Reportable/Non-Reportable

Reserved on 07.05.2026
Delivered on 13.05. 2026

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

Misc. Appeal No. 81 of 2025
(Arising out of I.A. 3357 of 2025 in S.A. No. 18 of 2025 in DRT-III, Kolkata)

1. Mohamad Arman, 17/6, Topsia Road, Second Lane, Ground Floor, Post Office & Police Station – Tiljala, Kolkata – 700039.
   Reraise Entertainment, 1, Allenby Road, 2nd Floor, P.O. & P.S-Bhowanipore, Kolkata 700020.

....Appellants

-Versus-

1. ICICI Bank Limited, Landmark Building, 4th Floor, 228-A, A.J.C. Bose Road, Kolkata – 700020.
2. The Authorised Officer, ICICI Bank Limited, Landmark Building, 4th Floor, 228-A, A.J.C. Bose Road, Kolkata – 700020.
3. Saffron Designer Concepts Pvt. Ltd., 1, Allenby Road, P.O. & P.S-Bhowanipore, Kolkata 700020.
4. The District Magistrate, Alipore Belvedere Road, Alipore Police Line, 24 Parganas (South), Kolkata 700027.
5. Officer in Charge, Bhawanipore Police Station, Bhawanipore Police Station, Kolkata – 700025.

....Respondents

Counsel for Appellants	Mr. Debasish Chakraborty, Mr. Snehasis Chakrabarty
Counsel for Respondents	Mr. Avishek Guha, Mr. Srijit Bose

JUDGMENT : 13th May, 2026

THE APPELLATE TRIBUNAL :

Instant Appeal has been preferred against an order dated 14.08.2025 passed by Learned DRT- III Kolkata in S.A. No. 18 of 2025 (Mohamad Arman Vs. ICICI Bank Limited.) whereby I.A. No. 3357 of 2025 for stay of all further proceedings was dismissed.

2. As per pleadings of parties, Appellants preferred an Application under Section 17 of the SARFAESI Act, 2002 (hereinafter referred to as 'The Act') challenging the order under Section 14 of the SARFAESI Act, 2002 passed by Learned District Magistrate, Alipore with respect to the 2nd Floor of Premises No. 1, Allenby Road P.S. Bhawanipore Kolkata-700020 on the ground that the Appellant is a tenant over the property having been created by an agreement dated 3rd October 2016. He is carrying on business under the name of "M/s. Reraise Entertainment". Consequent upon certain differences with the landlord, Respondent No. 3 Appellants deposited rent to the credit of the Respondent No. 3 with the Jurisdictional Rent Controller. A Suit No. T.S. 766 of 2024 is also filed against the Respondent No. 3 for injunction not to evict the Appellant. In the said suit Appellant has obtained interim injunction dated 19th June, 2024 from dispossessing the Appellant without following the due process of law.

3. Appellant is neither a borrower nor guarantor of the Bank which have started Securitisation proceedings over the Appellant. Appellant is a pre-mortgage tenant. An order

under Section 14 of the SARFAESI Act, 2002 dated 6th March, 2023 and 15th March, 2024 is obtained by the Bank which was obtained by fraud.

4. A Writ Petition being W.P.A. No. 27743 of 2024 was filed by the Appellant before the Hon'ble High Court at Calcutta wherein on 3rd December, 2024 a direction was issued to provide a copy of the order under Section 14 of the SARFAESI Act, 2002 to the Appellant. Appellant is protected by the provisions of West Bengal Premises Tenancy Act, 1997 which fact was suppressed by the Bank before the Learned District Magistrate. Accordingly, an Application under Section 17 of the SARFAESI Act, 2002 along with the I.A. No. 3357 of 2025 was filed.

5. I.A. was opposed by the Bank alleging that the action taken by the Bank is in accordance with law.

6. Learned DRT vide impugned order held that the sale conducted on 13.08.2025 was in accordance with law as the sale Notice dated 21.06.2025 was published on 28.07.2025 fixing the e-auction on 13.08.2025 which finding is not under challenge. Rather, the challenge in this Appeal is regarding the finding about the status of the Appellant as a pre-mortgage tenant of the Appellant. Learned DRT held that the tenancy was not reported to the Financer and no approval was taken by the borrower in respect of the alleged tenancy at the time of sanctioning of the loan. Tenancy is for more than one year while the tenancy agreement dated 3th October, 2016 was an unregistered document. Relying upon the judgment of Hon'ble Supreme Court in ***Bajarang***

Shyamsunder Agarwal versus Central Bank of India and another (2019) 9 SCC 94 Learned DRT held that where a lease is held for a period of exceeding one year, registration is compulsory. Accordingly, Learned DRT dismissed the I.A. which is under challenge.

7. Learned Counsel for the Appellant would submit that Appellant is a tenant under an Agreement dated 3rd October 2016. He is a pre- mortgage tenant as the mortgage was created on 10.05.2018. It is further submitted that the Appellant is a tenant on month to month basis. Even in the sanction letter dated 19.05.2018, it is mentioned in column No. 17 that "NOC from all tenants to be provided". Hence, there was no requirement of any registration of the tenancy Agreement. There was a valid tenancy in favour of the Appellants. Learned Counsel for the Appellant would further submit that in support of his contention, Appellant has filed rent receipts dated 03.10.2016 for the month of October 2016, 07.10.2018 for the month of October, November, December 2018, 06.12.2020 for the month of September October, November, December 2020. An Aadhar Card of Mohammad Arman is also filed which also relates to the tenanted portion. Pan Card is also filed. Bank statement of Kotak Mahindra Bank of Account No. 2314243692 is also filed with effect from 01.07.2020 to 15.12.2023. Reliance is also placed upon the Certificate of Enlistment Kolkata Municipal Corporation. Learned Counsel for the Appellant submits that on the basis of these documents, Appellant is

proved to be a tenant of the disputed property on monthly basis.

8. Learned Counsel for the Appellant very meticulously placed reliance upon the judgments of the Hon'ble Apex Court wherein the law on Tenancy is evolved. Reliance is placed upon Burmah Shell Oil Distributing now known as ***Bharat Petroleum Corporation Ltd. versus Khaja Midhat Noor and others (1988) 3 SCC 44*** Para No. 8 and 9 wherein it was held that when the lease was for a period of exceeding one year, it can only have been extended by a registered instrument executed by both the lessor and lessee. In the absence of registered instrument, the lease shall be deemed to be lease from month to month. In ***Anthony versus K.C. ITTOOP & SONS and Others (2000) 6 SCC 394,*** reliance is placed upon Para 13 and 14 wherein it was held that though when lease is a transfer of a right to enjoy the property, and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the Court to determine whether there was in fact a lease otherwise than through such deed.

9. Further, reliance is placed upon judgment of the Hon'ble Calcutta High Court in ***State Bank of India and Another versus Vivek Kumar Kejriwal AIR 2016 Cal 176*** wherein it was held that pre existing tenancy created under the West Bengal Tenancy Act cannot stand extinguished by operation of SARFAESI Act, 2002.

10. In ***Harshad Govardhan Sondagar versus International Assets Reconstruction Company Limited and Others (2014) 6 SCC 1,*** reliance is placed upon Para 21 wherein it was held that when the lawful possession of the secured asset is not with the borrower, but with the lessee under a valid lease, the secured creditor cannot take over possession of the secured asset until the lawful possession of the lessee gets determined. All these judgments of the Hon'ble Apex Court are before the amendment of Section 17 (4-A) of the SARFAESI Act, 2002 which was introduced in the SARFAESI Act., 2002 w.e.f. 01.09.2016.

11. Learned Counsel for the Appellant further submits that the law laid down by the Hon'ble Apex Court in ***Vishal N. Kalsaria versus Bank of India and others (2016) 3 SCC 762*** will not be applicable as it relates to the ***The Maharashtra Rent Control Act., 1999*** while the present case is covered under the ***West Bengal Premises Tenancy Act, 1997***.

12. Learned Counsel for the Appellant further submits that Bajrang Shyam Sundar Agarwal (supra) held in Para 24.1 and 25 as under:

"24.1. If a valid tenancy under law is in existence even prior to the creation of the mortgage, the tenant's possession cannot be disturbed by the secured creditor by taking possession of the property. The lease has to be determined in accordance with Section 111 of the TP Act for determination of leases. As the existence of a prior existing lease inevitably affects the risk undertaken by the bank while providing the loan, it is expected of banks/creditors to have conducted a standard due diligence in this regard. Where the bank has proceeded to accept such a property as mortgage, it will be presumed that it has consented to the risk that comes as a consequence of the existing tenancy. In

such a situation, the rights of a rightful tenant cannot be compromised under the SARFAESI Act proceedings.

25. In the present case, the bona fides of the tenant are highly doubtful, as there is no good or sufficient evidence to establish the tenancy in the first place. The present case involves a tenant who allegedly entered into an oral agreement of tenancy before the mortgage deed was entered into between the borrower and bank/creditor. Additionally, it must be noted that tenancy created under such an oral agreement, results in a fresh tenancy after the expiry of statutory period fixed under the TP Act."

13. Further, it was held in Para No. 27 that the tenant has to produce evidence of tenant's property Tax etc. It is submitted that Appellant has successfully produced the documents in support of his tenancy. Hence his rights have to be protected. Learned Counsel has further placed reliance upon ***Paul Rubber Industries Private Limited versus Amit Chand Mitra and Another (2024) 13 SCC 219*** wherein reliance was placed upon Antony case (supra).

14. On the basis of the aforesaid case laws, Learned Counsel submits that the Learned DRT has observed the tenancy of the Appellant as doubtful which has yet to be decided in the Appeal although Appellant successfully has proved his pre-mortgage tenancy.

15. Per contra, Learned Counsel for the Respondent Bank would submit that it is to be looked into as to whether any valid tenancy was created in favour of the Appellant or not? Learned Counsel has placed reliance upon amendment on Section 17 (4-A) of the SARFAESI Act, 2002 and submits that the case laws prior to that amendment would not be applicable in the present case. However, reliance is placed

on ***Punjab Housing Finance Ltd. versus Manoj Saha and Another (2025) SCC OnLine SC 1443.*** It is submitted that the onus lies on the Appellant to produce rent receipts or property/ water tax receipts, electricity charges etc. to establish the creation of a valid tenancy. It is further submitted that such tenancy is created under unregistered Agreement will not continue beyond one year from issuance of the notice under Section 13(2) of the SARFAESI Act, 2002 and thereafter, Appellant would become tenant in sufferance. Learned Counsel for the Appellant would submit that the evidences produced by the Appellant in no way prove the genuineness of the tenancy rather, all the documents if collectively looked into will disprove the fact that the Appellant is a pre-mortgage tenant. Learned Counsel further submits that no valid tenancy could be proved by the Appellant. No supporting evidence as required under the law could be produced by the Appellant. Accordingly, Appeal lacks merit and is liable to be dismissed.

16. Undisputedly, Appellant claims himself to be a tenant since 3rd October 2016 on the basis of an unregistered Agreement of tenancy wherein monthly rental of Rs.4,200/- per month was settled between the Appellant as well as Landlord. Loan was sanctioned in favour of the borrower on 10th May, 2018. Security was one Allenby Road, Entire second Floor Bhowanipore Kolkata. Heavy reliance is placed by the Learned Counsel on Clause 17 of the sanction letter wherein it is mentioned that NOC from all tenancies to

be provided. But there is nothing on record to show that any details of the tenants are given in the sanction letter. Now, in Punjab Housing Finance Ltd. (supra) which arises out of a matter relating to the Kolkata, Hon'ble Supreme Court considered the amendment of Section 17 (4-A) along with Harshad Govardhan Sondagar (supra), Vishal N Kalsaria (supra) and also Bajrang Shyamsundar Agarwal (supra) and held in Para 18 that –

"18. The Court further held that if the Chief Metropolitan Magistrate/District Magistrate is satisfied that a valid lease is created before the mortgage and the lease has not been determined in accordance with Section 111 of the TP Act, then he cannot pass an order for delivery of possession of the secured asset to the secured creditor. In case, he comes to the conclusion that there is no valid lease either before the creation of mortgage or after the creation of the mortgage satisfying the requirements of Section 65-A of the TP Act or even though there is a valid lease the same stands determined in accordance with Section 111 of the TP Act, he can pass an order for delivery of possession of the secured asset to the secured creditor."

17. Further, Hon'ble Apex Court in Para 23 held that –

"While we agree with the principle laid out in Vishal N. Kalsaria versus Bank of India (2016) 3 SCC 762 case that the tenancy rights under the Rent Act need to be respected in appropriate cases, however, we believe that the holding with respect to the restricted application of the non obstante clause under Section 35 of the SARFAESI Act, to only apply to the laws operating in the same field is too narrow and such a proposition does not follow from the ruling of this Court in Harshad Govardhan Sondagar versus International Assets Reconstruction Co. Ltd. , (2014) 6 SCC 1."

18. Now in the present case, law laid down by the Hon'ble Apex Court in Punjab Housing Finance Ltd. (supra) is squarely applicable. Appellant is claiming himself to be a pre mortgage tenant with effect from 3rd October, 2016 on the basis of an unregistered agreement at a monthly rental

of Rs. 4,200/- per month. In support of the same, Appellant has filed rent receipts of 3rd October, 2016. Thereafter 7th October, 2018. While the sanction letter is dated 10th May, 2018. So only one rent receipt of 3rd October, 2016 is on record. Apart from it, an Aadhar Card of one Mohammad Arman is placed on record wherein his address is shown as 1, Allenby Road LR Sarani, Kolkata 700020. Although in the memo of Appeal, the residential address of Appellant Mohamad Arman is shown as 17/6, Topsia Road, Second Lane, Ground Floor, P.S. Tiljala Kolkata 700039 and carrying on business at Reraise Entertainment, 1, Allenby Road, 2nd Floor, P.O. & P.S.- Bhowanipore, Kolkata-700020. However, when the Aadhar card was prepared and issued is not available on record. This document does not in any way prove that the Appellant is a pre mortgage tenant.

19. A Pan Card is also filed which nowhere indicates the address of the Pan card Holder and is of no help. Appellant Bank statement of Kotak Mahindra Bank of Mohamad Arman of Account No. 2314243692 with effect from 01.07.2020 to 15.12.2023 is filed which too is for a period after creation of mortgage. Accordingly, it could not be of any help to the Appellants. Reliance is also placed upon a document of Certificate of Enlistment of issue of Kolkata Municipal Corporation with respect to one Shabbir Ali Mirza and Sarwar Hossain wherein the commencement date is 09.01.2018 and the address is 1 Allenby Road, 2nd Floor Kolkata -700020. Nature of trade is shown as eating House/ restaurant/ eating House cum restaurant. The document

itself is contradictory to the claim of the Appellants. Neither Shabbir Ali Mirza nor Sarwar Hossain are party to the S.A., nor Appellant in the Appeal. How they are concerned with the present dispute between the parties? However, during the course of arguments, Learned Counsel for the Appellant submits that he will not be placing reliance upon these documents. Documents itself are against the contentions made by the Appellants. Hence, these documents also could not be used in aid of the Appellant case.

20. All the case laws as relied upon by the Learnd Counsel for the Appellants are duly considered by the Hon'ble Apex Court in the case of Punjab Housing Finance (supra) and as has already been observed the case law of Punjab Housing Finance (supra) is applicable in the facts of the present case. No evidence could be produced by the Appellants which can prove their pre-existing tenants at the time of creation of the mortgage. No tax receipts, electricity Bills, or any other documents could be filed in support of the claim. Accordingly, we are of the considered view that the Appellant failed to prove valid tenancy in their favour.

21. Another submission is made by the Learned Counsel for the Appellant that the notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 03.06.2021. Even if it is so, then after the lapse of a year, the Appellant will become "tenant in sufferance" having no legal status.

22. On the basis of discussion made above, we are of the considered view that Appellants failed to prove a valid tenancy or pre-mortgage tenancy in their favour. There is

no substance in the Appeal which requires interference in the impugned order. Appeal lacks merit and is liable to be dismissed.

ORDER

Appeal is dismissed. Order dated 14.08.2025 passed by Learned DRT- III Kolkata in S.A. No. 18 of 2025 (Mohamad Arman Vs. ICICI Bank Limited.) is confirmed.

No Order as to costs.

File be consigned to Record Room.

Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 13th day of May, 2026.

(Anil Kumar Srivastava,J)
Chairperson

Dated 13th May, 2026
/tp