

Case Citation: (2026) ibclaw.in 238 DRAT
BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI
Present: Justice Vivek Bharti Sharma, Chairperson

Misc. Appeal No. 28/2025

Between

Tara Pandurang Kulkarni V/s. DCB Bank Ltd & Anr.	... Appellant/s ...Respondent/s
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:- Order dated: 24/06/2026: -

Present:

Mr. Nikhil N. Wadikar, Advocate for Appellant.

Mr. Ayush Kothari along with Mr. Vinay Deshpande, i/b M/s V. Deshpande & Co., Advocate for Respondent No. 1.

Mr. Rahul S Mahadik, Advocate for Respondent No. 6 appeared through Video Conferencing.

2. At the very inception, it would be pertinent to note that vide order dated 11.03.2026 in Writ Petition No. 2672/2026 filed by Respondent No. 1/Bank, the Hon'ble High Court was pleased to direct this Appellate Tribunal to decide the Appeal on or before 29.05.2026 and the same was extended till 15.07.2026.

However, on 13.05.2026 the Appellant himself sought an adjournment on the ground that the main counsel was not available.

On the examination, it was discovered that the Appellant had not served the Respondents through the independent mode of speed

post. Accordingly, the Appellant was directed to serve again through Registered Speed Post. The Affidavit of service has been filed by Appellant. Taken on record.

However, there is no appearance on behalf of the Respondent Nos. 2, 3, 4 and 5 and therefore Respondent Nos. 2, 3, 4 and 5 are proceedings ex-parte.

3. Brief facts:

For the disposal of the Appeal, the brief facts giving rise to the present Appeal, as submitted by the parties, are that the Respondent No. 3, 4 and 5 were the partners of the Respondent No. 2 and on 05.04.2014 the Respondent No. 2 Company availed an overdraft facility along with other credit facilities from the Respondent No. 1/Bank; that, husband of the Appellant, Late Shri Pandurang Kulkarni, executed a simple mortgage in respect of property in question in favour of Respondent No. 1/Bank; that, Shri Pandurang Kulkarni died leaving behind Appellant (*his wife*), his son i.e. Respondent No. 3 and two daughters; that, the mortgage property was owned by the husband of the Appellant at the time of mortgage and her son Respondent No. 3; that, the later on the overdraft facility

of ₹12 lakhs was enhanced to ₹90 lakhs and subsequently to ₹115 lakhs; that, on 26.09.2023 the Respondent No. 1/Bank issued notice under Section 13 Sub-Section 2 of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (“SARFAESI Act” in short) to the Respondent Nos. 2 to 6; that, after death of mortgagor Shri Pandurang Kulkarni i.e. husband of the Appellant, the two daughters of deceased executed a Registered Relinquishment Deed thereby relinquishing their respective shares in mortgaged property in favour of the Appellant on 30.08.2022; that, on 12.12.2023 the Respondent No. 1/Bank filed an application under Section 14 of the SARFAESI Act before Chief Judicial Magistrate, Pune and thereafter proceeded to take the physical possession of the mortgage property on 24.05.2024; that, the Appellant filed Securitisation Application (*S.A.*) No. 170/2024 challenging the order of the Chief Judicial Magistrate, Pune dated 23.04.2024; that, in *S.A.* No. 170/2024, the Appellant filed Interlocutory Application (*I.A.*) No. 1108/2024 for restraining the Respondent No. 1/ Bank to take the physical possession of the mortgaged property; that, however, vide impugned order dated 24.05.2024 in *I.A.* No. 1108/2024 for the interim relief was disposed of with a direction to stay the dispossession

of the Appellant from the suit property scheduled on the date of the order i.e. 24.05.2024 subject to the Appellant and Respondent No. 3 jointly and severally deposit 10% of the amount of the Demand Notice by 2:30 p.m. on that day i.e., 24.05.2024.

4. Heard.

5. **Submission by Appellant:**

Learned Counsel for the Appellant would submit that the impugned order is bad in the eyes of law, as the prayer was to restrain the Respondent No. 1/Bank to take physical possession of the suit property till final disposal of the S.A. whereas the relief was given only to restrain for one day subject to 10% of the Demand Notice is being deposited on the same day.

Learned Counsel for the Appellant would further submit that the notice issued under Section 13(2) of SARFAESI Act is bad in eyes of law as the same was not issued to the Appellant notwithstanding the facts that the Bank was in knowledge of the fact that the Appellant is the owner of mortgaged property by succession and Relinquishment Deed executed by her daughters; that, the Appellant was in possession of the suit property and if the Appellant is dispossessed

from suit property after 24.05.2024 but during the pendency of the S.A. then the S.A. would become infructuous.

Learned Counsel for the Appellant would further submit that the Appellant has a good *prima facie* case for the reason that the mortgage was initially executed by the husband of the Appellant for ₹12 lakhs only and there was no further renewal of the mortgage of the same property by her deceased husband when the overdraft limit was enhanced to ₹90 lakhs on 27.09.2019 and subsequently enhanced to ₹115 lakhs on 23.01.2020.

Learned Counsel for the Appellant would further submit that the Lower Tribunal erred in not appreciating the fact that original mortgagor had expired on 26.08.2017, whereas the overdraft facility was enhanced to ₹90 lakhs on 27.09.2019 and to 115 lakhs on 23.01.2020 without any notice to the legal heirs of Late Shri Pandurang Kulkarni and without obtaining any written consent of the Appellant who had become owner of the mortgaged property by succession and relinquishment deed.

Learned Counsel for the Appellant would further submit that the Appellant has a good *prima facie* case also for the reason that the

notice under Section 13(2) was not issued by the authorized person and was issued without complying with the mandatory legal provisions.

He would further submit that the Learned Lower Tribunal erred in taking consideration of the different loan facilities which were not subject matter of the present mortgage. He would further submit that balance of convenience also lies in her favour and she would suffer irreparable loss that would not be compensated if she is dispossessed since she resides in the same.

6. Per Contra:

The Learned Counsel for the Respondent No. 1/Bank would contradict all the submissions made by the Appellant and submit that the Appellant does not have a good *prima facie* case as stated.

Learned Counsel for the Respondent No. 1/Bank would submit that the submission of the submission of the Appellant that the notice was not issued to the Appellant under Section 13(2) of the SARFAESI Act is misplaced for the reason that the factum of the death of the mortgagor i.e. the husband of the Appellant and the father of the Respondent No. 3 was never intimate d to the Bank.

He would further submit that the prior to 26.03.2014 the Respondent No. 2, the partnership firm had availed credit facilities of Term Loan of ₹1,66,88,000/- and Home Loan of ₹7,50,000/-.

7. Considered. Perused the records and impugned order.
8. It would be pertinent to mention that it is admitted by the parties that the husband of the Appellant died on 26.08.2017 whereas the overdraft facility was enhanced to ₹90 lakhs on 27.09.2019 and subsequently enhanced to ₹115 lakhs on 23.01.2020, Certainly, it cannot be said that the such enhancement was with the consent of the deceased person. It is not the case of Respondent Bank that mortgage was renewed by legal heirs of deceased. Therefore, *prima facie*, the legal heirs of deceased mortgagor would not be liable to the same.

Therefore, the Appellant has made out a good *prima facie* case as the Appellant is the wife of the deceased mortgagor who died on 26.08.2017 and in the possession of the mortgaged property. The balance of convenience also lies in her favour. It goes without saying that the Appellant being 90 years-old lady, as stated in the pleading, irreparable loss would be caused to her if she is dispossessed.

9. Last but not least, the prayer in I.A. No. 1108/2024 was as under:

“22 (b) Pending and till disposal of the securitization application, the defendant no. 1 bank, its authorized officer and any other person claiming through them kindly be restrained from taking any further measures under section 13(4) of the Act and he restrained from taking physical possession of the suit property and flat property.”

However, the Learned Lower Tribunal without any valid reason, passed order only to stay the dispossession from the suit property scheduled on 24.05.2024 on condition of depositing 10% amount of demand notice by 2:30 PM of 24.05.2024. The case is that if the stay could have been granted for a day then why could not have been granted till disposal of the whole S.A.

ORDER

In view of the above, the Appeal No. 28/2025 is allowed and the impugned order dated 24.05.2024 passed by the Learned Presiding Officer, DRT-Pune is hereby set aside.

The Respondent No. 1/Bank is restrained not to take possession of the suit property till final disposal of the S.A. No. 170/2024.

The Ld. DRT, Pune is requested to make endeavour to decide

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the S.A. No. 170/2024 as expeditiously as possible.

No order as to costs.

Sd/-
Chairperson

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