

**Case Citation: (2026) ibclaw.in 139 DRAT**  
**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Justice Vivek Bharti Sharma, Chairperson**

**I.A. No. 279/2026(Stay)**

**In**

**Regular Appeal No. 41/2026**

**Between**

Wateredge Hospitality Pvt. Ltd. & Ors. ... Appellant/s

V/s.

State Bank of India ... Respondent/s

*Mr. Herbert A Naronha, Advocate for Appellants along with Mr. Suresh R. Tandel (Appellant No. 3), Ms. Alpna S. Tandel (Appellant No. 4), Mr. Jay N. Tandel (Son of Appellant No. 2) and Mr. Jeet S. Tandel (Son of Appellant No. 2) are present.*

*Mr. Rajesh Nagory, i/b M/s C. C. Gandhi & Co., Advocate for Respondent Bank.*

**:- Order dated: 29/04/2026: -**

The Appellants have challenged the order dated 15.10.2025 (page No. 537) whereby the Learned DRT-II, Ahmedabad has dismissed the application under Section 22(2)(g) of the RDB Act for setting aside the ex-parte judgment an I.A. No. 279/2026 is moved in Appeal for interim stay.

2. The Learned Counsel for the Appellants would further submit that this Misc. Application for interim relief in present appeal is made on the ground that no service of summons of Original Application was affected on Appellant Nos. 1, 2, 3 and 5 rather it was Appellant No. 4/Defendant who had received the summons by speed post for all Appellants/Defendants. He would further submit that summons were even not served with a copy of plaint and annexures; that, even the postal stamp amount paid on the speed post was only ₹25/- which means that it could not have contained the plaint. He would further Submits that the

Original Application filed in by Respondent contained around 250 pages i.e. including the application and annexures and documents filed therewith.

3. Learned Counsel for the Appellants would further submit that the Learned DRT-II, Ahmedabad erred in observing that once the summon is received by Defendants than defendant was under duty to exercise diligence to appear in the court and take the date and tell the court that he has not received the annexures and plaint, so that, the same may be supplied to them to contest the case.

Learned Counsel for the Appellants would rely upon the judgment in “*Bimla Wati Sharma vs. State Bank of Patiala & Ors., AIR 1992 P&H 101*” and would submit that the Hon’ble Punjab and Haryana High Court observed that *No summons can be regarded to have been duly served unless it is accompanied by a copy of the plaint. ‘Due service’ means service of summons along with the plaint.*

4. Per contra, the Learned Counsel for the Respondent would submit that the service of summons on the all Appellants/Defendants was affected through Defendant No. 4; that, the Defendant No. 4 is wife of the Appellant No. 3 and sister-in-law ‘s the Appellant No. 2 and 5 and is also the director of the Appellant No. 1 Company.

5. The Learned Counsel for the Respondent would further submit that Learned DRT-II, Ahmedabad has specifically observed in para 21 of its order dated 15.10.2025 (page no. 549).

Learned Counsel for Respondent would rely upon the judgment passed by Hon’ble Supreme Court in “*Sunil Poddar case*” as quoted by the

Learned DRT-II, Ahmedabad in the impugned order. The same is reproduced here as under-

*“19. It is, therefore, clear that the legal position under the amended Code is not whether the defendant was actually served with the summons in accordance with the procedure laid down and in the manner prescribed in Order V of the Code, but whether (i) he had notice of the date of hearing of the suit; and (ii) whether he had sufficient time to appear and answer the claim of the plaintiff. Once these two conditions are satisfied, an ex parte decree cannot be set aside even if it is established that there was irregularity in service of summons. If the Court is convinced that the defendant had otherwise knowledge of the proceedings and he could have appeared and answered the plaintiff's claim, he cannot put forward a ground of non service of summons for setting aside ex parte decree passed against him by invoking Rule 13 of Order IX of the Code. Since the said provision applies to Debt Recovery Tribunals and Appellate Tribunals under the Act in view of Section 22(2)(g) of the Act, both the Tribunals were right in observing that the ground raised by the appellants could not be upheld. It is not even contended by the appellants that though they had knowledge of the proceedings before the DRT, they had no sufficient time to appear and answer the claim of the plaintiff-bank and on that ground, ex parte order deserves to be set aside.”*

6. The Learned Counsel for the Respondent would further submit that the Hon'ble Supreme Court has specifically observed that if the Defendant had notice of date of hearing of suit and sufficient time to appear then no ex-parte decree can be set aside even if it is established that there was irregularity in service of summons. He would further submit that there is no averment in the application for setting aside ex-parte decree by the Appellants that they did not have the sufficient time to appear.

7. Considered and perused the records.

8. Now it has to be seen whether the Appellants are entitled to any interim relief as prayed for in I.A. No. 279/2026 thereby staying the order

dated 15.10.2026 passed by the Learned DRT-II, Ahmedabad. For this, this Appellate Tribunal has to see if the Appellants were able to demonstrate that the Appellants have a good *prima facie* case; that, balance of convenience lies in their favour and; that, if interim relief is not granted then the Appellants would suffer irreparable loss.

9. **Prima facie case**

It is admitted case of the parties that Appellant No. 4 Mrs. Alpana Suresh Tandel had received the speed posts in her own name containing summons issued to her and on behalf of other Appellants. It is also admitted case that the Appellant No. 4/Defendant is one of the directors of the Appellant No. 1/ Company. Therefore, there is no reason not to believe that she is lady of prudence. It is expected from a person of prudence that whenever any registered post is received by him then he would take it with care and exercise due diligence to enquire from the Authority about the case. It would not out of place to observe that the Appellants are not only directors of the Appellant No. 1/Company but also are family members. It is admitted at bar that there is no specific averment in application for setting aside ex-parte order that the Appellants did not have sufficient time to appear and answer the claim of the Respondent in the DRT after receiving the summons. Therefore, in the considered view

of the Appellate Tribunal the Appellants do not have a good prima facie case.

10. **Balance of Convenience and Irreparable Loss**

On this point, this Appellate Tribunal is of the view that merely because the Appellant Nos. 2, 3, 4 and 5 are the directors of the Appellant No. 1 /Company and they own the resort, the balance of convenience does not lie in their favour and more so when they do not have any good prima facie case.

On the point of irreparable loss, it is an admitted fact that the loan extended by the Respondent Bank has not been repaid. In such circumstances, it cannot be said that irreparable loss would be caused to the Appellant if ad-interim stay is not granted in their favour. Therefore, Interim Application (I.A. No. 279/2026 is dismissed.

11. List the Appeal on 22.09.2026 for further proceedings.

Sd/-  
Chairperson

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