

Judgment reserved on: 25<sup>th</sup> June, 2026  
Judgment delivered on: 1<sup>st</sup> July, 2026

Appeal No. 88 of 2022-DRAT-Kolkata

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

Appeal No. 88 of 2022  
(Arising out of T.S.A. 298 of 2015 in DRT-III, Kolkata)

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

Shyamdev Das, carrying on proprietorship business under the name and style of "Wizard International", from 103, Subodh Garden, Budge Budge 1, Bansdroni, P.O. Bansdroni, P.S -Bansdroni, Kolkata - 700 070..

... Appellant

-Versus-

1. Central Bank of India, Bhowanipur Branch, 86, S.P. Mukherjee Road, P.S. Kalighat, Kolkata - 700 026;
2. The Authorized Officer, Central Bank of India, Assets Recovery Branch, 8<sup>th</sup> Floor, 33, Netaji Subhas Road, Kolkata - 700 001;
3. M/s. Aaradhaya I. T. Park Realtech Private Limited, 10F, S.P. Mukherjee Road, 1<sup>st</sup> Floor, Kolkata - 700 025.  
... Respondents

Counsel for Appellants ... Mr. Arijit Bardhan  
Ms. Saheli Bose

Counsel for Respondents ... Ms. Aparajita Rao  
Ms. Nabanita Dutta

**JUDGMENT : 1<sup>st</sup> July, 2026**

**THE APPELLATE TRIBUNAL:**

**1.** Instant appeal has arisen against the judgment and order dated 19.04.2022 passed by the Learned DRT-III, Kolkata in T.S.A. No. 298 of 2015 (Shyamdev Das -Vs- Central Bank of India & Others) whereby Learned DRT dismissed the securitization application filed by the Appellant.

**2.** Facts, in brief, are that the sole Appellant is carrying on proprietorship business, who availed overdraft facility of Rs. 18.00 lakh which was sanctioned on 13.03.2008. Equitable mortgage of immovable property situated at

Appeal No. 88 of 2022-DRAT-Kolkata

Rajpur, Sonarpur, South 24 Parganas was created. This property was taken by the Appellant on perpetual lease from one Suresh Chandra Goswami vide Deed No. I-00736 of 2007. Loan account became irregular and was classified as N.P.A. Respondent Bank initiated action under SARFAESI Act which was challenged by the Appellant on the ground that proposal for settlement of the Appellant was not considered by the Respondent Bank. Detailed reply of the representation dated 15.05.2010 was not given. Symbolic possession was taken against the law. O.A. was also filed by the Bank, hence, securitization action could not be initiated by the Bank. There is violation of Rule 8(5) and 8(6) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as Rules) while issuing sale notice dated 28.01.2012. Valuation of the secured asset was not properly done. An amount of Rs.18.00 lakh was arbitrarily credited to the account of the Appellant by the Bank. Relief is sought to the effect that notice under Section 13(2) dated 06.05.2010, Possession Notice dated 21.08.2010 and Sale Notice dated 28.01.2012 are bad in law. Possession of the property be also restored.

**3.** Respondent Bank filed reply stating that the loan account of the Appellant was classified as N.P.A. on 31.01.2010. Notice under Section 13(2) of the Act was issued on 06.05.2010 and the same was received back as undelivered and was published in the 'Financial Express' and the 'Aajkal' on 10.06.2010. Representation made by the Appellant was duly replied by the Bank on 25.05.2010.

Appeal No. 88 of 2022-DRAT-Kolkata

Possession Notice was issued and published on 24.08.2010. Sale Notice was issued on 28.01.2012. There was no bid against the Sale Notice. Thereafter fresh Sale Notice was issued and was published in the 'Financial Express' and the 'Aajkal' on 05.12.2012 fixing the sale date on 15.01.2013. Sale Notice sent to the Appellant was returned with an endorsement marked "envelop sent". Auction was successfully conducted on 15.01.2013 which was confirmed in favour of the highest bidder for Rs.17.50 lakh. Even then, a liberty was given to the Appellant to redeem his property within three days and communication was sent through E-mail as well as Speed Post on 7.02.2013. Redemption was not made by the Appellant. Accordingly, sale certificate was issued and excess amount was credited to the loan account of the Appellant. The proceeding for recovery under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 and under SARFAESI Act can be undertaken simultaneously. Proper valuation report was obtained by the Bank and thereafter auction was conducted.

**4.** After hearing the Learned Counsel for the parties, Learned DRT has recorded findings that loan account was rightly classified as N.P.A. by the Bank. Further Demand Notice, issued under Section 13 (2) of the Act, was in accordance with law. There was compliance of the provisions of Section 13 (3-A) of the Act by the Bank. Possession notice was rightly issued in accordance with law. Compliance of Rule 8(6) and 9(1) of the Rule was duly made. Sale Certificate has rightly been issued. Learned DRT did not find

any irregularity to interfere into the securitization proceedings. Accordingly, dismissed the Securitization Application filed under Section 17 of the Act.

**5.** Feeling aggrieved, Appellant preferred the appeal.

**6.** Learned Counsel for the Appellant would submit that notice under Section 13(2) was bad in law as the date of N.P.A. was not mentioned in the notice. Further, it was not duly served on the correct address. Bifurcation of the demanded dues, i.e., Rs.19,90,246.72, was not made. It is not specifically mentioned what was the principal amount due and what was the interest amount?

**7.** It was further submitted that compliance of Section 13(3-A) was not made by the Bank. Possession Notice is bad in law. There is violation of Rule 8(6) and 9(1) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules'). Securitization Application is filed within time. It is further argued that there is violation of Rule 9(3) and 9(4) of the Rules.

**8.** Per contra, Learned Counsel for Respondent would submit that Notice, under Section 13(2) of the Act, was duly sent to the residential address of the Appellant as the address D/66, Ravindra Pally, Kolkata – 700 086 was the address of the commercial establishment which was closed, hence, the notice was sent to the residential address of the Appellant. Loan account was classified as N.P.A. in accordance with law. There was compliance of Rule 8(6) and 9 (1) of the Rules. It is further submitted that no plea of non-compliance of the provision of Rule 9(3) and 9(4) of the

Rules was taken in the S.A. Further, in the Securitization Application no challenge of Notice under Section 13(2) and 13(4) of the Act has been made by the Appellant. In the Securitization Application limitation was sought from 07.02.2023 when the amount was credited in the account of the Appellant, which is against the law. There is no pleading of violation of Rule 9(3) and 9(4) of the Rules. Accordingly, Learned DRT has rightly dismissed the Securitization Application.

**9.** At the very outset, it has to be observed that in the Securitization Application, filed under Section 17 of the Act, relief was sought for to the effect that Notices issued by the Bank under Section 13 (2) dated 6.5.2010, 13 (4) dated 25.8.2010 of the Act and the sale, conducted on 28<sup>th</sup> January, 2012, be declared void.

**10.** Challenge to the Auction Sale dated 15.1.2013, in pursuance of the e-Auction Sale Notice dated 28.01.2012, was made by preferring an I.A.

**11.** As far as relief sought for in the Securitization Application is concerned, no e-Auction took place in pursuance of the Sale Notice dated 28.1.2012. Accordingly, relief sought for in this regard becomes infructuous. It is also observed that no amendment in the pleadings was sought for by the Appellant regarding the fresh Sale Notice dated 5.12.2012 wherein the e-Auction was to be conducted on 15.1.2013. Accordingly, prima facie, it is established that as far as auction sale, in pursuance of the notice dated 28.1.2012, is concerned, Securitization Application was

infructuous and liable to be dismissed on this count alone. However, Learned DRT had taken into consideration the I.A. filed challenging the e-Auction Sale conducted on 15.1.2013, in pursuance of the notice dated 5.12.2012.

**12.** Learned Counsel for Appellant submits that there is violation of Rule 9 (3) 9 (4) of the Rules. Perusal of Securitization Application as well as I.A. filed by the Appellant before the Learned DRT no violation of Rule 9 (3) and 9 (4) of the Rules is taken by the Appellant. Law is well settled that a plea which is not taken in the pleadings cannot be looked into by the Courts. Accordingly, there is no plea raised by the Appellant regarding violation of Rule 9 (3) and 9 (4) of the Rules. We do not find any force in the submission made by the Learned Counsel for Appellant. Issue of violation of Rule 9 (3) and 9 (4) of the Rules is not pleaded, hence cannot be considered in the appeal.

**13.** Learned Counsel for Appellant vehemently argued that there is violation of Section 13 (2) of the Act. Learned Counsel has further argued that there is violation of Section 13 (3) of the Act as no details of principal amount as well as interest is mentioned in the Notice under Section 13 (2) of the Act.

**14.** Perusal of Notice under Section 13 (2) dated 6.5.2010 would reveal that the demanded dues as on 31.12.2010 was Rs.19,90,246.72. Since this was an Overdraft Facility the bifurcation of the amount sanctioned as interest was not required as interest amount would be added in the principal as soon as the same became due. Accordingly, we do not

find any illegality in the impugned notice under Section 13 (2) of the Act.

**15.** Representation under Section 13 (3-A) of the Act was made by the Appellant on 15.5.2010 wherein it was stated that Statement of Account with details of transaction be provided to the Appellant. This representation was duly considered and was replied to by the Bank on 25.5.2010; thereby made compliance of Section 13 (3-A) of the Act. The details, as required under the law, duly finds place in the Notice under Section 13 (2) of the Act. Further, Learned Counsel for Appellant has placed reliance on ***Madhu Sudan Ghosh & Another -vs- Bank of Baroda & Others (2010 SCC OnLine Cal 2607)*** but the same is not applicable to the facts of the present case as in the present case Overdraft Facility has been availed by the Appellant while in the judgment cited by the Learned Counsel for Appellant it was House Building Advance wherein separately interest was accruing hence there was a direction of the Hon'ble High Court for giving the bifurcation of the amount in the notice.

**16.** Argument is made by the Learned Counsel for Appellant is that the Sale Notice was not served upon the Appellant. In support of his submission, he has drawn my attention to the address shown in the Notice under Section 13 (2) of the Act which was "D/66, Rabindra Pally, Kolkata – 700 086". Learned Counsel would submit that the Notice allegedly was sent at a different address "D-14, Rabindra Pally, Kolkata – 700 086" which was not the address of the Appellant.

**17.** Sale Notice was sent to the Appellant, Shyamdev Das, at the address "D-14, Rabindra Pally, Kolkata – 700 086" through speed post and was returned to the Bank. Notice was subsequently published in the newspaper also and was also affixed on the secured assets.

**18.** As far as issue of address of the Appellant is concerned, no doubt Notice under Section 13 (2) of the Act was sent at the address "D/66, Rabindra Pally, Kolkata – 700 086" but the Sale Notice was sent at the address "D-14, Rabindra Pally, Kolkata – 700 086". It is submitted that the same address was mentioned by the approved Valuer in its Valuation Report which was residential address of the Appellant. Further, it finds support from the Securitization Application filed under Section 17 of the Act wherein in the affidavit Appellant himself has mentioned his address as "D-14, Rabindra Pally, P.S. Patuli, Kolkata – 700 086" although at the first page in particulars of the Applicant it is mentioned as "Shyamdev Das, C/o. Wizard International, D/66, Rabindra Pally, Kolkata – 700 086". Bare perusal of the Securitization Application would reveal that Appellant himself has given the address of "D-14, Rabindra Pally, Kolkata – 700 086" as the residential address of the Appellant on which the notices were sent and were not served; thereafter published in the newspapers. It would also be relevant to observe that after the sale was conducted by the Bank, no objection has ever been raised by the Appellant that no notices were sent at the address of "D-14, Rabindra Pally, Kolkata – 700 086" and

Appeal No. 88 of 2022-DRAT-Kolkata

"D/66, Rabindra Pally, Kolkata – 700 086". Accordingly, it is not possible that the notices were not sent upon the Appellant.

**19.** Learned Counsel for Appellant would further submit that the date of N.P.A. is not mentioned in the Notice under Section 13 (2) of the Act. We do not find any force in the submission as it is not mandatory for the Bank to mention the date of N.P.A. in the Notice under Section 13 (2) of the Act.

**20.** On the basis of the discussion, we are of the view that Learned DRT has rightly arrived at the conclusion in dismissing the Securitization Application. No interference is called for in the appeal. Accordingly, appeal is liable to be dismissed.

#### O R D E R

Appeal is dismissed. The impugned judgment and order dated judgment and order dated 19.04.2022 passed by the Learned DRT-III, Kolkata in T.S.A. No. 298 of 2015 (Shyamdev Das -Vs- Central Bank of India & Others), is affirmed.

File be consigned to Record room.

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

Order pronounced in open Court.

(Anil Kumar Srivastava,J)  
Chairperson

Dated: 1<sup>st</sup> July, 2026  
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