

Judgment reserved on: 25<sup>th</sup> June, 2026

Judgment delivered on: 2<sup>nd</sup> July, 2026

Misc. Appeal No. 83 of 2025-DRAT-Kolkata

**IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA**

Misc. Appeal No. 83 of 2025

(Arising out of I.A. 2023 of 2025 in S.A. 249 of 2025 in DRT-II, Hyderabad)

**HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA  
CHAIRPERSON**

Union Bank of India, Krishna Nagar AB Branch, Plot No. 145, Phase III,  
Kamalapuri Colony, Hyderabad - 502 110. ... Appellant

-Versus-

1. Smt. Uppalapati Anusha Esha, Plot No. 473-M-III, Municipal No. 8-2-293/82/JIII/473, M/G-2, Hakimpet Village, Road No. 87, Jubilee Hills, Hyderabad;
2. Smt. Kakalwar Rohini, Flat No. 102, BVR Residency, Navodaya Colony, Opposite Ganpathi Complex, Yousufguda, Hyderabad - 500 018.  
... Respondents

Counsel for Appellant ... Ms. Tannya Baranwal (Virtual)  
Ms. Zeenat Shabab

Counsel for Respondent No. 1 ... Mr. Vudiga Ravinder (Virtual)  
Mr. Rupnath Mallick

**JUDGMENT : 2<sup>nd</sup> July, 2026**

**THE APPELLATE TRIBUNAL:**

**1.** Instant appeal has arisen against order dated 24.7.2025 passed by the Learned DRT-II, Hyderabad in I.A. 2023 of 2025 arising out of S.A. 249 of 2025 (Uppalapati Anusha Esha -vs- Union Bank of India) whereby Learned DRT passed a conditional order for payment of Rs.21.00 lac in three instalments and stayed further proceedings initiated by the Bank in compliance of the order under Section 14 of the SARFAESI Act.

**2.** Securitisation Application, under Section 17 of the SARFAESI Act, 2002 (hereinafter referred to as the 'Act'), filed by Respondent No. 2, Smt. Kakalwar Rohini, seeking relief for a declaration to the effect that the action of the

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Bank to dispossess her from the schedule property in pursuance of the Possession Notice dated 2.5.2025 is against law. Consequential reliefs were also sought for. It is stated in the Securitisation Application that the Securitisation Applicant entered into an agreement of sale dated 22.7.2019 for an amount of Rs.1.15 crore with Respondent No. 2, Smt. Kakalwar Rohini, for purchase of the schedule property. Respondent No. 2 is the owner of the property. Part payment of the sale consideration was made to an extent of Rs.59,87,000.00. Subsequently, another agreement of sale dated 26.11.2021 was executed for making payment of Rs.42,44,645.00 to the Respondent No. 2. Securitisation Applicant is in possession over the secured assets. Appellant Bank inform that Respondent No. 2, Smt. Kakalwar Rohini, has mortgaged her property with the Bank. No such communication was made to the Securitisation Applicant. Possession Notice was affixed on the secured assets. A civil suit No. 49 of 2025 is also pending before the Civil Court wherein a status quo order is passed. Demand Notice dated 10.2.2025 is illegal and the Possession Notice, subsequent thereto, dated 2.5.2025 is also illegal.

**3.** Learned DRT passed the impugned order restraining the Bank from taking over possession subject to payment of Rs.21.00 lac in three instalments of Rs.7.00 lac each.

**4.** Learned Counsel for Appellant would submit that no right accrues in favour of the Securitisation Applicant on the basis of an Unregistered Agreement of Sale. Further,

Learned DRT has no jurisdiction to pass the impugned order and to settle the terms of settlement between the Borrower and the Bank. The impugned order suffers from material illegality. Order under Section 14 of the Act has to be executed in accordance with law. All the actions of the Bank were initiated as per law. Order, under Section 14 of the Act, was passed by the Learned Additional Chief Metropolitan Magistrate, Hyderabad. Action of the Securitisation Applicant was initiated in collusion with the Borrower. The Securitisation Applicant is neither a Borrower nor a bona fide Purchaser who has no right to seek stay of SARFAESI action taken by the Bank on the basis of an Unregistered Agreement of Sale. Possession of the Securitisation Applicant is not lawful. Secured Creditor has every right to enforce the order passed by the Learned Additional Chief Metropolitan Magistrate, Hyderabad under Section 14 of the Act.

**5.** Per contra, Learned Counsel for Respondent would submit that the amount, as per the order of the Learned DRT, is deposited by the Securitisation Applicant which was accepted by the Bank without any protest. Accordingly, now the principle of approbate and reprobate would apply against the Bank. Learned Counsel would further submit that the Securitisation Applicant is in possession on the basis of an agreement of sale. She has every right to protect her possession.

**6.** Full claim of the Securitisation Applicant is based upon an Unregistered Agreement of Sale. Admittedly, the Bank is

not a party to the agreement. Further no notice of such agreement was ever given to the Bank. It is also not in dispute that Respondent No. 2, Smt. Kakalwar Rohini, is the Borrower of the Bank who has created equitable mortgage of the secured assets in favour of the Bank in lieu of the financial facilities granted by the Bank. When the loan account became irregular and was classified as N.P.A., Bank proceeded under the SARFAESI Act and obtained an order under Section 14 of the Act from the Learned Additional Chief Metropolitan Magistrate, Hyderabad.

**7.** Now the whole controversy revolves on the issue as to whether the Securitisation Applicant has any prima facie case in its favour?

**8.** Law is well settled that an interim order can be passed in favour of the Applicant if the Applicant is able to prove necessary ingredients, i.e., prima facie case, in its favour and balance of convenience and irreparable loss in favour of the Applicant.

**9.** As far as issue of prima facie case is concerned, Securitisation Applicant based its claim on an Unregistered Agreement of Sale. Law is well settled that an Agreement of Sale does not confer any right or title even though registered although in the present case it is unregistered; it does not confer any right or title upon the vendee. At the most, vendee has a right to file a suit for specific performance of contract against the vendor in accordance with law. But as far as the issue of rights of the Bank are

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concerned, no right can be claimed against the Bank on the basis of an Unregistered Agreement of Sale.

**10.** In a recent judgment by the Hon'ble Supreme Court decided on 1.9.2025 in ***Ramesh Chand (D) Thr. LRs -vs- Suresh Chand & Another (2025 SCC OnLine SC 1879)*** issue relates to a General Power of Attorney, Agreement to sale, affidavit and receipt of payment of consideration which was of the year 1996. Hon'ble Apex Court has placed reliance upon the judgment of ***Suraj Lamp and Industries Private Limited -vs- State of Haryana [(2012) 1 SCC 656]*** wherein the judgment of Hon'ble Delhi High Court in ***Asha M. Jain -vs- Canara Bank (2001 SCC OnLine Del 1157)*** was held to be not a good law.

**11.** Hon'ble Apex Court held that a transfer of immovable property, by way of a sale can only be made by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law) no right, title or interest in an immovable property can be transferred.

**12.** It was further held that any contract of sale (agreement to sell) 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 Property Act, 1882 and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53A of the T.P Act). It was further held that:

*"19. A power of attorney is not a sale. A sale involves transfer of all the rights in the property in favour of the transferee but a power of attorney simply authorises the grantee to do certain acts with respect to the*

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*property including if the grantor permits to do certain acts with respect to the property including an authority to sell the property."*

"21. Further, the position of a power of attorney with respect to conferment of title was explained by this Court in the case of *Suraj Lamp (supra)*, thus:

"20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee."

**13.** Even a receipt of consideration does not confer title as has been held in paragraph 28 of the judgment:

**"Receipt of Consideration/Affidavit**

28. Apart from the aforementioned documents, there is also an affidavit dated 16.05.1996 said to have been executed by Sh. Kundan Lal in favour of the plaintiff, along with a receipt of consideration, wherein Sh. Kundan Lal is said to have acknowledged receipt of full consideration for the sale of suit property to the tune of Rs. 1,40,000/- from the Plaintiff. The said instruments do not confer a valid title upon the plaintiff because as per Section 54 of TP Act, only through a deed of conveyance can a title can be transferred, and none of the other documents and recitals in the said affidavit are not proved by examining any other independent witnesses."

**14.** As far application of Section 53A of the Transfer of Property Act is concerned, it was held that:

"30. According to Section 53A of the TP Act, where there is a contract to transfer any immovable property in writing and the transferee has in part performance of the contract taken the possession of the property or part thereof, then notwithstanding that the transfer has not been completed in the manner prescribed by law, the transferor will be debarred from taking the possession of the property. x x x "

**15.** In ***Ghanshyam -vs- Yogendra Rathi [(2023) 7 SCC 361]*** Hon'ble Apex Court has placed reliance upon *Suraj Lamp (supra)* and held that agreement of sale may not be regarded as transaction of sale or a document transferring the proprietary rights in an immovable property.

**16.** In ***Indian Overseas Bank -vs- M.A.S. Subramanian & Others (2025 SCC OnLine SC 2619)*** it was held that:

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*"6. It is well settled that an agreement for sale in respect of an immovable property does not transfer title in favour of the purchaser under the agreement. In view of Section 54 of the Transfer of Property Act, 1882, an agreement for sale does not create any interest in the property. The only mode by which an immovable property worth more than Rs.100/- (Rupees one hundred) can be sold is by a sale deed duly registered in accordance with the Indian Registration Act, 1908."*

**17.** Accordingly, when the Agreement of Sale was executed in favour of the Securitization Applicant regarding a property which was already mortgaged, prima facie no right can be conferred upon the Securitization Applicant against Bank on the basis of the Agreement of Sale. Whatever rights or liabilities that may have occurred in accordance with law can only be inter se between the parties to the agreement. Accordingly, no prima facie case exists in favour of the Securitization Applicant to seek relief of stay of proceedings against the Bank.

**18.** Balance of convenience also lies in favour of the Bank as Bank is legally executing the orders of the Learned Additional Chief Metropolitan Magistrate, Hyderabad passed under Section 14 of the Act. Bank is enforcing security rights against its Borrower. SARFAESI Applicant, although is in possession but on the basis of an Unregistered Agreement of Sale which is not binding upon the Bank as the secured assets were already mortgaged with the Bank and the Bank is enforcing its right by taking over possession of the secured assets under Section 14 of the Act. Hence there is no possibility of irreparable loss in favour of the Securitization Applicant.

**19.** As far as the issue of application of principle of approbate and reprobate is concerned, although the amount

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is deposited by the Securitization Applicant under "No Lien Account" but it does not confer any right in favour of the Securitization Applicant because the order itself is not passed in accordance with law. Further, the amount is not being used by the Bank rather, it is deposited in a "No Lien Account".

**20.** On the basis of the discussion, we are of the considered view that the Learned DRT passed the impugned order against the settled principles of law which is liable to be set aside. Appeal deserves to be allowed.

#### O R D E R

Appeal is allowed. Order dated 24.7.2025 passed by the Learned DRT-II, Hyderabad in I.A. 2023 of 2025 arising out of S.A. 249 of 2025 (Uppalapati Anusha Esha -vs- Union Bank of India) is hereby set aside. However, Securitization Applicant would be entitled to refund of the amount deposited by her in "No Lien Account" in compliance of the impugned order.

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

Dated: 2<sup>nd</sup> July, 2026  
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