IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 05th of May, 2026

PRESENT: Hon'ble Mr. *Justice* G. Chandrasekharan
CHAIRPERSON

R.A (SA): 159/2018

(SA No.134/2017 on the file of DRT -2, Chennai)

Between

The Authorised Officer,
Axis Bank Limited,
Southern Recovery Cell,
II Floor, Karumuthu Nilayam,
192, Anna Salai,
Chennai – 600 002.

Presently at

1st Floor, New No.3 (old No. 2)
Club House Road, Anna Salai,
Chennai – 600 002.

... Appellant

And

1. Mr. H. Ramkumar,
S/o K.R. Hariharan,
B3, 2nd Cross Street, Periyar Street,
Shanmugapuram, Palani
Dindigul – 624 601. Now at 180/1, Zorwaddo,
Kaisua, Anjuna, Bardez Taluka,
Goa – 403 509.

2. M/s. C. T. Ramanathan Infrastructure Pvt. Ltd.,
Registered Office:
T.No. 4/3, Second Floor,
S.K. Enclave, Old No. 47, New No. 4,
Nowroji Road, Chetpet, Chennai – 600 031.

Also at :
No. 35, 1st Floor,
1st Street, Sait Colony,
Chennai – 600 008

3. Mr. R. Adaikalavanan,
S/o C.T. Ramanathan,
925-926, ABU-VSR Castle,
Flat No. 11 – A,
Poonamallee High Road,
Purasawalkam,
Chennai – 600 084

Also at
No. 238, A.K. Swamy Nagar,
9th Street, II Lane,
Kilpauk,
Chennai – 600 010

Also at :
No. 62-B, Ormes Road,
Kilpauk,
Chennai – 600 010.

Also at :
Hotel Meena,
109, Kalingarayan Street,
Ram Nagar,
Coimbatore – 641 009.

4. Mrs. A. Shanthi,
W/o C.T. Ramanathan,
925-926, ABU-VSR Castle,
Flat No. 11-A,
Poonamallee High Road,
Purasawalkam,
Chennai – 600 084.

Also at
No. 238, A.K. Swamy Nagar,
9th Street, II Lane,
Kilpauk, Chennai – 600 010

Also at :
No. 62-B, Ormes Road,
Kilpauk,
Chennai – 600 010.

Also at :
No. 80, Ansari Road,
Ram Nagar,
Coimbatore – 641 009.

5. Mr. Hariharan,
S/o Mr. Kulathu Raman,
B3, 2nd Cross Street,
Periyar Street,
Shanmugapuram, Palani,
Dindigul – 624 601.

6. Mrs. Ponnammal @ H. Jayashree,
D/o Mr. Subramaniamahadevan,
B3, 2nd Cross Street,
Periyar Street,
Shanmugapuram, Palani,
Dindigul – 624 601.

7. MuruganSwamynathan,
2/83, School Street,
Vandalur
Chennai – 600 048.

8. M/s. CT. Ramanathan Infrastructure Pvt. Ltd.,
Rep. by its Liquidator,
Mr. Pathukasahasram Raghunathan,
Reg. Office at Flat No. 4/3. S. K. Enclave,
Second Floor, Old No. 47 New No. 4,
Nowroji Road, Chetpet Chennai – 600 011
(Amended as per order dated 17/08/2023 on IA No. 540/2022)

… Respondents

Counsel for Appellant	:	*Mr. Suresh for M/s. Shivakumar and Suresh*
Counsel for R 1	:	*Mr. C.K.M. Appaji*
Counsel for R5 and R6	:	*Mr. P.K. Panneer Selvam for Mr. Ramachandran*
Counsel for R2 and R8	:	*Mr. R. Srinivasan*

O R D E R

1. This Appeal is filed challenging the order of Learned Presiding Officer, DRT-II, Chennai, in SA 134/2017 dated 03.09.2018.

1.1 SA 134/2017 was filed by 1st Respondent herein challenging the Possession Notice dated 15.05.2017. After the contest, the SA was allowed with exemplary costs of Rs.25,000/- imposed on the Appellant Bank. Aggrieved by the said order, this Appeal is filed by the Bank.

2. Learned Counsel for Appellant Bank submitted that the Learned Presiding Officer, DRT-II, Chennai, allowed the SA and aside the Possession Notice dated 15.05.2017, on the following grounds:

i. Security interest was created in respect of the property in which the Respondent Nos. 5 and 6 have

only a limited interest. This is against the terms of the Will;

ii. They can raise loan with Banks only for the purpose of business or construction of building. Loan cannot be taken for a different purpose.

iii. The mortgage by Deposit of Title Deeds was executed by Respondent No.5 in his individual capacity and as a power agent of Respondent No.1; however, the Tribunal below found that when the Respondent No.1 disputed the execution of the power of attorney, the claim of execution of mortgage by Deposit of Title Deeds by a Power of Attorney deed, cannot be accepted, more so, when the Power of Attorney is not produced before the Tribunal; and

iv. The liability was taken over by the Appellant Bank from M/s. SBI, Palani Branch.

2.1 Learned Counsel for Appellant Bank further submitted that as per the Will dated 22.09.1993, the Respondent Nos. 5 and 6 have been given life interest in respect of the mortgaged property. However, a limited power was given to Respondent No.5 to avail loan and create mortgage for any construction and for development of the business/Schedule property. An absolute interest was given to 1st Respondent. When a person having an absolute interest over the property along with a person having limited interest of enjoyment over the property, had joined together and execute the loan documents, it is legally permissible. Therefore, the findings of the Learned Presiding Officer in this regard in not correct.

2.2 The Memorandum of Deposit of Title Deeds was executed on 27.08.2013 by Respondents 1, 5 and 6, wherein the Respondent No. 5 has clearly stated that he is executing the document in his individual capacity and as a power agent of Respondent No.1. Respondent No.6 has also joined in the execution of said document. There is a specific mention in the document that Respondent No.5 namely Shri Hariharan

executed the document for himself and as power agent for his son Mr. Ramkumar, the Respondent No.1. Prior to the execution of the Memorandum of Agreement Evidencing Deposit of Title Deeds on 27.08.2013, the Respondent Nos.1, 5 and 6, had executed the acknowledgement of the receipt of sanction letter dated 24.06.2013. They had executed the Deed of Guarantee dated 24.08.2013, in their individual capacity. Respondent Nos.1, 5 and 6 had also executed the Memorandum of Entry on 24.08.2013, as mortgagors, confirming that the property was offered as collateral security for due repayment to the Bank. All these documents clearly exhibit that the documents were produced for creation of mortgage by deposit of title deeds. Besides these documents, the Respondent Nos.1, 5 and 6 have also executed Declaration cum Confirmation Deed dated 24.08.2013. They also executed Record of Mortgage by Deposit of Title Deeds dated 26.08.2013 with intent to create security thereof in favour of Appellant Bank.

2.3 Learned Counsel for Appellant Bank would contend that, till 2012, there was no mandatory for registration of equitable mortgage by deposit of title deeds in Tamil Nadu. Thereafter, the Tamil Nadu government made an amendment to Registration Act whereby it included memorandum of deposit of title deeds in the list of documents compulsorily registrable under Section 17 of the Act, with effect from 01.12.2012. All these documents show that the Respondent Nos. 1, 5 and 6 have joined together for creation of mortgage and executed the memorandum of deposit of title deeds for the loan facilities extended to Respondent No.2.

2.4 It is the further submission of Learned Counsel for Appellant Bank that the fact that the 1st Respondent has not taken any steps to cancel the creation of mortgage by deposit of title deeds, till date, shows that Respondents 1, 5 and 6 have colluded together to defeat the rights of the Bank in recovering the amount.

2.5 Learned Counsel for Appellant Bank has brought to the notice of this Tribunal, Sections 32, 34 and 60 of the Registration Act, 1908, to show how the registration has to be made, especially, when a document is registered through Power of Attorney. Section 34 (3) of Registration Act, 1908, requires that the registering authority should satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document. In case any person appearing as a representative, assign or agent, he should satisfy himself of the right of such person, to appear. Only after subjective satisfaction of the registering officer that the 5th Respondent was a representative of Respondent No.1, and a power agent, the registration was completed. When it is not challenged by 1st Respondent on the ground that he has not given any power to his father namely Respondent No.5, it goes without saying that only to defeat the interest of the Bank, these allegations are made.

2.6 In this regard, Learned Counsel for Appellant Bank referred to the judgement of Hon'ble Supreme Court in the

case of **Amar Nath Vs. Gian Chand and Another,** reported in *2022 SCC Online SC 102*, for the proposition that, there is no need for production of the original power of attorney when the document was presented. For better understanding, paras 26 and 33 of the judgement are extracted below:

> *26 For reasons, which we have indicated, Section 32(c) read with Section 33 and Section 34(2)(c) are interrelated and they would have no application in regard to the document presented for registration by a power of attorney holder who is also the executant of the document. In other words, there is really no need for the production of the original power of attorney, when the document is presented for registration by the person standing in the shoes of the second defendant in this case as he would be covered by the provisions of Section 32(a) as he has executed the document though on the strength of the power of attorney. To make it even further clear, the inquiry contemplated under the Registration Act, cannot extend to question as to whether the person who executed the document in his capacity of the power of attorney holder of the principal, was indeed having a valid power of attorney or not to execute the document or not.*

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33. On an analysis of the provisions, we have no hesitation in rejecting the argument of the plaintiff that the non-production of the original power of attorney by the second defendant, was fatal to a valid registration being effected. The understanding of the Courts regarding Section 18A is also erroneous. Section 18A was enacted only to ensure that the copying process is hastened, as noticed from the Objects and Reasons. The Trial Court was right when it held that Section 18A is concerned only with the document which is presented for registration. The Trial Court clearly erred relying upon Section 18(A) to hold that certified copy however being produced of the power of attorney was in conformity with Section 18A and the High Court was equally in error to hold that Section 18A contemplated production of true copy of the power of attorney."

He submitted that Respondents 5 and 6 can mortgage their property for the loan availed by Respondent No.2, and create mortgage by deposit of title deeds by Respondent No.5, on his behalf and as a power of attorney holder of Respondent No.1. There is no takeover of loan from State Bank of India, Palani

Branch, by the Appellant Bank. It is an independent loan granted to Respondent No.2.

2.7 He concluded saying that after disposal of the SA, 1st Respondent sent a communication to the Appellant Bank on 01.11.2018, with an offer to pay a sum of Rs.80 Lakhs by deducting Rs.15 Lakhs paid by Mr. K. R. Hariharan, to settle the issue. As per the Possession Notice, the amount due was Rs.12,35,02,485.33p. In the said circumstances, Learned Counsel for Appellant Bank prays for setting aside the order passed by Learned Presiding Officer, DRT-II, Chennai, and allow this Appeal by dismissing the SA.

3. In reply to these submissions, Learned Counsel for 1st Respondent submitted that it is not the case of a new loan facility. Respondent No.2 Company had already availed loan facilities from the Appellant and created security interest. Those properties now have been substituted by the property of Respondent Nos. 1, 5 and 6. In fact, the Respondent Nos. 1, 5 and 6 have not availed any loan from Appellant Bank

and they never offered to stand as mortgagors for the loan availed by Respondent No.2 Company.

3.1 It is further submitted by Learned Counsel 1st Respondent that when 1st Respondent was at his tender age, he, along with his parents, borrowed a loan of Rs.1.02 Crores from the State Bank of India, Palani Branch, on 29.12.2005. They executed loan documents in respect of the subject property. Subsequently, the loan facility was enhanced by another sum of Rs.27,00,000/-, on 25.06.2007. After completion of his engineering graduation, he got the placement, and then, he has shifted to Goa, 1st Respondent's property was managed by his parents. Due to problems given by State Bank of India, Palani Branch, 1st Respondent was informed by the Respondent Nos. 5 and 6 that the Appellant Bank had extended its helping hand by taking over the rights and liabilities from State Bank of India, Palani Branch. Therefore, 1st Respondent came to Chennai in August, 2013, and signed certain papers prepared by

Appellant Bank, to complete the legal formalities for taking over.

3.2 Learned Counsel for 1st Respondent would submit that due to misunderstanding between the 1st Respondent and his parents, he stopped visiting his parents. Surprisingly, on 18.05.2017, the Appellant Bank issued a paper publication for taking possession of the property under Section 13(4) of SARFAESI Act, 2002, and thereafter, he filed the SA. First Respondent never executed any Power of Attorney in favour of his father. There is a prohibition in the Will that the Respondent Nos. 5 and 6 shall not encumber the property. Restricted power was given to the 5th Respondent to raise the loan for improving the building and for development of business and not for the business of somebody else. Respondent No.2 Company is a fictitious Company and its Directors, the Respondents 3 and 4 have absconded after the disbursal of the loan. The Respondents 1, 5 and 6 and their property had been made as a scapegoat for the loan availed by Respondent Nos. 2, 3 and 4.

4. The case of the Respondents 5 and 6 is that under the guise of taking over the loan of State Bank of India, Palani Branch, Respondents 3 and 4 and the officials of Appellant Bank, conspiring with each other, induced them to sign certain documents. It is further contended that the 1st Respondent never executed the Power of Attorney deed, as claimed by Appellant Bank.

5. Considered the rival submissions and perused the records.

6. From the facts set out by the parties and the submissions of Learned Counsel appearing for the parties, the case in brief, especially, the Appellant is that, the Respondents 1, 5 and 6 offered the property in question, as collateral security for the credit facilities availed by Respondent No.2, and created equitable mortgage on 24.08.2013 by deposit of title deeds, which was registered as mortgage document No.2549/2013.

7. For the loan availed by the Respondent No.2, Respondents 3 and 4 stood as guarantors and executed deed of guarantees, and Respondent No.4 stood as mortgagor by offering her property by way of collateral security, by creating equitable mortgage on 22.10.2009. Respondent No.2, subsequently came up with a request for modification of the mortgage already created by replacing with the title deeds relating to the property of Respondents 1, 5 and 6, and that is how, the mortgage in respect of the property in question came to be included. Thereafter, the Respondents 2, 3 and 4 failed to pay the loan amount and measures had been taken under the SARFAESI Act, 2002, which came to be challenged by the 1st Respondent.

8. On the other hand, the case of the 1st Respondent is that the property in question belongs to his grandfather and he executed a Will giving life interest to his father and mother, and absolute interest to him, 5th Respondent can avail loan from the Banks for construction and for improving the business. Respondents 5 and 6 availed loan from State

Bank of India, Palani Branch to the tune of Rs.1.02 Crores by creating equitable mortgage by deposit of title deeds, which was enhanced by another sum of Rs.27 Lakhs. When Respondents 5 and 6 experienced problem from State Bank of India, Palani Branch, the Appellant Bank offered to take over the loan from State Bank of India. On that score, Appellant Bank induced the Respondents 1, 5 and 6 to sign certain documents, and those documents are misused for creation of alleged mortgage. The 1st Respondent never executed any Power of Attorney either to his father or to anyone for creation of mortgage.

9. As already pointed out, Learned Presiding Officer, DRT-II, Chennai, agreeing with the case of the 1st Respondent, allowed the Securitisation Application.

10. Before proceeding further, it is necessary to peruse the documents filed in support of the case of the parties. The Letter dated 24.06.2013 shows that at the request of Respondents No.2, the collateral securities for the loan

availed was substituted with the property in question, i.e., 'Hotel Shanmugananda Bhawan'. This document is said to have been signed by Respondents 1, 5 and 6. The Deed of Guarantees said to have been executed by Respondents 1, 5 and 6 has also been produced along with Memorandum of Entry and Declaration cum Confirmation Deed. There is also a letter produced dated 26.08.2013 to show that Respondents 1, 5 and 6 had written a letter to the Appellant Bank informing the deposit of title deeds for the loan of Rs.10 Crores availed by Respondent No.2. The Memorandum of Agreement evidencing deposit of title deeds dated 27.08.2013 is also produced, which is registered with the concerned Sub-registrar. The 1st Respondent denied his signature in the document aforesaid, said to have been executed on 24.08.2013 and 26.08.2013. It is also his case that the Memorandum of Agreement Evidencing deposit of title deeds dated 27.08.2013, said to have been executed by his father on his behalf, on the basis of Power of Attorney deed, is not a valid document, for the reason that he never executed any

Power of Attorney deed in favour of his father, for any purpose including for the purpose of creating mortgage.

11. In support of his submissions, he produced certain additional documents by filing Applications to receive additional documents and additional type set of papers.

I. IA 94/2025 is filed to permit him to produce the following documents;

i) The Appointment letter issued by the M/s. IIAS School of Management Goa dated 17.05.2013;

ii) Flight Ticket of the Petitioner from Goa to Chennai dated 24.08.2013,

iii) Flight Ticket of the Petitioner Return from Chennai to Goa dated 24.08.2013 and

iv) Statement of Accounts of SBI, Palani Branch dated 14.11.2022.

II. Respondents 5 and 6 also filed Applications in IA 95/2025 and IA 733/2023 to receive additional type set of papers containing police complaint given by 5th

Respondent dated 11.01.2023 and the summon issued by the Inspector of Police, District Crime Branch, Dindugal dated 13.02.2023 to Axis Bank; and to receive the order passed by the Learned Judicial Magistrate II Dindugal in Crl. M.P No 662 of 2025 dated 09.04.2025 respectively.

III. The Appellant Bank also filed an Application in IA 128/2025 to receive the following documents:-

i) Guarantee Deed executed by the first Respondent in favour of the appellant - 24.08.2013.

ii) Guarantee Deed executed by the fifth Respondent in favour of the appellant- 24.08.2013.

iii) Guarantee Deed executed by the sixth Respondent in favour of the appellant – 24.08.2013.

iv) Declaration by mortgagors by the Respondent No.1, 5 and 6 to the appellant - 24.08.2013 and

v) Record of Mortgage given by the Respondent No.1, 5 and 6 to the appellant - 26.08.2013.

Since these documents are germane and relevant for effective adjudication of the Appeal, these Applications are allowed and the documents are received as additional documents.

11.1 The documents sought to be filed as additional documents by the Appellant Bank in IA 128/2025 are already available in the Appeal typed set. Coming to the documents filed by the 1st Respondent, especially, flight ticket dated 24.08.2013 from Goa to Chennai and from Chennai to Goa, show that he visited Chennai obviously for the purpose of signing certain documents, and according to him, for taking over the loan from the State Bank of India, Palani Branch, by the Appellant Bank.

11.2 There is yet another typed set filed by the 1st Respondent, available for production of the following documents;

i. Registered Will of K. Ramalyer with Translation Copy, dated 23.06.2017,

ii. Memorandum of Deed of Deposit of Title by Applicant and 5 & 6th Respondent to SBI, Palani Branch for 1.02 Crores, dated 29.12.2005,

iii. Memorandum of Deed of Deposit of Title deeds by Applicant and 5th & 6th Respondent to SBI, Palani Branch for 27 Lakhs, dated 25.06.2007

iv. Memorandum of Deposit of Title deeds Dated: 27.08.2013 by 5th & 6 Respondent to 1st Respondent dated 27.08.2013,

v. Application in S.A. N0. 134 /2017 dated 23.06.2017,

vi. Counter of R1 in S.A. No. 134 /2017, November, 2017,

vii. Counter of R5 and R6 in S.A. No. 134 /2017, November, 2017 and

viii. Final Order in S.A. No. 134 /2017 dated 03.09.2018.

12. In the Memorandum of Deed executed for deposit of title deeds dated 29.12.2005 and 25.06.2007, the 1st Respondent had written his full name as his signature, whereas, in the document that is said to have been executed by him on 24.08.2013, there is a different signature available. He claims that he was not in Chennai on 24.08.2013. There is no mention in the Deed of Guarantees, where it was executed, whether it was executed in Chennai or in some other place.

13. Reading of the copy of Police complaint dated 11.01.2023, given by the 5th Respondent to the District Superintendent of Police, Dindugul shows that he alleged that "there was a balance amount of Rs.60 Lakhs payable to the State Bank of India, Palani Branch. In June, 2013, the Respondents 3 and 4 met him at his hotel, and Respondent No.3 introduced himself as a person who can facilitate the availing of loan at a minimum rate of interest and would arrange for taking over of his existing loan from State Bank of India, Palani Branch. On 22.08.2013, officials of the

Appellant, Axis Bank paid a sum of Rs.59 Lakhs to the loan account with State Bank of India, Palani Branch through Demand Draft. The officials of Axis Bank obtained signatures in several documents without filling up. They promised that they obtained his signatures only for taking over loan. Again, on 27.08.2013, they came prepared with documents for registration for creation of mortgage in respect of Rs.60 Lakhs, and accordingly, the document came to be registered. Thereafter, it is alleged that they came to know that Respondents 3 and 4 in collusion with officials of Axis Bank, cheated them, and made their property as collateral security for the loan availed by Respondent No.2 for a sum of Rs.10 Crores."

14. A copy of the notice sent by the Police Inspector, District Crime Branch, Dindigul, to Axis Bank, Dindugul Branch, is also filed. However, it is not known as to what happened pursuant to the Police compliant dated 11.01.2023, whether any First Information Report (FIR) was registered, investigation was conducted, and any final report was filed.

No further details have been annexed. It is also seen from the order of the Learned District Magistrate-II, Dindigul, in CR MP No. 662/2025, that a direction was given to the Inspector of Police, Crime Branch, Dindigul, to conduct a preliminary enquiry to ascertain whether the complaint lodged reveals any cognizable offence and, if so, to file a report by giving the notice to the *de facto* complainant. Thereafter, on 30.06.2025, in Crl. OP (MD) No. 10528/2025 filed by the 1st Respondent before the Hon'ble High Court of Madras at Madurai Bench, seeking a direction to Inspector of Police, District Crime Branch, Dindigul District to comply with the order passed by Leaned Judicial Magistrate No. II, Dindigul, in Cr. MP No. 662/2025, the Hon'ble High Court, after recording the submission of the Police that a preliminary enquiry has been conducted and that summons had been issued to the parties for enquiry, Hon'ble High Court closed the said Petition. Thus, it is clear that two complaints came to be lodged, one by Respondent No.5 in the year 2023 and another by 1st Respondent in the year 2025, with regard to the alleged fraud purported to have been

committed against them by the officials of the Appellant Bank.

15. As already stated, it is not known as to what is the final outcome of the criminal complaints, whether it resulted in registration of FIR or closing of the complaints.

16. One of the main grounds alleged by the 1st Respondent is that the Respondents 5 and 6 have no right to avail any kind of loan facilities from the Appellant in terms of the Will. The reason is that, the Will prohibits Respondent No.5 from availing any loan from individual or from any other financial company, except giving permission to avail loan from Bank, for the purpose of improvement of the building or the business development. For the better appreciation, the relevant portion of the Will in tamil, is extracted below:-

> "இதில் ஏ ஜாப்தாவில் கண்ட 1 லக்க சொத்தை எனது மகன் குளத்தய்யர் என்ற ஆர் ஹரிஹரன் அவன் படிக்கும் காலத்திலும், பின்பு தனது முழு நேரத்தையும் இதில் ஏ ஜாப்தாவில் கண்ட 1 லக்க சொத்தின் முன்னோற்றத்திற்காக செலவழித்து வந்தாலும்

வியாபார முன்னேற்றத்திற்கு முழு உதவியாக இருந்ததாலும், என் ஆயுளுக்கு பிறகு அடியில் கண்ட ஏ ஜாப்தாவில் கண்ட 1 லக்க சொத்தை என் ஆண் மகனும், பழனி டவுன், சன்முகபுரம் , பெரியார் வீதி 2வது குறுக்குத் தெரு கதவு எண் 32ல் வசிக்கும், வியாபாரம் குளத்தய்யர் என்ற ஆர் ஹரிஹரன் -1 உடன், தை விலாசத்தில் வசிக்கும், தையான் மனைவி சுக ஜீவனம், பொன்னம்மாள், என்ற ஜெயஸ்ரீ -2 பேர்களும் எங்கள் ஆயுள் உள்ளவரை எவ்வித வில்லங்கத்திற்கும் உள்படுத்தாமல் நல்ல முறையில் நிர்வாகம் செய்து எனது சொத்தில் இருந்து கிடைக்க கூடிய வருமானத்தை மட்டும் சர்வசுகந்திர பாத்தியமாக அடைந்து தையார்களின் ஆயுளுக்கு பிறகு தையார்களின் குமாரனும், எனக்கு மகன் பிள்ளை பேரனுமாக சுமார் 7 வயதுள்ள மைணர் நாம்குமார் என்பவன் சர்வ சகதந்திர பாத்தியமாக அடைந்த அணுபவத்துக் கொள்ள வேண்டியது . கை ஏ ஜாப்தா 1 லக்க சொத்தைப் பொருத்து, கட்டிட, மற்றும் வியாபார அபிவிருத்திக்காக வங்கிகளில் மட்டும் கடன் வாங்க என் ஆண் மகன் குளத்தய்யர் என்ற ஹரி ஹரனுக்கு உரிமையுண்டு வேறு தனிப்பட்ட நபர்களிடமோ அல்லது வேறு நிதிநிறுவனங்களிடமோ எவ்வித காரணத்திற்காவும், என் ஆன் மகள் ஏ ஜாப்தா 1 லக்க சொத்தை குளத்தய்யார் என்ற ஆர். ஹரிஹரன் வேறு எவ்வித வில்லங்கத்திற்கும் உள்படுத்தகூடாது”

The essential terms are that Respondents 5 and 6 shall be entitled to enjoy the property during their life time, without creating any encumbrance. They shall be entitled only to receive income from the property. The Respondent No.1 shall get the property absolutely after the life time of Respondents 5 and 6. Respondent No.1 can avail the loan for the purpose of construction and for business development from the Bank and he cannot avail loan facilities from any individual or private finance institution.

17. Admittedly, the Respondents 5 and 6 had availed a loan from the State Bank of India, Palani Branch, for the development of their business. It is pertinent to note that the Respondents 5 and 6 had not availed any loan facilities from the Appellant Bank. It is the Bank's claim that they offered their property as collateral security for the loan availed by the Respondent No.2, in which the Respondents 3 and 4 were the Directors. The loan payable by the Respondents 5 and 6 to the State Bank of India, Palani Branch, was only Rs.60 Lakhs, whereas, the loan availed by the Respondent No.2

from the Appellant Bank, was Rs.10 Crores plus interest. Would any sane person with reasonable prudence, would offer his property as security interest, for securing a loan of Rs.10 Crores to settle a loan of Rs.60 Lakhs? The answer would be seriously No. Yet, it is said to have happened in this case. Respondents 5 and 6 contend that they signed certain documents for taking over the loan from the State Bank of India, Palani Branch to the tune of Rs.60 Lakhs, whereas the Appellant Bank asserts that the Respondents 1, 5 and 6 had voluntarily offered their property as security for Rs.10 Crores loan availed by the Respondent No.2.

18. It is not in dispute that, only at the instance of the Respondents 3 and 4, the security offered by them was replaced with the security of Respondents 1, 5 and 6. Respondents 1, 5 and 6, and Respondents 3 and 4 are not close relatives. In such circumstance, why the Respondents 1, 5 and 6 should offer their property as security for a loan of Rs.10 Crores? It is quite obvious that they had been duped

by the Respondents 3 and 4, with or without the connivance of Appellant Bank.

19. The 1st Respondent disputed his signatures in the documents said to have been executed on 24.08.2013, but, from his own admission, flight tickets produced. The logical conclusion that could be drawn is that he could have signed the documents said to have been executed on 24.08.2023. At that point of time, he was only around 19 – 20 years of age. His parents namely, Respondents 5 and 6, were managing the hotel. Probably, at their instance, he came to Chennai for signing the documents. Even assuming that he had signed the documents on 24.08.2013, as stated above, the same would not, by itself, create a valid mortgage. The mortgage has to be duly registered at the relevant point of time. The Memorandum of Deposit of Title Deeds said to have been registered on 27.08.2013. This document was signed by Respondent No.5 as the power agent of the 1st Respondent. However, reading of this document shows that there is no mention about the Power of Attorney deed said to have been

executed by the 1st Respondent in favour of the Respondent No.5. Despite vehemently challenging the execution of any such Power of Attorney deed by the 1st Respondent in favour of Respondent No.5, the Appellant Bank has failed to produce the said Power of Attorney deed. There is also no mention about the Power of Attorney deed in the Memorandum of Agreement evidencing deposit of title deeds dated 25.03.2013. In the absence of mentioning about the Power of Attorney deed, on the basis of which the Memorandum of Agreement dated 27.08.2013 was executed, and in the absence of production of the same, it cannot be held that a valid mortgage by deposit of title deeds was created.

20. The facts of the case in the decision reported in **Amar Nath Vs. Gian Chand and Another,** reported in *2022 SCC Online SC 102* above, are totally different from the facts of this case that the issue was non-production of original Power of Attorney. In the case before hand, not even the copy of the Power of Attorney document was produce. Therefore, this

decision cannot be applied to the facts of this case. The reasons are that there is a serious doubt created as to whether any prudent person, acting with reasonable sense, would offer his property as security for a loan of Rs.10 Crores to settle a loan amount of Rs.60 Lakhs. Further, there is no mention about the details of the Power of Attorney alleged to have been executed by the 1st Respondent in favour of 5th Respondent, in the mortgage document.

21. Admittedly, the Respondents 1, 5 and 6 are not the borrowers, but, said to have offered their property as security for the loan availed by Respondent No.2, after substituting the security earlier offered by Respondents 3 and 4. Why the Respondents 1, 5 and 6 had to offer their property as security interest for the loan availed by Respondent No.2? There is no plausible explanation in this regard. A possible explanation is that Respondents 3 and 4, with or without the connivance of the officials of the Appellant Bank, induced the Respondents 1, 5 and 6 to sign the documents on the promise of taking over of loan of Rs.60 Lakhs from the State

Bank of India, Palani Branch. The outcome of the criminal complaints given by the 1st Respondent and Respondent No.5 is not known so far. In the said background, and on the ground that there is no valid mortgage created, this Tribunal finds that the order allowing the SA by the Learned Presiding Officer, DRT-II, Chennai, has to be sustained and accordingly, sustained.

22. In the result, the Appeal in R.A (SA): 159/2018 is dismissed. Consequently, the order passed by the DRT-II, Chennai is hereby affirmed. Both the parties are directed to bear their own costs. All pending IAs, if any, stand closed.

[Dictated to Athistamani, PS, in open court, transcribed by her, corrected and signed by me this 05th of May, 2026]

[*Justice* G. Chandrasekharan]
CHAIRPERSON