that both are situated at the same road and front of both the properties are south facing and as such both properties are different to each other.

20. It is relevant to point out that the appellant has again and again tried to establish that the respondent-Bank has sold her property instead of the property mortgaged by the respondent no. 3 with it, but she has not whispered even a single word about the existence and situation of the mortgaged property of respondent no. 3. It is further to be noted that if the property of the appellant had been sold by the Bank in order to recover its dues, definitely, the property, which was mortgaged by the respondent no. 3-borrower with the Bank would have been utilizing by the borrower because the property of the appellant and the mortgaged property both are situated nearby to each other.
21. From the whole scenario, it appears that the property of the appellant showing the name and number of the mortgaged property has been sold and possession of the same has been given to the Auction Purchaser. Thus the observation of the Tribunal below vide order impugned that appellant does not fall within the purview of aggrieved person by any of the SARFAESI actions of the Bank is not sustainable.



22. It also to be seen that prior to delivering the order impugned, the Tribunal below had got the said properties verified from an Advocate Commissioner and report of the said Commissioner is at page no. 104 & 105 of the paper book. While going through the said report, it is found that boundary of the both the properties are different to each other, but the said report does not state about the location, distance and dimension of both the properties. Thus the said report is of no avail, hence in my view, both the properties are again required to be verified in detail in order to decide the controversy of the appellant. As such it is a fit case for remand back to the Tribunal below for resolving the issue of the appellant.
23. In view of the discussions as held above, the order impugned is set aside and the case is remanded back to the Tribunal below for deciding it afresh in accordance with law after affording proper opportunity of hearing to the parties concerned without being influenced by any observations made here-in-above. Accordingly, the appeal filed by the appellant stands disposed of with no order as to costs.
24. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.

  
**CHAIRPERSON**

VN GIRI,PS