Reportable/Non-Reportable

Judgment reserved on: 11th May, 2026
Judgment delivered on: 13th May, 2026

Appeal Diary No. 455 of 2026-DRAT-Kolkata

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal Diary No. 455 of 2026
(Arising out of S.A. 112 of 2026 in DRT-I, Kolkata)

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

Priti Mitra, wife of Late Tarun Kumar Mitra, presently residing at "Nivedita Apartment" of No. 22/1, Chnnar Park, Ward No. 6, Kolkata – 700 136.

… Appellant

-Versus-

1. Punjab National Bank, Plot No. 4, Sector-10, Dwarka, New Delhi, Delhi – 110 075 and also having its zonal office at Office at United Towers, 11, Hemanta Basu Sarani, Dalhousie, Kolkata – 700 001;

2. Punjab National Bank, Stressed Asset Recovery Department, 3, Chittaranjan Avenue, Kolkata – 700 072;

3. The General Manager, Punjab National Bank, 11, Hemanta Basu Sarani, Dalhousie, Kolkata – 7600 001;

4. The Authorised Officer, Punjab National Bank, 11, Hemanta Basu Sarani, Dalhousie, Kolkata – 7600 001;

5. The Branch Manager, Punjab National Bank, Chinsurah Branch, V9QX+QRC, Malir Bagan Chinsurah RS, Hooghly, West Bengal – 712 101;

6. Inspector-in-Charge, Chinsurah Police Station, District – Hooghly – 712 101;

7. Aruna Dutta, Partner "Dutta Construction" carrying on business at or from Crooked Lane, Akhanbazar, Chinsurah, Hooghly – 712 101;

8. Sibnath Dutta, Partner "Dutta Construction" carrying on business at or from Crooked Lane, Akhanbazar, Chinsurah, Hooghly – 712 101.

… Respondents

Counsel for Appellants	…	Mr. Nemani Srinivas Mr. Sayak Ranjan Ganguly Ms. Chaitali Acharjee
Counsel for Respondent Bank	…	Ms. Anindita Das Ms. Mayuree Chakraborty

JUDGMENT : 13th May, 2026

Appeal Diary No. 455 of 2026-DRAT-Kolkata

THE APPELLATE TRIBUNAL:

Admission

1. Instant appeal has been preferred against the order dated 7.4.2026 passed by the Learned DRT-I, Kolkata in S.A. 112 of 2026 (Smt. Priti Mitra -vs- Punjab National Bank) whereby I.A. 654 of 2026 is dismissed against Respondent Bank.

2. At the 'Admission' stage, Learned Counsel for Respondent has put in appearance and the appeal is heard on merits at the 'Admission' stage and is being disposed of finally.

3. An S.A., under Section 17 of the SARFAESI Act, 2002 (hereinafter referred to as the 'Act'), is filed by the Appellant against the Bank challenging the Securitization action initiated by the Bank and also the order passed under Section 14 of the Act by the Chief Judicial Magistrate, Hooghly dated 13th January, 2026.

4. Undisputedly, Appellant claims himself to be in possession over the secured asset, i.e., Flat No. 4 on the 2nd Floor of the three storied Apartment, situated at Mouza Kapasdanga under Hooghly, Chinsurah Municipality, on the basis of an unregistered Agreement of Sale wherein entire consideration was paid to the Vendor, Sibnath Dutta. Possession was delivered to the Appellant on 20th April, 2014 and Sale Deed was executed on 21.01.2019.

5. Bank opposed the prayer on the ground that the mortgage was created by Aruna Dutta in favour of the Bank

on 11.7.2014 by deposit of Title Deed No. 06957 dated 03.9.2013 covering Flat No. 4, in the 1st Floor of building at Premises No. 189/15, named "Sristi Apartment" at Mahendra Mitra Lane, Barowari, Hooghly – 712 103, Mouza Kapasdanga, Ward No. 10 under Hooghly Chinsurah Municipality, District Hooghly, West Bengal under R.S. Dag No. 02088, L.R. Dag No. 4509, R.S. Khatian No. 420, L.R. Khatian No. 4066 registered with the office of DSR, Hooghly recorded in Book No. I Volume No. 19, Pages 4667 to 4682 for the year 2013. No right could be claimed on the basis of an unregistered Agreement of sale. Sale Deed was executed and registered after creation of the mortgage in favour of the Bank.

6. A notice, under Section 13 (2) of the Act was issued by the Bank to M/s. Dutta Construction, Proprietor Sibnath Dutta, on 15.6.2021. Agreement to Sale was executed by Sibnath Dutta in favour of the Appellant. Sibnath Dutta executed a Gift Deed in favour of his wife Aruna Dutta on 3rd September, 2013.

7. Learned Counsel for Appellant vehemently argued that the Appellant is seeking protection on the basis of his possessory title. Appellant came into possession on the basis of the agreement to sale. Subsequently, Sale Deed was also executed in favour of the Appellant. Learned Counsel has placed reliance upon a judgment of the ***Hon'ble Apex Court in Nanjegowda & Another -vs- Gangamma & 0thers [(2011) 13 SCC 232]*** which was a case arising out of a claim for title on the basis of an agreement to sale.

Hon'ble Supreme Court, while considering the principles of Section 53A of the Transfer of Property Act in paragraph 9 held that:

> *"9. From a plain reading of the aforesaid provision, it is evident that a party can take shelter behind this provision only when the following conditions are fulfilled. They are:*
>
> *(i) The contract should have been in writing signed by or on behalf of the transferor;*
>
> *(ii) The transferee should have got possession of the immovable property covered by the contract;*
>
> *(iii) The transferee should have done some act in furtherance of the contract; and*
>
> *(iv) The transferee has either performed his part of the contract or is willing to perform his part of the contract.*
>
> *A party can take advantage of this provision only when it satisfies all the conditions aforesaid. All the postulates are sine qua non and a party cannot derive benefit by fulfilling one or more conditions."*

8. Reliance is also placed upon ***Giriyappa & Another -vs- Kamalamma & 0thers (2024 SCC OnLine 3849)*** wherein a civil suit was filed for declaration of title and recovery of possession. However, in this judgment Hon'ble Supreme Court held that Section 53A of the Transfer of Property Act is an exception to the provisions which require a contract to be in writing and registered and which bar proof of such contract by any other evidence. Hon'ble Apex Court further held that Section 53A of the Transfer of Property Act was inserted partly to set at rest the conflict of views in this country but principally for protection of ignorant transferees to take possession or spend money in improvements relying on documents which are ineffective as transfers or on contracts which cannot be proved for want of registration. This judgment itself shows that provisions of

Section 53A of the Transfer of Property Act are exception to the General Rule.

9. The judgment of the Hon'ble Apex Court in *Nanjegowda* (supra) also could not support the Appellant as the provisions of SARFAESI Act, 2002 have an over-riding effect over the general law. When the notice, under Section 13 (2) was issued under the SARFAESI Act, 2002, we have to see as to whether there was any valid mortgage existing in favour of the Bank or not as on the date of registration of the sale deed there was a valid mortgage in favour of the Bank, hence, the Appellant cannot take any advantage of an Agreement of Sale in their favour or even possession over the secured asset on the basis of such Agreement to Sale or even subsequent registration of the Sale Deed.

10. Hon'ble Supreme Court in ***Suraj Lamp And Industries Private Limited -vs- State of Haryana & Another [(2009) 7 SCC 363]*** held that:

> *"15. The Registration Act, 1908 was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.*
>
> *16. Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs 100 and upwards to or in immovable property.*
>
> *17. Section 49 of the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affecting such property. unless it has been*

registered. Registration of a document gives notice to the world that such a document has been executed."

Further, in ***Vinod Infra Developers Limited -vs- Mahaveer Lunia & 0thers (2025 SCC OnLine SC 1208)*** it was categorically held that unregistered documents, required to be registered, are inadmissible in evidence for the purpose of conveying title or completing a sale transaction and can only be admitted for co-lateral purposes or a suit for specific performance. Hon'ble Apex Court relied upon the judgment of ***S. Kaladevi -vs- V.R. Somasundaram & 0thers [(2010 5 SCC 401].*** In the judgment of *S. Kaldadevi* (supra) Hon'ble Supreme Court in paragraph 19 categorically held that in contract of sale (Agreement of sale) which is not a registered deed of conveyance (Deed of sale) would fall short of requirements of Sections 54 and 55 of the Transfer of Properties Act and will not confer any title nor transfer any interest in immoveable property. According to the Transfer of Properties Act, an agreement of sale whether with possession or without possession is not a conveyance. Same principle is laid down by the ***Hon'ble Supreme Court in Shakeel Ahmed -vs- Syed Akhlaq Hussain [(2023) 20 SCC 655].***

11. Appellant is claiming protection on the basis of an unregistered Agreement to Sale wherein sale deed was executed after creation of the mortgage which is not permissible under the law. No title could be transferred with respect to immovable properties on the basis of an

unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e., the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to Sections 17 and 49 of the Registration Act and Section 54 of the Transfer of Property Act, 1882.

12. Accordingly, Learned DRT has rightly dismissed the I.A. 654 of 2026. We do not find any ground for interference in the impugned order. Accordingly, appeal is dismissed on merits at the 'Admission' stage.

Since appeal is being dismissed at the 'Admission' stage, I.A. 300 of 2026 for waiver from making pre deposit is also disposed of.

File be consigned to Record room.

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

Order signed, dated and pronounced in open Court.

(Anil Kumar Srivastava,J)
Chairperson

Appeal Diary No. 455 of 2026-DRAT-Kolkata

Dated: 13th May, 2026
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