IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA
Appl. No. 83 of 2023
(Arising out of S.A. 125 of 2018 – DRT-III Kolkata)

THE HON'BLE JUSTICE SHRI ANIL KUMAR SRIVASTAVA, CHAIRPERSON

08.05.2026

Sri Mukesh Chawla, residing at Flat No.6, 3rd floor, Premises No. 282 Sahid Hemanta Kumar Basu Sarani, Kolkata 700074 Ps Dum dum

..☐Appellant

--Vs--

1. The Authorised Officer, Bank Of Baroda Ultadanga Branch, P-88, Ultadanga Main Road, Kolkata – 700067.

2. The Authorised Officer, Indian Bank, C.R Avenue Branch, 113/1b, C.R Avenue, Kolkata – 700073.

3. Bank of Baroda, Ultadanga Branch, P-88, Ultadanga Main Road, Kolkata – 700067.

4. Indian Bank, C.R Avenue Branch, 113/1b, C.R Avenue, Kolkata – 700073.

..☐Respondents

For Appellant : Mr. Debasish Karmakar , ld. adv.
Mr. Surath Chakraborty, ld. Adv.
Mr. Arya Nandi, ld. Adv.

For Respondent : Mr. Dipanjan Dutta, ld. Adv.
Ms. Papiya Dutta, ld. Adv.

THE APPELLATE TRIBUNAL :

Heard learned counsel for appellant as well as learned counsel for respondent no.1 and 3 Bank of Baroda. None is present for respondent no.2 and 4 Indian Bank. Opposition is filed by both the bank.

2. Instant appeal is preferred against the order dated 27.07.2020 passed by the learned DRT-III Kolkata in S.A. No. 125 of 2018 whereby S.A. was dismissed.

3. As far as facts of the matter are concerned, appellant herein is an auction purchaser of the secured asset wherein auction was conducted by the respondent no.2 and 4 Allahabad Bank subsequently merged with the Indian Bank in a securitization action. Undisputedly, appellant is holding sale certificate and conveyance deed in his favour issued by the Indian Bank and he is still in possession of the secured asset.

4. Subsequently, notices u/s 13(2) and 13(4) of the SARFAESI Act, 2002 (hereinafter referred to as Act) were issued by the Bank of Baroda which was challenged by the appellant by filing securitization application before learned DRT.

5. Curiously, neither Bank of Baroda nor Indian Bank filed any opposition before the learned DRT, although opposition is filed by both of them in appeal.

6. Learned counsel for Bank of Baroda would submit that they are having prior charge over the secured asset as the mortgage was created in their favour by one Mr. Arup Chaterjee, Proprietor of M/s Panchamukhi Traders on 24.10.2008. To prove the same, Bank of Baroda filed an I.A. No. 172 of 2026 under Order 8 Rule 1A(3) CPC for bringing on record the relevant documents. Opposition to the I.A. is also filed by the appellant.

7. Learned counsel for appellant would submit that learned DRT has erred in passing the impugned order as appellant is a successful auction purchaser who purchased the secured asset in public auction from Indian Bank. He is holding possession of the secured asset. He has no knowledge of any prior mortgage in favour of Bank of Baroda. It is further submitted that there may be some inter se dispute between two banks, but appellant is not at all concerned about the same. In alternative appellant is pressing for refund of the amount paid to the Indian Bank with interest.

8. Per contra, learned counsel for respondent Bank of Baroda would submit that they have prior charge over the secured asset. S.A. was dismissed by the learned DRT wherein it was held that appellant has failed to prove non-compliance of the provisions of the Act. It is further submitted that learned DRT recorded a finding that secured asset is mortgage with the Bank of Baroda.

9. Another ground was taken by the learned DRT while dismissing the S.A. that appellant earlier filed another S.A. No. 200 of 2014 on the same cause of action, hence, present S.A. is barred by res-judicata.

10. As far as issue of res-judicata is concerned, prima facie it appears that learned DRT has misread the principle provided under Section 11 CPC. The earlier S.A. 200 of 2014 was withdrawn by the appellant on 18.03.2019. Withdrawal was made by the appellant on certain grounds and learned DRT dismissed the S.A. as withdrawn without going into the merit of the case. Learned DRT should have gone into the issue as to whether principle of res-judicate would be applicable in the present case.

11. As far as issue of charge over the secured asset is concerned although no opposition was filed by either of the bank before the learned DRT, both the bank have filed opposition in appeal. Respondent Bank of Baroda has also filed an application under Order 8 Rule 1A(3) for bringing additional evidence on record in the form of memorandum of entry along with attendance sheet and opposition to the application has also filed by the appellant, which are taken on record. Now, these documents are to be considered by the learned DRT after giving opportunity of rebuttal to the appellant herein.

12. In such circumstances, matter has to be decided by the learned DRT afresh in the light of the observation made above, although all issues are kept open. Learned DRT should not be

persuaded in any of the finding made in the body of the impugned judgement. Learned DRT should also give opportunity to the both the bank to file opposition and decide the pending S.A. expeditiously. Accordingly, appeal is liable to be disposed of.

O R D E R

13. Appeal 83 of 2023 is disposed of and the matter is remanded back to learned DRT to decide afresh in view of the observation made in the body of the judgement expeditiously. Till disposal of the S.A. parties should maintain status quo. All pending I.A.s are also disposed of. Costs easy.

File be consigned to record room.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 8th day of May, 2026.

(Anil Kumar Srivastava, J)
Chairperson

Dated : 08.05.2026
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