Reportable/Non-Reportable

Reserved on 10th July, 2026
Delivered on 23rd July, 2026



**IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA**

**HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA CHAIRPERSON**

Appeal No. 28 of 2025
(Arising out of S.A. No. 313 of 2023 in DRT- 2 Kolkata)

1. Mr. Prasanta Mavai, son of Sri Kalipada Mavai, residing at Village – Jamalchak, P.O. Shibramnagar, P.S. Sutahata, District – Purba Medinipur, PIN -721635.

2. Mrs. Rinku Rani Das (Mavai), wife of Prasanta Mavai, residing at Village – Jamalchak, P.O. Shirbramnagar, P.S. Sutahata, District – Purba Medinipur, Pin – 721635.

....Appellants

-Versus-

1. Indian Bank, Stressed Assets Management Large (SAML), Calcutta branch having its office at 14, India Exchange Place, 2nd Floor, Indian Bank Building, Calcutta, PIN 700001.

2. Authorised Officer, Indian Bank, Stressed Assets Management Large (SAML), Calcutta branch having its office at 14, India Exchange Place, 2nd Floor, Indian Bank Building, Calcutta, PIN 700001.

3. M/s. Kuchupapa Infra Projects Private Limited, having its registered office at 128, Bakultala Lane, Khamarpara, Ghoshpara, P.O. Bansberia, P.S. Chuchura, District – Hooghly, PIN - 712502.

4. Smt. Runu Sil, 128, Bakultala Lane, Khamarpara, Ghoshpara, P.O. Bansberia, P.S. Chuchura, District – Hooghly, PIN - 712502.

5. Smt. Munmun Sarkar, wife of Sri Atanu Sarkar, Tilipara, Dhaniramnnpur, Jalangi, Murshidabad, PIN – 742306.

6. Apan Mansan, son of Ganesh Masan, Village- Rang Pashchima Para, P.O. & P.S. Kalna, Diistrict – Burdwan, PIN -713409.

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7. M/s. Suranjana Holiday Resort, having its registered office at 64/A, Sadananda Road, P.O. & P.S. – Kalighat, Kolkata – 700026.

8. Dumdum Commercial Complex Private Limited, 12 N.C. Sen Avenue, Dumdum Municipality, North 24 Parganas, Kolkata – 700080, West Bengal.

....Respondents

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| Counsel for Appellants | Mr. Nemani Srinivas, Learned Advocate |
| Counsel for Respondent No. 1&2 | Mr. Joy Saha, Learned Senior Advocate, Ms. Asmita Lohia |
| Counsel for Respondent No. 8 | Ms. Sharmistha Mitra, Learned Advocate |

**JUDGMENT** : **23rd July, 2026**

**THE APPELLATE TRIBUNAL :**

Instant Appeal has been preferred against a judgment and Order dated 14.02.2025 passed by the Learned DRT-2, Kolkata, dismissing the SA No. 313 of 2023 ***(Mr. Prasanta Mavai, and another versus Indian Bank and others)***.

**2.** Securitization Application under Section 17 of the SARFAESI Act, 2002 (hereinafter referred to as the 'Act') was filed by the Appellants challenging the auction initiated by the Respondent Nos. 1 and 2, i.e. secured creditor, in respect of the secured assets.

**3.** As per the pleadings, Appellants are the Securitization Applicants who are neither the borrower nor guarantors. Rather, they are aggrieved by the measures initiated by the Bank under the SARFAESI Act. Appellants are the

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subsequent lessee of premises No. 71/415, Sector-N2, New Digha, Purba Medinipur, West Bengal 721463. Respondent Nos. 5, 6 and 7, namely Smt. Munmun Sarkar, Apan Masan and M/s Suranjana Holiday Resort, are the predecessor in interest of the Appellants. Digha Sankarpur Development Authority, (DSDA), is the original lessor of the subject property. In the Lease Deed No. 6706 of 1977, any transfer of leasehold interest shall be done only upon obtaining the previous permission of the Government in writing to that effect. Accordingly, Respondent No. 7, i.e. M/s. Suranjana Holiday Resort, moved an application and also deposited the necessary transfer charges in favour of DSDA on 04.03.2020. DSDA vide letter dated 05.03.2020 granted permission for transfer of the leasehold interest in favor of the Appellants. Lease Deed was executed on 06.03.2020 and registered on 12.03.2020. It contains the same clauses and conditions which were contained in the original Lease Deed of 1977. Mutation was also carried out. Applicants are in possession over the property.

**4.** Possession Notice under Section 13(4) of the Act was pasted on the property on 16.12.2021 wherein the Applicants came to know that the property was mortgaged with the Bank by Defendant No. 3. The Respondent Nos. 1 and 2 were requested to recall the notice on the ground that no previous consent in writing from DSDA was obtained before the creation of any mortgage or hypothecation. E-Auction Sale Notice was published on 24.06.2023 mentioning the date of issuance of Notice dated 23.06.2023

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fixing the sale on 04.08.2023. Sale Notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules') was not published in two leading newspapers. Rule 8(5) of the 'Rules' was also not complied by the Bank. The property is attempted to be sold at a low price and under valuation. Sale Notice was not affixed on the conspicuous part of the secured assets. Rights of the Securitization Applicants as a lessee are duly protected. Accordingly, relief was sought declaring the auction of the Bank as null and void, and further, e-auction Sale Notice dated 23.06.2023 be set aside.

**5.** Reply was filed by the Bank. It is stated that the sale was conducted on 04.08.2023 after duly complying with the provisions of the SARFAESI Act, 2002 and Security Interest (Enforcement) Rules, 2002 for a sum of Rs. 4.65 Crores. Sale is already confirmed in favour of the Auction Purchaser. Schedule property was mortgaged in favour of the Bank in 2018 by creation of equitable mortgage by Respondent Nos. 5 to 7 being the guarantors. Credit facilities were availed by Respondent No. 3 namely M/s. Kuchupapa Infra Projects Private Limited by deposit of Title Deeds. Respondent No. 5 and 6 are the partners of Respondent No. 7 who have executed the necessary documents in the Bank. A declaration was also executed on 29.11.2018 by the Respondent Nos. 5 to 7 undertaking not to mortgage, charge, encumber, lease, dispose off or deal with the property mortgaged to the Bank to cover the guarantee during the continuance of said facilities to M/s Kuchupapa

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Infra Projects Private Limited. and further to keep and indemnify the Bank fully and effectively against all claim, demands charges and expenses whatsoever in respect of the property. Accordingly, any transfer of leasehold rights purportedly in favour of the Appellants is in contradiction to the said declaration and it was a sham and fraudulent transaction undertaken with a design to defeat the rights and interest of secured creditor. No Notice was given to the Bank and no 'NOC' was obtained from the Bank.

**6.** Equitable mortgage was created by the borrower on 29.11.2018 and the charge was also registered under the CERSAI on 29.11.2018. There is intentional and malicious concealment of the fact by the Respondent Nos. 5 to 7 that the property is mortgaged with the Bank.

**7.** After taking permission and approval from the DSDA on 08.05.2017, Respondent Nos. 5 to 7 entered into an indenture of lease dated 11.05.2017 from transfer of leasehold right from Contai Syndicate Pvt. Ltd. dated 11.05.2017 wherein there is no such explicit clause pertaining to taking any permission from DSDA before creation of mortgage over the property.

**8.** Sale Notice was issued in accordance with law. SARFAESI Application is liable to be dismissed.

**9.** I.A. No. 945 of 2023 is also disposed of by the Learned DRT by the impugned judgment.

**10.** Learned DRT framed the following two issues for consideration:

*(1) Whether there is a creation of any valid security in favour of the defendant Bank over the schedule property or whether*

[redacted]

*the lessor has the right to further lease the property during the subsistence of the mortgage in the fact of the case?*

(2) *Whether execution of the lease to the Applicant is subject to the conditions of the mortgage or not?*

**11.** Learned DRT recorded a finding that the issues are decided against the Applicants. Consequently, dismissed the Securitisation Application.

**12.** Feeling aggrieved by the impugned judgment, Appellant preferred the Appeal.

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

**14.** Learned Counsel for the Appellant would submit that the Appellants are neither borrower nor guarantor and there is no jural relationship between the Appellant and the Bank. Deed No. 6706 of 1977 was executed by DSDA in favour of Contai Bus Syndicate Pvt. Ltd. Thereafter on 18.11.1977, Contai Bus Syndicate Pvt. Ltd. executed the lease deed in favour of M/s. Suranjana Holiday Resort which was duly ratified by the DSDA and M/s. Suranjana Holiday Resort executed this lease deed in favour of the Appellants. It is submitted that the DSDA has given written permission on 05.03.2020 to get the lease registered in favour of the Appellants. It is further submitted that indenture of transfer was executed on 06.03.2020 between M/s. Suranjana Holiday Resorts and the Appellants which was registered by the ADSR Ram Nagar in presence of the officers of the DSDA. Accordingly, the Appellants are in possession of the property. It is submitted that the 'NOC' was duly given by the DSDA for executing the lease Deed. The 'NOC' was

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obtained by the vendor before effecting the transfer on 08.05.2017. Learned Counsel for the Appellant has also placed reliance upon a reply received under the Right to Information Act, 2005 dated 13.09.2023 wherein it was mentioned that no 'NOC' was ever granted to any Bank for creating mortgage. It is further submitted that the Bank is placing reliance upon a declaration dated 29.11.2018 given by the borrower to the Bank wherein it was stated that the property is not mortgaged with any other Bank or authority and they have created to indemnify the Bank fully in the event of any loss caused to it. It is further submitted that Bank is fully protected by the indemnity against the mortgagor for any loss suffered. But Bank has not opted to exercise that right and is proceeding to realise the dues by enforcing the properties of the Appellant claiming it to be a mortgage. Learned DRT has erred in recording the findings.

**15.** Per contra, Learned Senior Advocate for the Respondents would submit that the Learned DRT misdirected itself in recording the findings. Learned Senior Advocate for the Respondents would submit that basic principles of law that once a mortgage is always a mortgage will cover the field. If the fact of mortgage was concealed by M/s. Suranjana Holiday Resort to the Appellant, it does not absolve the Appellant from the liabilities accruing from the mortgage. Original deeds are lying with the Bank. It was an equitable mortgage which was not required to be registered. Learned Senior Advocate for the Respondent would further submit that a declaration dated 29.11.2018 by

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Suranjana Holiday Resort was given to the Bank that the property is not mortgaged.

**16.** Learned Senior Advocate for the Respondent vehemently argued that the Appellant has no locus standi to file the Securitisation Application. Conditions in the original lease deed of 1977 have to be complied by the lessor and lessee as they were there at that time and subsequent thereto also. Appellant is litigating a litigation in proxy. The Agreement or the contract was a voidable agreement wherein the state should have exercised its option for cancellation of the deed. But even if the state has not opted to exercise their discretion, it does not mean that the mandatory conditions of the lease deed can be bypassed by the parties.

**17.** It would further be submitted by the Learned Counsel that the mortgage in favour of the Bank was duly registered in the CERSAI which was in public domain. The lease deed if any, in favour of the Appellant would be transferred with the mortgage. The lease deed dated 18.11.1977 conditions (h) is binding upon the parties. It is further submitted that even if for the sake of arguments it is accepted that any permission was given by the DSDA, then it is not proved as to whether the fact of mortgage was informed to DSDA or not? Learned Senior Advocate has placed reliance upon Section 55 of the Indian Contract Act, 1872. Reliance is also placed upon ***Federal Bank Limited versus Sub Registrar 2023 SCC OnLine Mad. 878.***

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**18.** Learned Senior Advocate further placed reliance upon ***Hon'ble High Court of Judicature for Rajasthan versus P.P.Singh and another (2003) 4 SCC 239*** and submits that when the initial action was illegal, all subsequent actions would be illegal. Learned Senior Advocate has further placed reliance upon Section 65 of the Transfer of Property Act, 1882.

**19.** There are certain undisputed facts. Original lease deed was executed on 18th November, 1977 between the Government of the State of West Bengal and Contai Bus Syndicate Pvt. Ltd. wherein one of the conditions was that –

*"(e) The lease hold interest will be hereinafter but shall not be transferable without the previous permission of the Government in writing and except to a party as may be approved by the Government."*

*(h) Not to mortgage or charge the leasehold interest of the lessee and the building to be erected thereon without the premises consent in writing of the Government. Such convent not to be unreasonable withheld in case of bonafide necessity."*

**20.** Thereafter, Contai Bus Syndicate Pvt. Ltd. created the lease in favour of Suranjana Holiday Resort on 11.05.2017 wherein it was recorded that *"the transferors by virtue of their Application has obtained the permission from the Digha Sankarpur Development Authority vide Memo No. 103/ XXVI-98/DSDA/2017 dated 08.05.2017 to transfer its leasehold interest subject to all its obligations under such lease of plot No. 71/ 415 in N2 Sector, Digha in favour of transferees for the unexpired period of the term of lease contents in said Lease Deed being No. 6706 for the year 1977."*

[redacted]

**21.** Thereafter, M/s. Suranjana Holiday Resort transferred the leasehold rights in favour of the Appellant on 6th March, 2020 wherein it was recorded that –

*"AND WHEREAS, the Transferor by virtue of its application has obtained the permission from the Digha Sankarpur Development Authority vide memo no. 3295/XXVI-98/DSDA/2020 dated 05.03.2020 to transfer its leasehold interest subject to all its-obligations under such lease of Plot No.71/415 in N2 Sector, Digha in favour of Transferees for the unexpired period of the term of lease contents in the said Deed of Lease being No.-I-6706-for the year 1977.*

*AND THIS INDENTURE FURTHER WITNESSETH that the Transferor doth hereby covenant with transferee that he has not done or suffered to be done anything whereby the Transferor is or may be prevented from lawfully executing these presents in favour of the Transferee transferring its lease hold interest in the said plot of land mentioned and described in the Schedule hereunder written.*

*AND THIS INDENTURE FURTHER WITNESSETH THAT THE Transferee doth hereby agree and covenant with Transferor that the Transferee shall duly and faithfully observe fulfill and perform the terms and conditions and covenants on the part of the Transferor contained in the said hereinbefore of the Deed of Lease being No. I-6706 for the year 1977 and shall otherwise keep the Transferor saved harmless and indemnified against the same."*

**22.** In this manner, Appellants claims that they have acquired the leasehold rights over the property. It is important to note that the Respondent Nos. 5 to 7, i.e. Smt. Munmun Sarkar, Apan Mansan, M/s. Suranjana Holiday Resort has mortgaged the property in favour of the Bank on 29.11.2018 by creating equitable mortgage by deposit of the Title Deeds. They were the guarantors of the credit facilities availed by Respondent No. 3, namely M/s Kuchupapa Infra Projects Private Limited. At this stage, it would be relevant to observe that neither the Respondent No. 3, M/s. Kuchupapa Infra Project Private Limited, nor

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Respondent Nos. 5 to 7 have appeared in the Appeal. It is also not in dispute that a declaration was also made and executed by Respondent Nos. 5 and 6 on 29.11.2018, that they have not created any mortgage, charge or encumbrance of any kind, whatever, in respect of the said property, and the property is free from all encumbrances. This indemnity bond was filed in compliance of the conditions mentioned in the Lease Deed of 1977.

**23.** Now, it is to be seen as to whether the transfer in favour of the Appellant by M/s. Suranjana Holiday Resort was absolute or would be subject to the mortgage as created by them in favour of the Bank on 29.11.2018? It is also not in dispute that no permission or consent was obtained by M/s. Suranjana Holiday Resort for transferring the leasehold right in favour of the Appellants.

**24.** Conditions imposed in the Lease Deed of 1977 are binding upon the parties. Subsequent transfers of leasehold rights are subject to the terms and conditions on leasehold of 1977.

**25.** Now we have to see as to whether any permission was obtained from the Government or DSDA for creation of the mortgage by M/s. Suranjana Holiday Resort in favour of the Bank? The transfer in favour of M/s. Suranjana Holiday Resort in the year 1977 was within the knowledge of DSDA and the officers of the DSDA also signed the documents. Even in the subsequent lease deed in favour of M/s Suranjana Holiday Resort, DSDA signed the documents. A letter was issued by DSDA to Contai Syndicate Private

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Limited on 11.05.2017 prior to transfer the leasehold right, interest in favour of the transferee for unexpired period of term of lease as for the lease deed No. 6706 of 1977. No doubt, this permission was granted by the DSDA but it was a condition only for transfer of the leasehold rights. No permission was ever granted to mortgage the leasehold rights in favour of the Bank. Now, the question arises that when the leasehold rights were transferred in favour of the Appellants by M/s. Suranjana Holiday Resort what would be the effect? Whether the Appellants have a right to challenge the contents of the lease deed on the ground that no permission was ever granted by DSDA for creation of the mortgage? Whether it would adversely affect the rights of the Bank?

**26.** Hon'ble Supreme Court in the case of ***Syndicate Bank Vs. Estate Officer & Manager, A.P.I.I.C. Ltd. & Ors [(2007) 8 SCC 361]*** has held that Section 58 of the Transfer of Property Act inter alia, provides that where a person in any of the towns mentioned therein delivers to a creditor or his agent documents of title to immovable property with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds. It would be seen from this provision that three essentials are required for an equitable mortgage, namely, (1) a debt, (2) deposit of title deeds and (3) the intention that the delivery should be security for the debt.

**27.** Undisputedly, M/s Suranjana Holiday Resort created an equitable mortgage in favour of the Bank by deposit of Title

[redacted]

Deeds being guarantor for the loan availed by M/s. Kuchupapa Infra Private Limited. Hence, the necessary ingredients for creation of equitable mortgage are duly complied with.

**28.** Accordingly, all the necessary ingredients for creation of equitable mortgage are complied with by M/s. Suranjana Holiday Resort. The issue of challenge to the mortgage cannot lie in the basket of the Appellants. If the permission was not obtained by M/s Suranjana Holiday Resort from the State Government, then it is an issue which is to be taken care of between the State Government and M/s Suranjana Holiday Resort. Further, as far as issue of indemnification is concerned, that also does not concern the Appellants. Mortgage created by M/s Suranjana Holiday Resort cannot be challenged by the Appellants. Contract between M/s Suranjana Holiday Resort and its Lessor or the State Government was voidable contract which option could have been exercised by the State Government but if the State Government has not exercised its option, it does not confer any right upon the Appellants to challenge the mortgage. The mortgage created in favour of the Bank was duly registered in the CERSAI which was in public domain. When the leasehold rights were transferred in favour of the Appellants, it was the duty of the Appellant to ensure as to whether there are any encumbrances over the property or not? Principles of 'Caveat emptor' would apply against the Appellants. They should have been cautious enough at the time of transfer to ensure that the property is free from all

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encumbrances. But if the Appellants have purchased the leasehold rights of the property which was already mortgaged, then they purchased the same voluntarily along with the mortgage.

**29.** It has been argued that it is the duty of the Bank at the time of the mortgage to verify as to whether the property is free from all encumbrances or not? Further, whether the conditions laid down in the Lease Deed of 1977 are complied with or not? This issue at the very outset could not be raised by the Appellants as they were not a party to the mortgage. Bank or the State Government can take this plea but as far as the issue of permission to grant mortgage is concerned, no permission was ever granted by the DSDA or the State Government for creation of the mortgage. Rather, the only permission which was granted was only for transfer of the leasehold rights. It is also relevant at this stage that the Government was not a party in the mortgage deed. Hence, the mortgage was created behind the back of the State Government. It cannot bind the State Government.

**30.** Factum of mortgage was concealed by M/s Suranjana Holiday Resort while executing the deed in favour of the Appellants. It is well settled law that "once a mortgage is always a mortgage". Any transfer made by M/s Suranjana Holiday Resort would be subject to the mortgage created by M/s Suranjana Holiday Resort. If any concealment of the transfer of mortgage is made by M/s Suranjana Holiday Resort from the Appellants, Appellants could have a legal remedy against M/s Suranjana Holiday Resort at appropriate

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forum. But Appellant cannot challenge the validity of the mortgage created in favour of the Bank. Mortgage was created in favour of the Bank. As per the provisions of Section 58 (F) of the Transfer of Property Act, 1882, a declaration was also made by M/s Suranjana Holiday Resort wherein it was stated that –

> *"We further say that Allahabad Bank, Kolkata Main Branch at 14, India Exchange Place, Kolkata- 700 001 has given and has agreed to continue to give financial accommodation to the Company namely M/s. Kuchupapa Infra Projects Private Limited (CIN U70109WB2017PTC222409), a Company within the meaning of Companies Act 2013 having it's registered office at 128, Bakultala, Khamarpara, Hooghly, West Bengal 712502 on the strength of guarantee and security given by us and we hereby agree and undertake not to mortgage, charge, encumber, lease dispose of or deal with the property mortgaged by us to cover the guarantee during the continuance of the said facilities to M/s. Kuchupapa Infra Projects Private Limited by the Bank"*

**31.** The transfer made in favour of the Appellants is in violation of the declaration made by M/s Suranjana Holiday Resort which itself is void.

**32.** Original documents of the transaction are still lying with the Bank as a necessary ingredient of the creation of equitable mortgage which supports the case of the Bank that the equitable mortgage was created in favour of the Bank and transfer if any, shall be subject to the mortgage.

**33.** Learned Counsel for the Appellant has placed reliance upon ***State of Uttar Pradesh and versus United Bank of India and others (2016) 2 SCC 757*** which will not be applicable to facts of the present case. In that case, the issue was regarding nazul land as provided under Rule 1 of Nazul Rules of Uttar Pradesh which means any land or

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building which being the property of the Government is not administed as a state property. In the present case, property in dispute is not a nazul land.

**34.** Information obtained under the Right to Information Act, 2005 dated 13.09.2023 by the Appellants itself specifically shows that no 'NOC' had been granted in favour of any one to create any mortgage. This issue does not and could not be raised by the Appellants as they have no 'locus standi' to challenge the mortgage created by M/s. Suranjana Holiday Resort in favour of the Bank. Appellants are the subsequent transferee by M/s Suranjana Holiday Resort. Hence, they are bound by the actions of their transfer i.e. M/s. Suranjana Holiday Resort who have created the mortgage in favour of the Bank. Hence, whatever rights are transferred in favour of the Appellants were all subject to the mortgage created in favour of the Bank. Non-appearance of M/s Suranjana Holiday Resort itself makes all the transactions suspicious.

**35.** On basis of discussions made above, we are of the considered view that the Learned DRT had rightly arrived at its conclusion. No interference is required in the impugned judgment. Appeal lacks merit and is liable to be dismissed.

## ORDER

Appeal is dismissed. Impugned order dated 14.02.2025 passed by the Learned DRT-2, Kolkata, dismissing the SA No. 313 of 2023 ***(Mr. Prasanta Mavai,***

[redacted]

***and another versus Indian Bank and others)*** is confirmed.

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 day 23rd day of July, 2026.

[redacted]

(Anil Kumar Srivastava,J)
Chairperson

23.07.2026

Dated 23rd July, 2026
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