IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 78/2025

1. Khalid Ahmed Ansari, S/o Jubair Ahmed Ansari
2. Mobassir Ahmed Ansari, S/o Jubair Ahmed Ansari.
3. Modassir Ahmed Ansari, S/o Jubair Ahmed Ansari.
4. Zunaid Ahmed Ansari, S/o Jubair Ahmed Ansari
   All are R/o Village-Irba, P.O. and P.S. Ormanjhi, District-Ranchi.

....Appellants

Versus

1. Shri Jasbir Singh, S/o Sardar Chambali Singh, R/o Kusai Colony, Doranda, P.S. Doranda, District Ranchi, presently residing at 4, West Minister Drive, Voorhee, NJ 08043, United States of America.
2. United Commercial Bank (UCO Bank), office at 10, Braborne Road, Kolkata, Pin 700001 and also Branch at Main Road, Ranchi, P.S. Kotwali, District- Ranchi Pin-code No. 834001.

....Respondents

Advocates, who appeared in this case:

For the appellants	Shri V.K. Shukla, Advocate,
For the respondent No. 1	Ex-parte,
For the respondent No. 2- Bank	Shri M.K. Srivastava, Advocate

JUDGMENT

Date of Pronouncement: 17.07.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The present appeal has been filed under section 18 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") against the final order dated 27.09.2022, whereby the M.A. No. 14/2013 filed by the respondent no. 1 has been allowed.

2. Brief facts of the matter are that the respondent No. 1 was granted financial assistance by the respondent No. 2, in the year 1969, which was enhanced to Rs. 1.00 lacs in the year 1981. In order to secure the same, the respondent No. 1 and his sister-in-law namely Smt. Prakash Kaur created mortgage over their properties by

executing registered mortgage deeds in favour of the respondent-Bank. Since the loan was not repaid in terms of the loan agreement, therefore, the respondent No. 2-Bank filed a Civil Suit No. 178/88 of 1999 in the court of Civil Judge-1, Ranchi for recovery of Rs. 2,33,846/- along with interest and costs against the respondent No. 1 and Smt. Prakash Kaur, which was decreed ex-parte vide judgment dated 06.06.2020 and the recovery certificate was issued.

3. It appears that the recovery proceedings bearing RP Case No. 16 of 2004 was initiated before the Recovery Officer. On 20.08.2004, the Recovery Officer passed an order to attach the mortgaged property. Thereafter, on 12.10.2004, the sale proclamation was made scheduling the auction of the property in question to be held on 22.11.2004 and the property was sold to the appellants and some other persons.

4. It further appears that on 23.12.2004, one Mr. Sunil Tiwari filed an objection before the Recovery Officer, which was rejected vide order dated 10.01.2005. Against the said order, Mr. Tiwari filed an appeal under section 30 of the RDDB FI Act before the Tribunal below, which was conditionally allowed vide order dated 13.10.2006. Against a part of said order regarding deposit of Rs. 20.00 lacs, an Appeal (T) No. 113/2013 was filed by Mr. Tiwari before this Tribunal, which was dismissed vide order dated 29.03.2019. Against the said order, respondent No. 1-borrower filed a Writ C No. 2138/2019 and Writ C No. 1789/2019 by Mr. Sunil Kumar Tiwari before the Hon'ble High Court of Jharkhand, Ranchi, which were disposed off vide common order dated 06.01.2025 on the ground of judgment dated 27.09.2022 passed by the Tribunal below in M.A. No. 14/2013 filed by

the respondent No. 1-borrower. The said M.A. was disposed off by the Tribunal below vide judgment dated 27.09.2022. The relevant portion of the said judgment is as under:-

> *"Thus in view of the above discussion the preliminary ex-parte decree dated 06.06.2000 and final decree dated 12.01.2004 with all consequential effect are in nullity and are thus liable to be set aside. The respondent-Bank needs to approach the competent court for reopening of the said suit MTS NO. 176 of 2000. The respondent-Bank is since pleading ignoring regarding the death of decreased (defendant) Smt. Prakash Kaur, such factum is now within the knowledge of the respondent-Bank and the list of all legal heirs of the said decreased has been furnished in the memo of the MA and impleading the said legal heirs of the deceased Smt. Prakash kaur the respondent-Bank may rectify the error in the proceeding before the ld. Trial Court.*

5. Being aggrieved by the said order, the present appeal has been filed by the appellants along with application for condonation of delay.

6. Learned counsel for appellant submitted that the Tribunal below without impleading the appellants in the misc application filed by the respondent no 1 passed the order impugned, which is not sustainable in the eye of law. It was further contended that the respondent no 1 had not disclosed about the pendency of the said case either before this Tribunal or before the Hon'ble High Court in his Writ-C No. 2138/2019 and as such the appellants came to know for the first time about the order impugned, when the respondent no 1 disclosed the said order before the Hon'ble High Court on 06.10.2025. It was also contended that the appellants were not party in the proceeding before the Tribunal below and the order impugned was obtained by the respondent no. 1 by suppressing the earlier round of litigation before this Tribunal as well as also the Hon'ble Jharkhand High Court and as soon as when the appellants came to know about

the order impugned, they approached this Tribunal by filing the present appeal. It was also contended that the appellants are in possession of the property in question and after liberty given by Hon'ble High Court on 06.01.2025, the present appeal was filed well within the period of limitation as prescribed under the Act and as such the delay if any caused in filing the present appeal is not an intentional and deliberate. It was, therefore, prayed that the same may condoned.

7. The order sheets show that despite service of notice, no one has put in appearance on behalf of the respondent no. 1- borrower. It further shows that despite giving sufficient opportunity, no reply has been filed on behalf of the bank also to the application for condonation of delay filed by the appellants.

8. Considered the arguments of the learned counsel for the appellant and perused the record.

9. Undisputedly, in the present misc application, the respondent no 1/applicant had filed an application before the Tribunal below on 26.09.2014 to implead the appellants/purchasers, but the same was not pressed by the applicant nor considered by the Tribunal below. Thus the appellants were not given any opportunity to contest the present case before the Tribunal below. As such the contention of the appellant that they came to know for the first time about the said proceedings on 06.01.2025, when the respondent no. 1-borrower disclosed about the same before the Hon'ble High Court, as it is evident from paragraph no. 4 of the said order passed by the Hon'ble High Court in Writ C No. 2138/2019 filed by the respondent no 1. It is also to be pointed out that the respondent no. 1 arrayed the appellants while filing the said writ petition before the Hon'ble High Court, but in

the present misc application, did not do so despite filing the impedement application. The said impleadment application was neither pressed by the respondent no. 1 nor considered by the Tribunal below. Thus the contention of the appellants that they came to know about the order impugned for the first time on 06.01.2025 is found to be correct/true. The present appeal was filed on 17.01.2025 by the appellants before this Tribunal and if the period of limitation is counted from 06.01.2025, which is date of knowledge, then the said appeal is found to have been filed within the period of limitation as prescribed under the Act and Rules made thereunder. As such the application for condonation of delay is allowed and the delay, if any, occurred in filing the present appeal, is condoned.

10. With regard to merits of the case, learned counsel for the appellant submitted that the mortgaged property was auctioned in favor of the appellants being highest bidders and after deposition of entire sale consideration, the sale certificate was issued and possession was also handed over and as such the auction proceedings challenged up to this extant has attained finality in view of the order dated 29.03.2019 passed by this Tribunal. It was further contended that after lapse of several years and suppression of material facts, the present misc. application seeking recall of the decree and setting aside the auction sale proceedings conducted by the recovery officer has illegally been allowed by the Tribunal below vide order impugned, which could not be done. It was further contended that the Tribunal below has acted beyond its jurisdiction in setting aside a decree passed by a Civil Court, as the said decree had already attained finality and stood executed. It was further contended that once the decree stood executed and recovery satisfied,

the Tribunal becomes functus officio and had no authority to reopen the matter.

11. Learned counsel further submitted that the appellants are bona fide auction purchasers, whose rights crystallized upon confirmation of sale, issuance of Sale Certificate, delivery of possession and it is settled law that the auction sale once confirmed cannot be set aside casually, especially after lapse of long time.

12. It was also contended that the application for recall was filed after an inordinate and unexplained delay of more than 12 years, but the Tribunal below has condoned the same without assigning any reason. It was further contended that the Recovery Certificate had already been executed, satisfied and withdrawn under section 26(2) of the Act and once the recovery stood satisfied, the reopening of the matter is legally impermissible.

13. It was also contended that this Hon'ble Tribunal had already upheld the auction proceedings vide order dated 29.03.2019, but the impugned order indirectly nullifies the said order, which is impermissible in law.

14. Learned counsel further submitted that it is a settled principle that finality of judicial proceedings must be respected and auction purchaser's rights are protected, as the orders passed in violation of natural justice vitiates all proceedings. It was, therefore, prayed that order impugned may be set aside and the appeal may be allowed.

15. Learned counsel for the respondent-Bank has adopted the arguments as advanced by the learned counsel for the appellants adding further that the Recovery Officer has sold the mortgaged property to the satisfaction of the recovery certificate and physical possession of the

property in question was handed over to the auction purchasers long back and since the whole amount has been recovered and loan account has been closed as well as the R.P. Case No. 16/2004 has also been withdrawn by the Bank, thus now there remains nothing in the present matter. It was further contended that the Presiding Officer has no jurisdiction to recall the decree, which was passed by the Civil Court, therefore, the order passed by the Presiding Officer is erroneous, illegal and without jurisdiction, hence the impugned order dated 27/9/2022 may be set aside and appeal may be allowed.

16. It appears that despite service of notice, no one has appeared on behalf of the respondent no. 1-borrower.

17. I have considered the rival contentions of the learned counsels for the parties and perused the material available on record.

18. Undisputedly, the respondent no. 1 and Smt. Prakash Kaur were granted financial assistance by the respondent no. 2-Bank and the said facility was secured by the borrowers by creating equitable mortgage over their property in question by depositing original title deed with the Bank. Since the borrowers did not adhere to the terms of loan agreement, therefore, the original suit was filed by the Bank before the Civil Court, which was decreed ex-parte vide judgment dated 06.06.2000. Despite service of summons through substituted service, no one had appeared on behalf of the borrowers before the Civil Court, which is held by the Tribunal below in para 24, 25 and 26 of the order impugned and the same has never been challenged by the borrowers. Thus the order impugned to this extent of service of summons upon the borrowers has attained finality.

19. So far as the point of limitation involved in the misc application filed by the respondent no. 1 before the Tribunal below is concerned, it is to be seen that the present M.A was filed by the respondent no. 1-Borrower before the Tribunal below in the year 2013 against the ex-parte decree dated 06.06.2020 and final decree dated 12.01.2004 and as such the said application was filed beyond the period of limitation of more than 12 years. As per para 9 of the said application, the Civil Suit was filed by the respondent-Bank before the Subordinate Judge-1, Ranchi in the year 1999, but as per para 9 of the M.A filed by respondent no. 1-Borrower, the respondent no.1 and Smt. Prakash Kaur left the country in the year 1985 and they acquired the citizenship of USA in the year 2004, meaning thereby when the recovery proceedings were initiated by the Bank by filing the suit, neither the respondent no. 1 nor Smt. Prakash Kaur were in India. The admitted fact is that during the proceedings of the suit, the summons were issued and in case of non service of the same through post, the same were also published in the newspapers. If the substituted service is made, then the same is presumed to have be made upon the party sufficiently. In this regard, the Tribunal below in para 26 of the order impugned has also held as under:-

> *"In view of the above it is understood that the Defendants in Suit. MTS No. 176 of 2000 stood served, hence proceeding ex-parte of the Defendant by the Ld. Trial Court and basing thereupon passing of preliminary ex-parte decree dated 06.06.2000 and final decree dated 12.01.2004 has been outcome of following due process of law, hence this issue is decided in favour of the Respondent Bank. Thus the said decree dated 12.01.2004 and consequential effect thereof cannot be set aside on this count."*

From the above, it is clear that the summons were properly served upon the Borrowers, although they were not available in the country. If the Tribunal below has held the service of summons upon the Borrowers to be proper, then the limitation would start from there, but the Tribunal below without giving any rhymes or reasons, has condoned the delay of 12 years vide order impugned, which is against the provisions of the law laid down by several Hon'ble High Courts and Apex Court. It is settled principle of law that the delay should be explained on day to day basis, but the respondent no. 1 has only taken the plea that there was no service on him nor does he read the newspaper, which is not tenable, because during the said period, the respondent no. 1 was not in the country, as he was in the USA. The benefit of non availability of the respondent no.1 in India cannot not be extended, because before leaving the country, he ought to have informed the Bank about the same and given the address, where he was going to shift, but he did not do so. Thus there was no reason before the Tribunal below to condone such an inordinate delay of 12 years. Thus the order impugned to the extent of condoning inordinate delay of more than 12 years is liable to be quashed and consequently, the M.A filed by the respondent no. 1 is also liable to be rejected being highly barred by time.

20. So far as the decree against a dead person is concerned, it is settled principle of law that during the proceeding of the case, if any party dies, her or his legal heirs should be brought on record to contest the case and protect the interest on behalf of the deceased. In the present case, in para 9 of the misc application filed before the Tribunal below, it is stated that the respondent no. 1 and Smt. Prakash Kaur left the country for USA in the year 1985 and they acquired the citizenship of USA in the year 2004, meaning thereby during the proceedings of the suit, which was filed in the year 1988, they were not in the country, but benefit thereof cannot be given to the

respondent no. 1, because before leaving the country, the Borrower did not inform the same to the Bank, therefore, it can be said that the Bank was not aware about the Borrowers.

21. As per para 3 of the M.A filed by the respondent no. 1, Smt. Prakash Kaur died on 06.08.1999, but as per para 3 of the said application, Smt Prakash Kaur and the respondent no. 1 had taken the citizenship of the USA in the year 2004, thus the date of death of Smt. Kaur appears to be doubtful. While going through the contents of the said application, nowhere anything is mentioned about the place of death, as to where Smt. Kaur had died either in India or in USA. If she died abroad, there was no way for the Bank to get the information about the death of Smt. Kaur. When the suit was filed the Bank, all efforts as available in law were made by the Bank to serve the summons upon the Borrowers and even through publication, but in sptie of it, nobody appeared and gave any information about death of Smt. Kaur, therefore, no fault can be attributed to the Bank for not bringing on record the legal heirs of Smt. Kaur. It is further stated that without any information, the Borrowers left the country, which can be said that the Borrowers were absconding and in case of abscond, the party does not deserve or eligible for any relief from the court, but the Tribunal below has not considered this aspect of the matter while passing the order impugned, therefore, the order impugned is liable to be quashed on this count also.

22. It is also relevant to point out that one Mr. Sunil Kumar Tiwari, who had entered into agreement to sale on 21.12.1990 for the property mortgaged with the respondent-Bank by the respondent no. 1 and Smt. Prakash Kaur, filed an appeal (T) No. 113/2013 before

this Tribunal, in which respondent no. 1 was arrayed as respondent no. 2 and Smt. Prakash Kaur was arrayed as respondent no. 3. The array of party at page no. 120 of the paper book shows that both the parties had appeared in the said case through their advocate namely Bansh Gopal Mishra, which creates further doubt about the death of Smt. Kaur. If Smt. Kaur had died in the year 1999, then as to how she acquired the citizenship of USA in the year 2004 and as to how she had appeared in the said appeal before this Tribunal through her counsel and as such the death of Smt. Kaur is suspicious and doubtful. It is also to be noted that the respondent no. 1 had filed objection to the appeal filed by Mr. Tiwari before this Tribunal, copy of which is placed at page no. 114 of the paper book, but he had not whispered even a single word about the death of Smt. Prakash Kaur. It is further to be pointed out that the respondent no. 1 filed a Writ petition no. 2138/2019 against the judgment dated 29.03.2019 passed by this Tribunal in Appeal (T) No. 113/2013 filed by Mr. Tiwari, but in the said writ petition, the respondent no.1 has not made party to the legal heirs of Smt. Prakash Kaur, when he was contesting the present case on the same ground and the legal heirs of Smt. Prakash Kaur was arrayed as respondent no. 2 to 6. From this, it is clear that the respondent no. 1 was not contesting the case with clean hands and till date Smt. Prakash Kaur or her legal heirs has never come forward to challenge any of the proceedings conducted by the Bank, which amounts to be acceptance. If the legal heirs of Smt Prakash Kaur was/is not aggrieved by any of the proceedings of the bank or any of the orders passed by the court, then the respondent no. 1 cannot be permitted to take the advantage of death Smt. Prakash Kaur to get the proceedings quashed. Thus the Tribunal below has erred in setting aside the ex-parte decree passed by the Civil Court on the ground of death of Smt. Prakash Kaur vide order impugned and as such the order impugned is liable to set aside on this count also.

23. It is also relevant to state that the Civil Suit No. 176/88 of 1999 filed by the Bank was decreed ex-parte vide order dated 06.06.2000 and the Recovery Certificate was issued. The said Recovery Certificate was instituted as R.P Case No. 16 of 2004 before the Recovery Officer and the recovery proceedings were initiated. The sale proclamation was made on 12.10.2004 by the Recovery Officer scheduling the auction to be held on 22.11.2004. The property was sold to the appellants as well as to some other purchasers. After receiving entire sale consideration, the sale certificate has been issued and possession has also been handed over to the Auction Purchasers and property has also been mutated in the name of the Auction Purchasers. Recovery Certificate has also been withdrawn vide order dated. 09.03.2005 and as such no recovery proceedings are pending and even the account of Borrowers was closed after due adjustment in the loan account. Once the decree has been satisfied and recovery proceedings had been withdrawn, then the same cannot be permitted to be disturbed.

24. In view of the discussions as recorded above, the order impugned passed by the Tribunal below is set aside and the present M.A. filed by the respondent no. 1-borrower is firstly dismissed being highly barred by time and secondly on merits also. Consequently, the appeal filed by the appellants is liable to be allowed and accordingly, the same is allowed with no order as to costs.

25. A copy of this judgment be forwarded to the parties as well as to the DRT concerned and be also uploaded on the e-drt portal.

CHAIRPERSON

VN GIRI,PS