Reportable/Non-Reportable

Reserved on 11th June, 2026
Delivered on 10th July, 2026

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA CHAIRPERSON

Appeal No.301 of 2018
(Arising out of O.A. No. 652 of 2017 in DRT-II, Hyderabad)

1. Sri R. Gireeshwar Reddy, S/o. R. Yella Reddy, 15/II RT. Vijayanagar Colony, Hyderabad 500057.

2. Sri K. Ravinder Reddy, S/o. Late Sri K. Yella Reddy R/o. No. 519-F, Road No. 28, Jubilee Hills, Hyderabad 500033.

3. Sri K. Srinivasa Reddy, S/o. Late Sri K. Yella Reddy, R/o. No. 519-F, Road No. 28, Jubilee Hills, Hyderabad 500033.

4. Sri K. Rambhupal Reddy, S/o. Late Sri K. Yella Reddy, R/o. No. 519/F, Road No. 28, Jubilee Hills, Hyderabad 500033.

5. Smt. A.P. Rajeswari, D/o. No. 519 -F, Road No. 28, Jubilee Hills, Hyderabad 500033.

....Appellants

-Versus-

1. M/s Pegasus Assets Reconstruction Pvt. Ltd., rep by its Power of Attorney Kotak Mahindra Bank Ltd. Regd. Office at 36-38A, Nariman Bhavan, 227 Nariman Point, Mumbai.

....Respondents

Counsel for Appellants	Mr. Nemani Srinivas
Counsel for Respondents	Mr. Pratik Ghose, Mr. Sarathi Dasgupta
JUDGMENT	**: 10th July ,2026**

THE APPELLATE TRIBUNAL :

Instant Appeal is preferred against a judgment and order dated 7th May, 2018 passed by Learned DRT-2

Hyderabad in O.A. No. 652 of 2017 (Old O.A. No. 211 of 2005 of DRT -1 Hyderabad) ***M/s Pegasus Assets Reconstruction Private Limited versus Sri R. Gireeshwar Reddy and others*** whereby Learned DRT allowed the O.A. against defendant Nos. 1 and 2 jointly and severally for payment of Rs.79,90,703.79 with interest @ 18.5% per annum simple from the date of O.A. till the date of realization. Further, Bank was entitled to proceed against the Defendants No. 2 to 6 to the extent of estate of Late Smt. K. Nageswaramma lying in their hands if any, towards realization of its debt. O.A. claim against the O.A. schedule property was dismissed.

2. Feeling aggrieved by the impugned judgment, defendant No. 1 to 4 and defendant No. 5 preferred the Appeal.

3. As per pleadings of the parties, the O.A. was filed by IndusInd Bank Limited who subsequently assigned the loan account to the Respondent M/s Pegasus Assets Reconstruction Pvt. Ltd. and the same was substituted in the O.A. proceedings.

4. IndusInd Bank Ltd. hereinafter referred to as the Bank sanctioned an Indus Estate Loan of Rs. 50 lacs to defendant No. 1 on 23rd March 2002 repayable in 24 monthly instalments commencing from 01.04.2003 with interest at the rate of 14.50% per annum with quarterly rests. In case of default, interest would be 18.50% + 2%. The defendant No. 1 namely Sri R. Gireeshwar Reddy was to give primary security by way of mortgaging the property land ad measuring Ac.0.20 guntas bearing plot No. 13 in Survey No. 73, 74, 75 of Madhapur village, Serilingampally Village, Ranga Reddy District and the personal guarantee of defendant No. 2 Late Smt. K. Nageswaramma and Sri K Ravinder Reddy. Defendant No. 1 also executed the D.P. Note, Letter of Waiver, Letter of Continuity and Term Loan Agreement on 30th March, 2002. Personal guarantee was also executed by Sri K Ravinder Reddy and Late Smt. K Nageswaramma on 30.03.2002. Defendant No 1 mortgaged the land by deposit of title Deeds in favour of the M/s. IndusInd Bank Ltd. Defendant No. 1 and Late Smt. K. Nageswaramma were the joint owners of the property.

5. Loan account became irregular. Defaults were committed in repayment. Accordingly, a legal Demand Notice was sent by the Bank on 11.01.2005 for a sum of Rs.66,50,946.75ps due and payable as on 30th September, 2004.

6. Smt. K. Nageswaramma died intestate on 22.10.2004 leaving behind defendant Nos. 2 to 6 as her legal heirs. Defendant No. 2 is also the Guarantor and defendant No. 3 to 6 are necessary parties. Accordingly, relief was sought for recovery of Rs. 79,90,703.79ps with future interest at the rate of 20.5% per annum with quarterly rests from 31.03.2005 to 31.06.2005 with a further relief for sale of the mortgaged property.

7. Written statement was filed by the defendant Nos. 1 to 6 jointly stating that Smt. K. Nageswaramma never signed the letter dated 23.03.2002 in token of the acceptance of the terms and conditions. Hence, no liability can be fastened either on her or her legal representatives i.e. Defendant Nos. 2 to 6. No guidelines have been brought on record regarding application of rate of interest. No communication was made about the change of rate of interest by the Bank. Defendant Nos. 1 and 2 are not liable to make any payment.

8. It is further stated that no equitable mortgage was created by deposit of original title deeds by late Smt. K. Nageswaramma. No date of alleged mortgage is mentioned in the Original Application. No document is on record for creation of the mortgage. Legal Demand Notice dated 11.01.2005 was not received by the defendants. It was well within the knowledge of Bank that Smt. K. Nageswaramma died on 22.10.2004. Notice was issued against a dead person. A challenge was made to the Statement of Account, its validity and authenticity. It was not certified as required under The Bankers' Books Evidence Act., 1891. A separate written statement is filed by defendant No. 2 challenging the creation of equitable mortgage. It is further stated that he never stood as guarantor in the loan transaction.

9. Learned DRT framed the following two issues for determination:

i) Whether the Applicant Bank proved the O.A. claim against the Defendants and O.A. schedule property?

ii) To what relief?

10. A witness namely Sri V. Ganesan, Vice President of the Applicant Company was produced by the Bank as AW-2 who was duly cross-examined by the defendant Nos. 1 to 5. Another witness was produced by the Bank who was not produced for cross examination. Hence his evidence cannot be read in evidence.

11. Defendants produced Sri K. Ravinder Reddy, defendant No. 2 as DW -1 who was duly cross examined.

12. Learned DRT after assessing the evidence arrived at a conclusion that the O.A. claim against the Defendant No. 1 and 2 is proved by the plaintiff, but dismissed the O.A. claimed against the O.A. schedule property.

13. Feeling aggrieved by the judgment, defendants preferred the Appeal.

14. I have heard the Learned Counsel for the parties and perused the records.

15. Learned Counsel for the Appellants would submit that the impugned judgment is erroneous in law. Learned DRT erred in holding that the amount was sanctioned and disbursed by the Respondents/ IndusInd Bank. It is submitted that originally IndusInd Bank was allegedly the secured creditor who assigned the account to the Respondent/ Pegasus Assets Reconstruction Private Limited.

16. Learned Counsel for the Appellant would further submit that Respondents are seeking a decree of recovery of money wherein initial burden lies upon the Respondents to prove their case as is required in a case of title of immovable property. Learned Counsel for the Appellant would further submit that the Respondents have utterly failed to discharge their initial burden to proof. They could not be able to prove the advancement of loan amount coupled with the disbursement. Learned Counsel would further submit that whole claim of the Respondents is based upon a statement of Account which too is not admissible in evidence. It is not proved in accordance with Section 4 of the Bankers' Books Evidence Act. 1891. Entry is made in the account statement which were not even made in regular course of business as required under Section 34 of the Indian Evidence Act,1872. Hence, those entries are also not admissible in evidence. Learned Counsel would further submit that the Statement of Account itself is not a legal document as the original entry of disbursement begins with a debit entry. There is no credit entry in the statement of account. Learned Counsel for the Appellant would further submit that a specific case of denial was taken by the Appellants but Respondent Bank failed to produce the person in whose presence the loan account was opened or the amount was disbursed or signatures were made on the loan documents. It is further submitted that even the signatures of Late Smt. K. Nageswaramma were also disputed by the Appellants.

17. Learned Counsel for the Appellant would further submit that even no primary evidence is produced by the Respondents to prove the sanctioning or disbursement of the loan. A witness AW-2 namely Sri V. Ganesan is produced who was not a person before whom either the loan documents were signed or loan account was opened. Hence, his evidence being secondary evidence is not admissible in evidence. Learned Counsel for the Appellant would further submit that as per the Respondents, the loan account was to be repaid in 24 equal instalments. Certain entries in the account Statement have been relied upon by the Respondents wherein it is stated that those repayments were made by the Appellants, hence they have admitted the loan amount. Learned Counsel for the Appellant would submit that no such payment was ever made by the Appellants. If any amount was to be repaid by the Appellants, that should have been an amount of one of the EMIs. If the total amount is not being paid, extension of time should have been granted by the Bank to pay the remaining amount. But there is nothing on record to prove the same. Accordingly, the alleged repayments are not made by the Appellants. It is further submitted that the loan documents too have not been filed by the Respondents. It is further submitted that Learned DRT has not considered the submissions made by the Appellants, rather, simply passed the order in a mechanical way.

18. Per contra, Learned Counsel for the Respondents would submit that the Appellants approached the IndusInd Bank for sanction of the loan amount which was duly considered and accepted by the Bank and the loan amount was disbursed on the basis of application of the Appellants. Thereafter, there were defaults in the repayment. Demand Notice was issued. It is further submitted that equitable mortgage was also created to secure the loan amount. Learned Counsel for the Respondent would submit that no plea of non-disbursal of the loan amount was taken by the

Appellants in their written statement. Sanction and disbursal of the loan amount was duly proved by filing of the Statement of Account which was duly proved under Section 4 of the Bankers' Books Evidence Act, 1891. Advancement of the loan as well as the disbursal of the amount was also proved by the statement of the Bank's witness AW-2 who was duly cross-examined. Statement of the DW-1 did not find favour from the Learned DRT. Accordingly, Learned DRT rightly allowed the O.A. Application.

19. Claim petition under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 was filed by the IndusInd Bank Limited before the DRT for issuance of Recovery Certificate for an amount of Rs.79,90,703.79ps with interest @20.50% per annum with quarterly rests with effect from 01.07.2005 till the date of payment. Nature of loan was Indus Estate Loan. As per the Application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, the defendant No. 1 namely R. Gireeshwar Reddy approached the Bank for sanction of Rs.50 lacs as Indus Estate Loan on 16.01.2002 which was sanctioned on 23rd March, 2002 repayable in 24 monthly instalments with effect from 01.04.2003. Equitable mortgage was also created. Demand Promissory Note, Letter of Waiver, Letter of Continuity and Term Loan Agreement were signed on 30th March, 2002. Defendant No. 2 namely Sri K Ravinder Reddy and Late Smt. K. Nageswaramma executed the personal guarantee. Since Late Smt. K. Nageswaramma died intestate and defendant Nos. 2 to 6 are her legal heirs, an equitable mortgage was also created by defendant No. 1 regarding land ad measuring 0.20 guntas, in Survey No. 73, 74 and 75 of Madhapur village, Serilingampally village and Municipality, Ranga Reddy District. Defaults were committed. Legal Demand Notice was sent on 11.01.2005 to the defendants and Smt. K. Nageswaramma were returned unserved with an endorsement 'unclaimed'.

20. Now the main issue relates to the factum as to whether the Respondents herein had successfully proved their O.A. petition in accordance with law?

21. As far as the issue of burden of proof is concerned, Section 101 of the Indian Evidence Act, 1872 defines burden of proof which reads as under:

> ***"101. Burden of proof.*** *-Whoever desires any Court to give judgment any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

22. In ***Smriti Debbarma (dead) through Legal Representatives versus Prabha Ranjan Debbarma and others (2023) 19 SCC 782,*** Hon'ble Supreme Court has dealt with the issue of burden of proof. The burden of proof to establish a case lies upon the plaintiff as this burden lies on the party who asserts the existence of a particular state of things on the basis of which relief is claimed. If the party fails to discharge its burden, suit will fail as per Section 102 of the Indian Evidence Act, 1872.

It was held that-

"Onus of proof, no doubt shifts and the shifting is a continuous process in the evaluation of evidence, but this happens when in a suit for title and possession, the plaintiff has been able to create a high degree of probability to shift the onus on the defendant. In the absence of such evidence, the burden of proof lies on the plaintiff and can be discharged only when he is able to prove title. The weakness of the defence cannot be a justification to decree the suit."

23. Accordingly, in the facts of the present case wherein the Respondents/ plaintiffs are claiming a particular amount from the Appellants, initially burden lies upon them to prove their case. Now we have to see as to whether the Appellants succeeds in proving their case?

24. In order to prove the case, a witness namely Sri V Ganeshan is produced by the Respondents/ Applicants who is the Vice President of M/s Pegasus Assets Reconstructions Private Limited i.e. Respondents.

25. At the very outset, it is to be observed that no officer of the IndusInd Bank is produced in the evidence. The officer who sanctioned the loan or disbursed the loan is not produced by the Bank. Apart from this witness, a statement of account is also relied upon by the Respondents which is exhibit A-10 in the records beginning from 30th March, 2002 till 30th June, 2005. It was signed by the Authorised signatory for IndusInd Bank Ltd. A certificate under Section [2A (a)] of the Bankers' Books Evidence Act, 1891 is also issued by the Authorised Signatory which is to the effect that-

"Certified with the computer print out/ photocopy of the computer print/ Excel Sheet in Smt. Subbamma, Sri R.

Gireshwar Reddy and Sri Nageshwar Reddy is a true and correct copy of the entries made in the usual and ordinary course of business." A certificate of the System Administration under Section 2A (b) and 2A (c) of the Bankers' Books Evidence Act, 1891 is also annexed. Now it is to be seen as to whether on the basis of these documents, Respondent Bank had successfully been able to prove its case?

26. AW-2 Sri V. Ganesan admits that he is giving evidence on the basis of the records available. He did not have first hand information regarding any fact.

27. Perusal of the Statement of AW-2 would reveal that he is not the officer in whose presence either the loan was sanctioned or disbursed. AW-2 Sri V. Ganeswan also admits that the original Application dated 16.01.2002 submitted by R. Gireeshwar Reddy is not available on records. It means that AW-2 Sri V Ganesan is giving a secondary evidence. Even in the cross examination in chief affidavit, nowhere it is stated that he was the officer who sanctioned the loan. Whether he can be produced in evidence or not and if he could not be produced then what are the reasons that secondary evidence can be led by the Respondents? Section 65 of the Indian Evidence Act, 1872 deals with the cases in which secondary evidence relating to documents may be given. Section 59 of the Indian Evidence Act,1872 provides that the all facts, except the [contents of documents or electronic records] may be proved by oral evidence. As far as contents of documents are concerned, they may be proved by primary or secondary evidence. But when the signatures on the documents are disputed as in the present case, concerned officer in whose presence signatures were made has to be produced. In the present case, there is nothing on record to show as to why any officer of the IndusInd Bank could not be produced?

28. In ***Jagmail Singh and another versus Karamjit Singh and others (2020) 5 SCC 178,*** it was held that for secondary evidence to be admitted fraudulent Evidence has to be given being the reasons as to why the original evidence has not been furnished. It was further held that-

> *"It is trite that under the Evidence Act, 1872 facts have to be established by primary evidence and secondary evidence is only an exception to the rule for which foundational facts have to be established to account for the existence of the primary evidence."*

29. In the present case, there is nothing on record to show as to why the primary evidence could not be produced? As far as the veracity of Statement of AW-2 Sri V Ganesan is concerned, we shall consider the same at a later stage.

30. As far as the statement of AW-2 is concerned, it is admitted by Sri V. Ganesan that accepted letters duly signed by the defendants was not submitted in the Bank.

31. AW-2 Sri V. Ganesan further states that the debit entry on 30.03.2002 were withdrawn by Sri R. Ganesan. Term loan account will be opened without any credit entry. Some repayments were made as per the statement of account. But it is not recorded as to how these repayments were made? It is also admitted by the witness that Sri R. Gireeshwar Reddy was not having any account in the Bank.

Whether the account was classified as NPA or not also could not be affirmed by the witness. Whole statement of the witness is dependent upon records. Although he also could not even prove the original sanction letter. Whole statement is based upon statement of account which is under challenge. A statement of account of Sri R. Gireeshwar Reddy 210625 with effect from 30th March, 2002 till 30th June, 2005 is on record wherein the first entry of 30th March, 2002 is about withdrawal of Rs. 50 lacs. It is signed by "for IndusInd Bank Ltd. by the Authorised signatory." A certificate under Section [2A (a)] of the Bankers' Books Evidence Act 1891 by the Branch Manager is to the effect that-

"Certified with the computer print out / photocopy of the computer print/ excel Sheet in Smt. Subbamma, Sri Girshwar Reddy and Sri Nageshwar Reddy is a true and correct copy of the entries made in the usual and ordinary course of business.

Yours faithfully.

Authorised Signatory"

32. Another certificate is issued by system administration under Section 2A(b) and 2A (c) of the Bankers' Books Evidence Act, 1891 which too is signed by the Authorised Signatory. On the basis of these certificates, it is argued that the statement of account is filed as required under Section 4 of the Bankers' Books Evidence Act, 1891 and is admissible in evidence.

33. In ***Chandradhar Goswami and Others versus Gauhati Bank Ltd. 1966 SCC OnLine SC 255,*** the facts were that a sum of Rs. 10,000/- was borrowed by the Appellant from the Bank on March 19, 1947. Thereafter, two amounts were brought into the Bank. One on 14th May, 1948 and other on November 24, 1949. Suit was filed on April 9, 1953 for a sum of Rs. 40,000/-. Main defence was that the allegation of the Bank that on November 24, 1949, Rs. 100 was repaid was untrue. Accounts of the Bank were not kept correctly and in the regular course of business and were fraudulent and therefore not relevant and not admissible in evidence. It was recorded in the judgment of the Hon'ble Supreme Court that the main question was that there is no evidence besides the certified copy of the account to prove that a sum of Rs. 10,000/- was advanced to the Appellants and therefore in view of Section 34 of the Indian Evidence Act, 1872, the Appellants cannot be saddled with liability for that amount.

34. Section 34 of the Indian Evidence Act, 1872 which reads as under:

"Entries in books of account, including those maintained in electronic form when relevant. Entries in books of account, including the maintained in an electronic from), regularly kept in the course of business, relevant whenever they refer to a matter into which the Court has to inquire, b such statements shall not alone be sufficient evidence to charge any person with liability."

35. Hon'ble Supreme Court held that-

"It is clear from a bare perusal of the section that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment

of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them. In the present case, however, the appellants did not accept the correctness of the books of account"

36. In that case also correctness of the Books of Account was under challenge. Hon'ble Supreme Court held that- "

"It will be clear that section 4 gives a special privilege to banks and allows certified copies of their accounts to be produced by them and those certified copies become prima facie evidence of the existence of the original entries in the accounts and are admitted as evidence of matters, transactions and accounts therein, but such admission is only where, and to the same extent as, the original entry itself would be admissible by law and not further or otherwise. Original entries alone under section 34 of the Evidence Act would not be sufficient to charge any person with liability and as such copies produced under section 4 of the Bankers' books Evidence Act obviously cannot charge any person with liability. Therefore, where the entries are not admitted, it is the duty of the bank, if it relies on such entries, to charge any person with liability, to produce evidence in support of the entries to show that the money was advanced as indicated therein and thereafter the entries would be of use as corroborative evidence. But no person can be charged with liability on the basis of mere entries whether the entries produced are the original entries or copies under section 4 of the Bankers' books Evidence Act. We cannot agree with the High Court that the mere fact that the appellants did not specifically mention the sum of Rs. 10,000 as not having been advanced to them in their written statement would make any difference on the facts of the present case."

37. In the said case also the dispute was regarding disbursement of Rs. 10,000/- on 19th March 1947 wherein the Hon'ble Supreme Court held that-

"The bank had to prove that the sum of Rs. 10,000/- was in fact advanced on March 19, 1947. and could not rely on mere entries in the books of account for that purpose. This is clear from the provision in section 34 of the Evidence Act. No attempt was made on behalf of the bank to prove by any evidence whatsoever that a sum of Rs. 10,000/- was advanced on March 19, 1947. The entry in the account books in that connection is to the effect: "To amount paid to Gauhati branch as per D/advice, dated 6th March, 1947". If this amount of Rs. 10,000/- was paid by the bank on the order of the appellants or any one of them, that order should have been produced in support of the entry,

and then the entry would have been helpful to the bank as a corroborative piece of evidence. But the bank did nothing of the kind. The only witness produced on behalf of the bank was an officer who had nothing to do with the Tezpur branch where the transactions were entered into. We are therefore of opinion that in view of section 34 of the Evidence Act the appellants cannot be saddled with liability for the sum of Rs.10,000 said to have been advanced on March 19, 1947, on the basis of a mere entry in the account. Section 34 says that such entry alone shall not be sufficient evidence, and so some independent evidence had to be given by the bank to show that this sum was advanced. What would be the nature of such independent evidence would certainly depend upon the facts of each case; but there can be no doubt that some independent evidence to show that advance had been made has to be given. Further, as in this case the dispute was with respect to one entry of Rs. 10,000/-, it should not have been difficult for the bank to produce evidence with respect thereto. We cannot therefore agree with the High Court that the advance of Rs. 10,000/- on March 19, 1947, has been proved in this case."

38. In the present case also, facts are similar to ***Chandradhar Goswami and Others*** (supra). Reliance is placed upon the statement of account, but the same is not proved in accordance with the provisions of Section 4 of the Bankers' Books Evidence Act, 1891. Certificate as issued under Section 2(A) (a) of the Bankers' Books Evidence Act, 1891 is concerned, this is also not in the format as required under the Law. Section 2(A)(a) and (b) of The Bankers' Books Evidence Act, 1891 provides as under:

"[2A. Conditions in the printout. *A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely:-*

(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and

(b) a certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of-

(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons;

(B) the safeguards adopted to prevent and detect unauthorised change of data:

(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;

(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;

(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;

(F) the mode of identification of such data storage devices;

(G) the arrangements for the storage and custody of such storage

(H) the safeguards to prevent and detect any tampering with the system; and

(I) *any other factor which will vouch for the integrity and accuracy of the system."*

39. Section 2A.(a) of the Bankers' Books Evidence Act, 1891 defines certified copy which reads as under:

"(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager;"

40. A statement of account simply bears seal by Indusind Bank Limited wherein Authorised Signatory signed it. Certificate is not in accordance with Section 2A.(a) of the Act. Section 2A (a) of the Act requires that the certificate should be given by the principal accountant or the Branch Manager. But the Certificate is issued by the Authorised Signatory although on the top of the Certificate it is mentioned that it is a certificate of Branch Manger but the person who signed the same is the Authorised Signatory who authorized him to sign the certificate. Whether the branch Manager had any authority to delegate his powers to the Authorised signatory? Whether any power was delegated by the Branch Manger to the Authorised Signatory? If so, under what provision of law? Hence, certificate itself is not in accordance with the Section 2A(a) of the Act. Further, as noted above, there is no certificate that the entry is contained in one of the ordery book of the Bank. Further such book is still in the custody of the Bank. Accordingly, the certificate given along with the statement of account is not in accordance with the provisions of Section 2A (a) of the Banker's Books Evidence Act, 1891.

41. The AW-2 Sri V Ganesan simply states that an entry of withdrawal is made in the statement of account, but there is nothing on record to show that any such withdrawal was made by the Bank. Further, as far as deposits are concerned, how those deposits were made is not on record. How these deposits were entertained when it is below the amount of EMI could also not be proved by the Bank. It was the responsibility of the Bank to prove that if the amount is below the amount of EMI, same term would have been granted to make good the EMI payment or when the account became irregular, the same should have been classified as NPA. But nothing is on record to prove the same. Rather, it is stated that a legal demand Notice was sent to the borrowers although on the date of issuance of the legal notice Smt. K. Nageswaramma was already dead. Then how the legal notice can be treated as a valid legal notice which is issued against a dead person?

42. According to the Bank, Smt. K. Nageswaramma approached the Bank for sanction of the IndusInd Estate Loan for Rs. 50 lacs on 16.01.2002. Defendant No. 1 namely Sri R. Gireeshwar Reddy and Smt. K.

Nageswaramma were the personal guarantors and mortgagors. Demand Notice was issued on 11.01.2005 (Exhibit – A-9) to Smt. K. Nageswaramma. Sri R. Gireeshwar Reddy and Sri K. Ravinder Reddy who is also a personal guarantor. It is also admitted fact that on the date of issuance of Notice dated 11.01.2005, Smt. K. Nageswaramma Reddy was not alive. She died on 22.10.2004 leaving behind defendant Nos. 2 to 6 as her legal heirs. Since the defendant No. 2 was already the guarantors, hence, defendant Nos. 3 to 6 in the O.A. were impleaded as defendants.

43. Bare perusal of Exhibit A-9 would reveal that the Notice was issued apart from two other persons to Smt. K. Nageswaramma also on 11.01.2005 while admittedly she was not alive and this fact was well within the knowledge of the Bank. It means that the Demand Notice was sent to a deceased person. Demand Notice issued to Smt. K. Nageswaramma was against dead person. Her legal representatives were impleaded in the O.A. being defendant Nos. 3 to 6 apart from defendant No. 2 but no Demand Notice was issued and served upon defendant Nos. 3 to 6. In such circumstances, the Demand Notice itself which is basis of the O.A. proceedings, is bad in law.

44. Whole case of the Respondent Bank is based on the Statement of Account, Ex-A-12 which is not proved in accordance with the provisions of Section 4 of the Banker’s Books Evidence Act, 1891. As far as the issue of disbursal of loan is concerned, it is vehemently denied by the Appellants herein that loan Account was ever disbursed by the Bank. A plea was taken in the written statement filed by the Defendant No. 1. to 6 wherein categorically the signatures on the Sanction Letter by Smt. K. Nageswaramma are denied. Further, signatures on all the documents were denied which are allegedly executed by Smt. K. Nageswaramma. No mortgage was created by her. Authenticity of the statement of Account was also challenged. In order to prove the disbursal of the amount, only the statement of Account is filed by the Bank. One witness AW-2, Sri V. Ganesan is produced who admits that the Application dated 16.01.2022 submitted by the defendant is not on record and an entry of debit is made in the Statement of Account but no other account was opened by the borrowers in the Bank. It is further stated that on 30th March, 2002, debit entry of Rs. 50 lacs and corresponding credit is given to the running Account of the borrower. Although it is denied that Sri R. Gireeshwar Reddy has no other Account with the IndusInd Bank. It means that except for the alleged loan Account no other Account of the defendants was there in the Appellant Bank. This is how the term loan amount was disbursed while there is only one debit entry in the statement of Account although the same is not proved in accordance with law.

45. As far as the statement of Account is concerned, it is simply an Excel sheet except A-12. It is not the complete Statement of Account sheet. In the alleged term loan Agreement, the number of instalments for repayments is 36 while AW-2 Sri V. Ganesan states that the amount was repayable in 24 instalments.

46. A categorical denial is made by the defendant Nos. 3 to 6 regarding the signatures or thumb impression of Smt. K. Nageswaramma on the loan documents. Perusal of A-2, single Demand Promissory Note (Exhibit A-3), letter of wavier (Exhibit A-4) letter of continuity (Exhibit A-5), term loan Agreement simply bears the thumb impression. Even it is not mentioned as to whose thumb impression are there on the documents. No efforts have been made by the Bank to prove the thumb impression that they were put by Late K. Nageswaramma as has been held earlier, in the Money Suit burden lies upon the creditor to prove the case beyond doubt. When the signatures or thumb impression were denied, it was incumbent upon the Bank to prove the same either by producing the officer before whom thumb impressions were put on the papers or hand writing expert's opinion could have been produced to prove the thumb impression. But neither all the above two modes are adopted by the Bank for proving the same.

47. On the basis of discussion made above, we are of the considered view that the Bank failed to prove alleged statement of Account by invoking the provisions of Section 4 of the Banker's Books Evidence Act, 1891. Further, the Bank failed to prove the documents in accordance with law. The thumb impression of Late K. Nageswaramma also could not be proved by the Bank. Disbursal of loan also could not be proved by the Bank. Deposits allegedly made by the defendants are also not proved. Creation of Mortgage is also not proved.

48. Accordingly, Learned DRT has erred in recording its findings to this effect which are erroneous and against law. Appeal deserves to be allowed. Impugned judgment and order dated 7th May, 2018 passed by Learned DRT-2 Hyderabad in O.A. No. 652 of 2017 old O.A. No. 211 of 2005 of DRT -1 Hyderabad ***(M/s Pegasus Assets Reconstruction Private Limited versus R. Gireshwar Reddy and others)*** are liable to be set aside.

ORDER

Appeal is allowed. Impugned judgment and order dated 7th May, 2018 passed by Learned DRT-2 Hyderabad in O.A. No. 652 of 2017 old O.A. No. 211 of 2005 of DRT -1 Hyderabad ***(M/s Pegasus Assets Reconstruction Private Limited versus R. Gireshwar Reddy and others)*** is set aside. Consequently, O.A. No. 652 of 2017 stands dismissed.

No Order as to costs.

File be consigned to Record Room.

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

Order signed and pronounced by me in the open Court on this the 10th day of July, 2026.

(Anil Kumar Srivastava,J)
Chairperson

. Appeal No..301 of 2018 -DRAT-Kolkata

Dated 10th July, 2026
/tp