

Judgment reserved on: 1st July, 2026
Judgment delivered on: 10th July, 2026

Appeal No. 166 of 2018-DRAT-Kolkata

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 166 of 2018
(Arising out of S.A. 12 of 2017 in DRT, Cuttack)

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

1. Smt. S. Nagaratna Patro, wife of Sri Jagannath Patro, at Ganghi Nagar, Berhampur, District – Ganjam, Odisha;
 2. S. Jagannath Patro, son of Smt. Chandrima Patro, Gandhinagar, Berhampur, District – Ganjam, Odisha, since deceased has been substituted by:
 - 2(a). S. Purnima Kumari Patro, daughter of S. Jagannath Patro;
 - 2(b). S. Pragyani Patro, daughter of S. Jagannath Patro;
 - 2(c). Rajeswari Subudhi, daughter of S. Jagannath Patro;
 - 2(d). S. Rajesh Kumar Patro, son of S. Jagannath Patro;
- All are residents of Village – Gandhi Nagar, Berhampur,
District – Ganjam.

... Appellants

-Versus-

1. Central Bank of India, represented by its Manager, Bada Bazar, Berhampur, District – Ganjam, Odisha;
2. Authorised Officer, Central Bank of India, Regional Office, Bhubaneshwar, 108-B, Unit-7, First Floor, Suryanagar, Gopabandhu Chhak, Bhubaneshwar – 751 003, Odisha;
3. Apex Computers, represented by Partner, Rajesh Kumar Patro, Gandhinagar, Main Road, Berhampur;
4. Asit Satapathy, son of Sri Lambodhar Satapathy, Ashok Store, A-1/93, Auroboindo Nagar, 1st Lane, Berhampur, Ganjam, Odisha;
5. Sri Uppa Ravana Rao, son of Sri U. Dinabandhu Rao, Resident of Balajipentho Sahi, Post Office Nabeen, P.S. Bada Bazar, Berhampur, District – Ganjam – 760 009, Odisha;
6. Chittara Tarakeswar Rao, Lakshmi Narsingh Sahi, 3rd Lane, Near Ganesh Nagar, Berhampur, District – Ganjam – 760 002, Odisha.

... Respondents

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Counsel for Appellants	...	Mr. Prasanta Kumar Satpathy (Virtual) Mr. Biprab Kumar Das
Counsel for Respondents No. 1 and 2	...	Mr. Protip Mukherjee Ms. Tutul Das Singh Mr. B. Chakraborty

JUDGMENT : 10th July, 2026

THE APPELLATE TRIBUNAL:

1. Instant appeal is preferred against Judgment and order dated 30th December, 2017 passed by the Learned DRT, Cuttack dismissing S.A. 12 of 2017, (Smt. S. Nagaratna Patro -vs- Central Bank of India).

2. As per pleadings of the parties, Appellant No. 1 is the owner of Schedule property 'A' and Appellant No. 2 is the owner of Schedule property 'B'. O.A. 64 of 2011 is filed by Respondent Bank against the Appellants who, putting their appearance, came to know that their properties, allegedly have been mortgaged with the Bank while no mortgage was created by them. Notice under Section 13 (2) and 13 (4) of the SARFAESI Act, 2002 (hereinafter referred to as the 'Act') are not served upon the Appellants while Notice dated 7.8.2018 was published which was challenged by the Appellants by preferring S.A. 25 of 2012 (Smt. S. Nagaratna Patro -vs- Central Bank of India). S.A. 25 of 2012 was dismissed as infructuous by the Learned DRT with liberty to the Bank to proceed afresh. Secured assets are agricultural land. Bank proceeded with the secured assets as per Section 31 (i) of the Act. No Notice under Section 13 (2) and 13 (4) of the Act as well as Sale Notice, under

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Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002, were ever served upon the Appellants in accordance with law. Accordingly, challenge was made against the Securitization action initiated by the Bank against the Appellants.

3. Opposition was filed by the Bank stating that the Partnership firm, namely Apex Computers, through its Partner, S. Jagannath Patro and S. Rajesh Kumar Patro, had availed financial assistance to the extent of Rs.5.00 lac from the Bank which was subsequently enhanced to Rs.11.00 lac. Equitable mortgage was created in favour of the Bank. Partners of the Partnership Firm are liable for repayment of the loan. The account became irregular and was classified as N.P.A. Notice under Section 13 (2) of the Act was issued by the Bank which was duly served but was not responded to. Possession Notice was also issued which was published in newspaper. S.A. 25 of 2012 was filed by the Borrowers which was dismissed by the Tribunal. E-auction Sale Notice was published on 18.2.2017 fixing the sale date on 23.3.2017. Secured assets are not agricultural land. S.A. is liable to be dismissed.

4. As far as the issue of res judicata is concerned, earlier S.A. was dismissed by the Learned DRT on the ground of it being infructuous as the sale could not be conducted. Law on res judicata is very well settled. In a recent judgment, the Hon'ble Apex Court held that the principles of res judicata would be applicable even in the pending proceedings. The Hon'ble Apex Court has also approved the

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decision of Five Judges Bench of the Hon'ble High Court in ***Tarini Charan Bhattacharya -vs- Kedar Nath Haldar [AIR 1928 Cal 777 (PB)]*** wherein it was held that:

"(1) The question whether a decision is correct or erroneous has no bearing upon the question Whether it operates or does not operate as res judicata. The doctrine is that in certain circumstances the Court shall not try a suit or issue but shall deal with the matter on the footing that it is a matter no longer open to contest by reason of a previous decision. In these circumstances it must necessarily be wrong for a Court to try the suit or issue, come to its own conclusion thereon, consider whether the previous decision is right and give effect to it or not according as it conceives the previous decision to be right or wrong. To say, as a result of such disorderly procedure, that the previous decision was wrong and that it was wrong on a point of law/or on a pure point of law, and that therefore it may be disregarded, is an indefensible form of reasoning. For this purpose, it is not true that a point of law is always open to a party.

(2) In India, at all events, a party who takes a plea of res judicata has to show that the matter directly and substantially in issue has been directly and substantially in issue in the former suit and also that it has been heard and finally decided. This phrase "matter directly and substantially in issue" has to be given a sensible and businesslike meaning, particularly in view of Expl. 4 to sec. 11 of the Code of Civil Procedure which contains the expression "grounds of defence or attack." Sec. 11 of the Code says nothing about causes of action, a phrase which always requires careful handling. Nor does the section say anything about point or points of law, or pure points of law. As a rule parties do not join issue upon academic or abstract questions but upon matters of importance to themselves. The section requires that the doctrine be restricted to matters in issue and of these to matters which are directly as well as substantially in issue.

(3) Questions of law are of all kinds and cannot be dealt with as though they were all the same. Questions of procedure, questions affecting jurisdiction, questions of limitation, may all be questions of law. In such questions the rights, of parties are not the only matter for consideration. The Court and the public have an interest. When a plea of res judicata is raised with reference to such matters, it is at least a question whether special considerations do not apply.

(4) In any case in which it is found that the matter directly and substantially in issue has been directly and substantially in issue in the former suit and has been heard and finally decided by such Court, the principle of res judicata is not to be ignored merely on the ground that the reasoning, whether in law or otherwise, of the previous decision can be attacked on a particular point. On the other hand it is plain from the terms of sec. 11 of the Code that what is made conclusive

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between the parties is the decision of the Court and that the reasoning of the Court is not necessarily the same thing as its decision. The object of the doctrine of res judicata is not to fasten upon parties special principles applicable to them inter se, but to ascertain their rights and the facts upon which these rights directly and substantially depend and to prevent this ascertainment from becoming nugatory by precluding the parties from re-opening or recontesting that which has been finally decided."

Since the issues, which were directly and substantially in issue in the earlier S.A., were not finally adjudicated by the DRT rather S.A. was dismissed as infructuous on the ground that no sale was conducted in pursuance of Sale Notice Accordingly, the present S.A. is not barred by the principles of res judicata.

5. Learned DRT after hearing the Learned Counsel for the parties dismissed the S.A. by the impugned order. Bare perusal of the impugned judgment would show that the Learned DRT has not analyzed the issue raised by the S.A. Applicant/Appellants in accordance with law rather a very cryptic order is passed wherein even necessary ingredients required under the law were not considered by the DRT.

6. Jural relationship of Borrower and Creditor is not in dispute. Main contention of the Appellants is that Notice under Section 13 (2) and 13 (4) of the Act were not duly served upon the Appellants as required under the law. In reply to the same it is stated in the objection filed by the Bank that the notices were duly served upon the Borrowers. Learned DRT has not recorded any specific finding about the service of notice. When the challenge was made about the service of notice, it was incumbent upon the Bank to

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produce the records of service of notice but no proof of service of notices is filed by the Bank. A letter written by the Assistant Regional Manager to the Branch Office of its Bank dated 18.01.2010 was enclosed wherein the notice under Section 13 (2) of the Act were forwarded for service upon the Borrowers. But whether those notices were served or not is not on record. Likewise, Possession Notice dated 28.11.2010 was also not personally served upon the Appellants rather it was only published in the newspaper which could not be held to be service of Possession Notice. Likewise, as far as service of e-Auction Notice dated 18.2.2017 is concerned, whereby the auction was fixed on 23.3.2017, it was only published in the newspaper. In the Notice published in the newspaper it is mentioned that "*This notice is also to be treated as 30 days statutory sale notice to borrowers and guarantors required under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002.*" Except for this publication, no Sale Notice was served upon the Borrowers. All the documents of service are wanting in the matter which proves that there is no service of notices under Section 13 (2) of the Act, Possession Notice as well as Sale Notice upon the Borrowers. Accordingly, there is violation of the mandatory provisions of SARFAESI Act, 2002, as provided under Rule 3 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules'). Further Possession Notice was also not served in accordance with the provisions of Rule 4 of the Rules. Sale

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Notice is required to be served upon the Borrowers as per Rule 8 (6) of the Rules but was not served. These are the mandatory provisions and non-compliance of the same vitiates the whole action initiated by the Bank under the Act.

7. Another issue is raised regarding applicability of Section 31 (i) of the Act. It is argued that secured assets are agricultural land wherein the securitization action could not be undertaken by the Bank.

8. Per contra, Learned Counsel for Respondent Bank would submit that the secured assets are not agricultural land and they are not being used for agricultural purpose. Learned Counsel for Respondent placed reliance upon Hon'ble Supreme Court judgment ***K. Sreedhar -vs- Raus Constructions Private Limited [(2023) 11 SCC 169]***.

9. As far as issue of applicability of Section 31 (i) of the Act is concerned, the law is well settled by the Hon'ble Apex Court in the case of *K. Sreedhar* (supra).

10. In the present case burden lies upon the Applicants to show that secured assets are being used for agricultural purposes. In support of the submission, Appellants placed reliance upon Land Record documents which could not prove that the land is being used for the agricultural purpose. Learned DRT on this count has rightly arrived at this finding.

11. On the basis of the discussion, we are of the considered view that the Learned DRT erred in dismissing the S.A. Accordingly, the impugned order suffers from material illegality and is liable to be set aside.

O R D E R

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Appeal, is allowed. Judgment and order dated 30th December, 2017 passed by the Learned DRT, Cuttack in S.A. 12 of 2017 (Smt. S. Nagaratna Patro -vs- Central Bank of India), is hereby set aside. Securitization action initiated by the Bank by issuing the Notices under Section 13 (2) of the Act, Possession Notice and the Sale Notice are accordingly set aside. However, Bank would be at liberty to proceed afresh to secure its loan in accordance with law.

File be consigned to Record room.

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

Order signed, dated and pronounced in open Court.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 10th July, 2026
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