Reportable/Non-Reportable

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA (Camp Court – Hyderabad)

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA CHAIRPERSON

Misc. Appeal No. 71 of 2025
(Arising out of I.A. No. 1823 of 2018 in O.A. No. 219 of 2010 in DRT-I, Hyderabad)

1. INDIAN BANK, Narayanguda Branch, Hyderabad Rep by Assistant General Manager at SAM Branch, Koti Hyderabad.

....Appellant

-Versus-

1. M/S. PRATYANKARA ELECTRONICS PRIVATE LIMITED REPRESENTED BY THE OFFICIAL LIQUIDATOR, High Court of A.P High Court Building, Hyderabad.

2. SRI ALLURI MAHESH RAJU, Plot No 60, Siddardha Nagar, S.R Nagar, Hyderabad-500038.

3. SRI JONNAVITHULA ARUN KUMAR, 404, Yasoda Residency, Somasundar Nagar Bagh Amberpet, Hyderabad-500032.

4. ING VYSYA BANK LTD., Ashoka Hitech Chambers, Road No. 2, Banjara Hills Br, Hyderabad Rep. by its Branch Head.

5. AXIS BANK, 6-3-879/B, 1st Floor, G. Pullareddy Building, Green Lands, Begumpet Road, Hyderabad-500016 Rep. by its Branch Head.

6. DEVELOPMENT CREDIT BANK LTD. 9-1-125/3-1, 5th Floor, Siddhardh Plaza, 44, S.D. Road, Secunderabad-500003 Rep. by its Branch Head.

....Respondents

Counsel for Appellants — Sri Shaswat Nayak

Counsel for Respondents — Mr. Debasish Karmakar

[redacted]

JUDGMENT : 28th April, 2026

THE APPELLATE TRIBUNAL :

Heard Ld. Counsel for the parties and perused the record.

2. The instant appeal is preferred against the order and judgement dated 12.11.2018 passed by Ld. DRT- I, Hyderabad in I.A.1823/2018 arising out of O.A.219/2010 whereby Ld. DRT allowed the I.A.1823/18 and appointed an Advocate Commissioner for cross examination of AW-1 i.e. bank witness. Being aggrieved by the impugned order, the Appellant preferred the present appeal.

3. It appears that initially, Appellant preferred W.P.No.42666/2018 before the Hon'ble High Court for the State of Telangana at Hyderabad which ultimately was disposed of with a liberty to the Appellant to file appeal u/s 20 of Recovery of Debts and Bankruptcy Act, 1993. Consequently, the Appeal was filed by the Appellant.

4. O.A. No. 219 of 2010 was filed by the Appellant for issuance of Recovery certificate for an amount of Rs.10,89,51,647/- with consequential reliefs in the year 2010 wherein the pleadings were exchanged and affidavit of the Bank witness was filed by the witness namely B. Sudha Rani, Assistant General Manager of the Bank. Evidence in affidavit was filed on 13.04.2017. After filing of

the evidence, I.A.1823/18 was filed by the Respondents herein for cross examining the bank witness on the ground that the Bank also initiated SARFAESI proceedings and sold the secured assets on a throw away price by playing fraud upon the Respondents and they did not follow the procedure prescribed under the SARFAESI Act, 2002. The properties are agricultural lands which are prohibited u/s 31(i) of the SARFAESI Act, 2002. The properties sold were also personal properties of the defendants and the amount claimed by the Bank is also disputed. Another SAIR 274/13 was filed for setting aside the sale which is pending. Another ground is taken that if the Respondents are not permitted to cross examine the witness, truth will not come out.

5. Ld. Counsel for the Bank filed opposition in I.A.No.1823/18 wherein it is stated that the proceedings under the Recovery of Debts and Bankruptcy Act, 1993 are summary in nature. Further, sufficient ground has to be shown for according permission for cross examining the witness. Proceedings under the Recovery of Debts and Bankruptcy Act, 1993 and SARFAESI Act, 2002 are separate and independent proceedings and the SARFAESI action cannot be challenged under the Recovery of Debts and Bankruptcy Act, 1993.

6. Ld. DRT in the impugned order recorded the submissions made by the Ld. Counsel for the parties and without assigning any reasons, allowed the I.A. and



appointed Sri A. Naresh Kumar as Advocate Commissioner for examining the witness.

7. Ld. Counsel for the Appellant would submit that the impugned order suffers from material irregularities and illegalities. The impugned order was not in accordance with Rule 12(9) of Debts Recovery Tribunal (Procedure) Rules, 1993 wherein sufficient cause has to be shown for seeking permission for cross examining the witness. The only ground taken in the application is about the valuation of the properties sold under the SARFAESI Act, 2002 and the fraud played upon by the Bank. It is further submitted that the DRT proceedings are summary in nature which cannot be a prerogative to be lingered with on account of moving an application without sufficient ground.

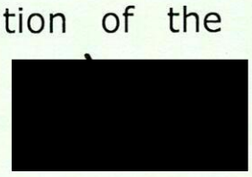
8. Ld. Counsel for the Appellant placed his reliance on the judgement of ***Hon'ble Apex Court in Union of India & Anr. Vs. Delhi High Court Bar Association and others (2002) 4 SCC 275.***

9. Per contra, Ld. Counsel for the Respondents vehemently argued that as far as the issue of summary trial is concerned, only fifteen days time was allowed by the DRT for cross examination of the witness failing which, I.A shall stand dismissed. But the said order was challenged by the Bank before the Hon'ble High Court of Telangana at Hyderabad and the matter remained pending long time and ultimately, the writ petition was withdrawn by the bank on



26.04.2024. Thereafter, the instant appeal is filed which is being heard today.

10. It is further submitted that fraud has been played upon the Respondents by the Bank as secured assets were sold for under-valuation and the said plea was taken in the written statement itself. In support of the same, cross examination of the witness was sought for. It is further submitted that desire of the borrower would be sufficient for permitting the borrower to cross examine the witness of the secured creditor. Ld. Counsel for the Respondents further placed his reliance on the judgment of ***Hon'ble Karnataka High Court, Bangalore between Smt. Pushpa A. Mulimani Vs. Syndicate Bank in Writ Petition No. 19711/2014(GM-DRT).*** Ld. Counsel for the Respondents would further submit that the Respondents were implicated in the criminal cases wherein they were sent to jail and ultimately, Ld. Principal Special Judge for CBI cases, Hyderabad in ***C.C.No.3/2014 between CBI Vs. M/s Pratyankara Electronics P. Ltd.*** acquitted the accused i.e. Respondent No.2 herein vide their order dt.22.02.2018 wherein certain observations were also made regarding the under-valuation and action of the then Authorized officer of the Appellant, Abraham Lincoln. It is further submitted that for that reason also, the witness needs to be brought on record and cross examination of the bank witness is necessary.



11. Rule 12(9) of Debts Recovery Tribunal (Procedural) Rules, 1993 reads as follows:

> *12(9): "The Tribunal may at any time for sufficient reason order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable:*
>
> *Provided that after filing of the affidavits by the respective parties where it appears to the Tribunal that either the applicant or the defendant desires the production of a witness for cross examination and that such witness can be produced and it is necessary to do so, the Tribunal shall for sufficient reasons to be recorded, order the witness to be present for cross examination, and in the event of the witness not appearing for cross examination, then the affidavit shall not be taken into evidence and further that no oral evidence other than that given in this proviso will be permitted".*

12. A perusal of the proviso to the said Rule 12(9) of the Rules will show that sufficient reason has to be shown by the Applicant for permission to cross examine the witness as the Tribunal has to record its decision that sufficient reason and sufficient ground has been made out for cross examination of the witness as has been held by the Hon'ble Apex Court. In the case of ***Union of India (supra)***, wherein in Para No.23, **Hon'ble Apex Court** has laid down the law which reads as under:

> *"The proviso to Rule 12(6) would certainly apply only where the Tribunal chooses to issue a direction on its own, for any particular fact to be proved by affidavit the affidavit of a witness being read at the hearing. The said proviso refers to the desire of an applicant or a defendant for the production of a witness for cross examination. In the setting in which, the said proviso occurs, it would appear to us that once the parties have filed affidavits in*

support of their respective cases, it is only thereafter that the desire for a witness to cross examined can legitimately arise. It is at that time, if it appears to the Tribunal, that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case that it shall require the witness to be present for cross examination and in the event of his not appearing, then the affidavit shall not be taken into evidence".

13. It was further held that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case. The witness to be present for the cross examination and in any event, of his not appearing, then the affidavit shall not be taken into evidence. Sufficient cause and ground has to be made out by the Applicant for permission to cross examine the witness.

14. If we go through the application filed by the Applicant for permission to cross examine the witness, it is found that only ground taken by the Applicant was that the secured assets were sold for under-valuation and they were agricultural lands and personal properties of the Applicant. On that ground alone, claim made by the Bank was disputed.

15. As far as the ground of under-valuation or the secured assets being agricultural lands are concerned, these issues have to be looked into by the DRT in the proceedings u/s 17 of the SARFAESI Act, 2002. During the course of arguments, Ld. Counsel for the Respondents would submit that the application filed under the SARFAESI Act, 2002 by the Respondents herein was dismissed on the ground of

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limitation and the matter is pending in appeal, meaning thereby that on such ground, application was already filed by the Respondents u/s 17 of the SARFAESI Act,2002. The scope of application u/s 19 of the Recovery of Debts and Bankruptcy Act, 1993 and Section 17 of the SARFAESI Act, 2002 are independent in nature. The grounds on which plea of fraud is taken by the Appellant have to be looked into in the application u/s 17 of the SARFAESI Act. If it is found to be unheard, appeal to be filed within the time but when the alternate remedy was available with the Respondents, such issues cannot be taken into consideration for permission to cross examine the witness in OA proceedings. The scope of Section 19 of Recovery of Debts and Bankruptcy Act is entirely different wherein Recovery certificate, as sought by the Bank, to be issued. Accordingly, when all the issues are to be taken care of in the SARFAESI application and no ground for cross examination of the witness on any of the issues which can be looked into in Section 19 application is taken in the I.A., I do not find any merits for permission to cross examine the witness.

16. It is to be observed that the DRT has passed very cryptic and unreasoned order without assigning any reasons which cannot be sustained in the eye of law. *Reasons are the soul of an order* as has been held by the *Hon'ble Apex Court in* ***Kranti Associates Pvt. Ltd. and another v. Masood Ahmed Khan and others (2010) 9 SCC 496.***

[redacted]

17. Accordingly, the judgment relied upon by the Ld. Counsel for the Respondents in the case of **Pushpa A. Mulimani (supra)**, is not applicable to the facts of the present case in view of the law laid down by the **Hon'ble Apex Court in *Union of India* (supra).**

18. On the basis of the discussion made above, I am of the considered view that Ld. DRT-I, Hyderabad has erred in passing the impugned order dt.12.11.2018 in I.A.1823/2018 without assigning any reasons and accordingly, the same shall be set aside.

ORDER

Appeal is allowed by setting aside the impugned order dt.12.11.2018 passed in I.A.1823/18 in O.A.219/2010. Since the O.A. is pending since 2010, Ld. DRT-I, Hyderabad is directed to decide the O.A. as expeditiously as possible without granting unnecessary adjournment, sought by the parties, in accordance with law.

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 28th day of April, 2026.

[redacted]

(Anil Kumar Srivastava, J)
Chairperson

Dated 28th April, 2026

28.04.2026