

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appl. No. 135 of 2018
(Arising out of S.A. 375 of 2016 – DRT-III Kolkata)

**THE HON'BLE JUSTICE SHRI ANIL KUMAR SRIVASTAVA,
CHAIRPERSON**

01.07.2026

1 Asset Reconstruction Co. (India) Ltd. having office at Room No. A-11, 8th floor, Chatterjee International Centre, 33A, Jawaharlal Nehru Road, Kolkata PIN 700071.

2. The Authorised Officer, Asset Reconstruction Co. (India) Ltd. having office at Room No. A-11, 8th floor, Chatterjee International Centre, 33A, Jawaharlal Nehru Road, Kolkata PIN 700071.

..□Appellant

--Vs--

1. Nil Ratan Dey, residing at A/12C/1, Paikpara Row, PS Chitpur, Kolkata – 700037.

2. Sukhaniloy Coop. Housing Society Ltd., having officer at 12C, Paikpara Row, PS Chitpur, Kolkata – 700037.

..□Respondent

For Appellant : Mr. Rohit Das , Id. adv.
Ms. Kishwar Rahaman, Id. Adv.
Ms. Divya Tekriwal, Id. Adv.

For Respondent : Mr. Dhiman Kr. Sengupta, Id. Adv.
Ms. Farhin Mustaque, Id. Adv.

THE APPELLATE TRIBUNAL :

Instant appeal is preferred against the judgment and order dated 16.06.2017 passed by learned DRT-III Kolkata in four connecting S.A.s (i) TSA 13 of 2016 arising out of S.A. 202 of 2011 (Sri Nil Ratan Dey Vs. United Bank of India & Ors.); (ii) TSA 102 of 2016 arising out of S.A. 354 of 2010 (Sri Nil Ratan Dey Vs. United Bank of India & Ors.); (iii) TSA 1261 of 2016 arising out of

S.A. 402 of 2011 (Sri Nil Ratan Dey Vs. United Bank of India & Ors.); and (iv) S.A. 375 of 2016 (Sri Nil Ratan Dey Vs. Asset Reconstruction Co. (I) Ltd. & Ors.) whereby learned DRT allowed the four S.A.s with the direction that bank/financial institution is entitled to claim their security/charge on the said flats which they have stated to be secured assets.

2. Feeling aggrieved, Asset Reconstruction Co. Ltd. preferred this appeal against the judgment and order passed in S.A. 375 of 2016. Judgment was passed by the learned DRT in four S.A.s jointly wherein only judgment in S.A. 375 of 2016 is assailed by the Asset Reconstruction Co. Ltd.

3. As per pleadings of the parties the securitization applicant, Sri Nil Ratan Dey, filed the securitization application challenging the securitization action initiated by the secured creditor. One Samrat Kar is the borrower of the financial institution who purchased flat No.4 on the first floor from the securitization applicant through a power of attorney by one Subrata Das, who was also 'Developer'. A Deed of conveyance was executed on 03.11.2005. Securitization applicant, Nil Ratan Dey, is neither borrower nor guarantor of the bank who is the absolute owner of

the property situated at A-12C/1, Paikpara Row, Kolkata, who was member of Sukhaniloy Coop. Housing Society Ltd. which was registered for the purpose of allotment of plots and construction of residential houses for their members only. The plot of land of 12/C Paikpara Row, Kolkata was purchased by the Society and the plot was subdivided into nine sub-plots which were allotted to its members. One of the said plots was allotted to one Jasada Lal Saha Banik, who transferred said plot no. A/12C/1 in favour of Nil Ratan Dey and deed of conveyance was executed on 04.12.1999. Mutation was also carried out and construction was made.

4. An agreement was entered into between the applicant and Subrata Das on 11.02.2002 for construction. A power of attorney was also executed in his favour. However, Subrata Das entered into agreement of sale of flats with so many persons without any authority. Said third parties mortgaged the flats to different banks and obtained loan. Unregistered agreement and power of attorney were cancelled by Nil Ratan Dey. Challenge was made to the securitization action initiated by the secured creditor.

5. Secured creditor filed written objection wherein it is stated that said Samrat Kar is the borrower who purchased the flat on

the first floor of 12C Paikpara Row, Kolkata through his attorney Subrata Das who was also developer. Conveyance deed was executed. Loan was granted by the Indian Bank to Samrat Kar in October 2005. Loan agreement was executed for Rs.6.75 lakhs. Repayment of loan amount was irregular. Securitization action was initiated by the bank. Loan was assigned to the Asset Reconstruction Co. who issued demand notice dated 16.02.2013 for an amount of Rs.14,11,608.68. Possession notice was also issued on 18.08.2016. Loan was granted on the basis of documents submitted by the borrower.

6. Without entering into merits of the matter, at the very outset, impugned judgement and order itself reflects a procedure followed by the learned Presiding Officer which is against law. When the matter was heard and judgement was reserved for 16.06.2017, learned Presiding Officer in Para 9(vii) of page 12 has recorded that in order to ascertain correct position in regard to the possession of the secured asset, Presiding Officer personally visited the property on 06.06.2017. Thereafter, he recorded certain observations which he made at the time of inspection. Certain queries were made to the Secretary of the

Society, Sri Pradip Roy Chowdhury. On the basis of those observations made by him during inspection of the property, Presiding Office passed the impugned judgment and order. Learned Presiding Officer adopted a procedure which is contrary to the settled legal principle of law. Although it is true that Court or Tribunal in order to finally adjudicate the issue, if it deem proper, can make a spot inspection of the disputed property, but it is to be done in accordance with law. Principles of natural justice have to be followed by the Presiding Officer while adopting a mode of adjudication through inspection of the secured asset. If Presiding Officer intends to make a spot inspection, he should have issued notice to the parties or their counsel informing them the date and time of the inspection. Thereafter, at the time of making inspection he should have to make the spot notes and on the basis of notes, he should also prepare an inspection report which should be made part of record. This is the correct procedure which should have been followed by the learned Presiding Officer before making spot inspection of the secured asset, but as would appear from the impugned judgement and

order, learned Presiding Officer did not make any effort to follow the principles of natural justice. Parties or their counsel were not informed about the date and time of the inspection. Nothing is on record to show that spot notes were prepared by the learned Presiding Officer or any inspection report was prepared by him. No opportunity of hearing was accorded to the parties before deciding the securitization application on the basis of the inspection. Such procedure cannot be approved under the provision of the Act.

7. In such circumstances, without entering into the merit of the matter since inherent illegality is committed by the learned Presiding Officer, we are left with no option but to set aside the judgment and remand the matter to learned DRT to decide it afresh after affording opportunity of hearing to the parties.

O R D E R

8. Appeal is allowed. Impugned judgment and order passed in S.A. 375 of 2016 is set aside. Matter is remanded back to learned DRT-III Kolkata to decide it afresh after affording opportunity of hearing to the parties. Learned DRT should not be

influenced by the inspection note made by the learned Presiding Officer in his inspection dated 06.06.2017. Costs easy.

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 1st day of July, 2026.

(Anil Kumar Srivastava, J)
Chairperson

Dated : 01.07.2026
/pkb

