IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 1558/2023

Cholamandalam Investment Finance Company Ltd. through its Director, Registered Office at Dara House. 2 NSC Bose Road, Chennai-600001 Corporate Office at Cholamandalam 1st & 2nd floor, Plot No.6 Pusa Road, Karoi Bagh, New Delhi-110005 Lucknow Office at C-14, 4th Floor Bachan Medical Center, Shashtri Complex, Vibhuti Khand, Gomti Nagar, Lucknow, UP-226010.

....Appellant

Versus

1. Ashwani Kumar, S/o Late Yogendra Prasad, R/0 18724, Cox Avenue, Saratoga, CA-95070, USA, at India NHPC Officers Society, House No. 58, Pocket P4, Builders Areas, Beeta-2, Greter Nodia, U.P. Also at 319-E, Saket Colony, Ajabpur Kalan, Dehradun.
2. Shri Jaswant Singh Rawat, S/o Shri Jeet Singh Rawat, B-1 Lane No.1 Ward No.31, Opposite Anbanda Hospital, Shastri Nagar, Nehrugram, Dehradun, (Uttrakhand)-248001.
3. Mr. Mohit Garg, S/o Arvind Kumar Garg, R/o Near SSM School, Mahar Para, Dankaur, Gautam Budh Nagar, Uttar Pradesh-203201.
4. Ayush Goyal, S/o Madhusundan Goyal, R/o H. No. E-41, Alpha-2, Greater Noida, Kasana, Gautam Budha Nagar, Uttar Pradesh 201301.

....Respondents

Advocates, who appeared in this case:

For the appellant	Shri Sidharth Chopra, Advocate,
For the respondent-Borrower	Shri U. K. Saxena, Sr. Advocate assisted by Shri Maneesh Mehrotra, Advocate
For the respondent-auction purchaser	Shri Sanjay Kumar Gupta, Advocate,

JUDGMENT
Date of Pronouncement: 28.07.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The present appeal has been filed under section 18 of the Securitization and Reconstruction of financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "The SARFAESI Act") against the order

dated 04.11.2023, whereby the S. A. No. 509/2023 filed by the respondent-borrower has been allowed.

2. Brief facts of the matter are that father of the respondent-borrower Late Yogendra Prasad had established a company in the name of Prasad Agrico Industries Pvt. Ltd. The respondent no. 1 is the son of late Yogendra Prasad, who expired on 22.04.2021 and Pratima Prasad, who expired on 04.05.2020.

3. It appears that some financial facilities were granted by the appellant-FI to Late Yogendra Prasad, to which Late Pratima Prasad created equitable mortgage over her property and also Late Yogendra Prasad on his property by depositing original title deeds with the appellant-FI. and also executed loan agreement on 30.09.2018 and 02.09.2020. It is stated that two properties were mortgaged, one was situated 319-E, Saket Colony, Ajabpur Kalaan, Dehradun, Uttarakhand and another at Unit No. 58 at NHPC Executives Sahkari Avas Samiti Ltd. in Plot No. 06, Sector- Petitioner-4, Greater Noida, Gautam Budh Nagar, Uttar Pradesh. Since the borrowers did not maintain the financial discipline, therefore, account was classified as NPA on 08.11.2021 and demand notice dated 16.03.2022 under section 13(2) of the SARFAESI Act was issued followed by possession notices dated 18.06.2022 and 21.06.2022. Thereafter, the sale notice was issued on 28.07.2022 scheduling the auction of the property in question on 30.08.2022 and the property situated at Dehradun was sold for Rs. 5.60 crores on 30.08.2022 and the Noida property was sold for Rs. 1.50 crores and sale certificate in respect of Noida property was issued on 16.09.2022 and in respect of Dehradun property, the sale certificate was issued on 07.09.2022. Subsequent to it, the appellant-FI obtained

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the orders from District Magistrate of Dehradun on 26.11.2022 and from the District Magistrate, Gautam Budh Nagar on 12.05.2023.

4. It transpires that against the demand notice dated 16.03.2022, a representation dated 16.05.2022 was submitted by the respondent no. 1 before the appellant on 19.05.2022, which was replied on 07.06.2022.

5. It further appears that an FIR No. 0436/2021 dated 24.10.2021 was lodged by one Preet Mahendra against the respondent No. 1 with regard to sale of a property, which was mortgaged for a loan advanced by the appellant-FI. Prior to the said complaint, the respondent No. 1 had also lodged FIR against his employee namely Shri Ashok Kumar, who had made statement before the ACM- XI, Mohihari East, Champaran that he had allegedly taken loan from the appellant and Indusland Bank in the name of three family members including the respondent No 1 by making forged signature for his own benefit, but in the charge-sheet, the investigating officer had given a clean chit to the appellant, which proves that the appellant has no fault in the entire transactions.

6. It is averred that the respondent No. 1 filed a Writ C- No. 22262/2022 before the Hon'ble Allahabad High Court for the fraud allegedly committed by the appellant company, which was disposed off vide order dated 30.08.2022 with certain directions.

7. It is further averred that the respondent No. 1 challenged the order dated 26.11.2022 passed by the District Magistrate, Dehradun under section 14 of the SARFARSI Act before the Hon'ble high Court by filing Writ Petition (M/S) No. 990/2023, which was dismissed vide order dated 27.04.2023 on the ground of alternative remedy.

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Against the said order, the respondent No. 1 filed Special Appeal No. 123/2023, which was also dismissed vide order dated 04.05.2023 on the ground of alternative remedy. Thus the S.A. was filed by the respondent No. 1 before the Tribunal below on 17.06.2023, which was allowed vide order impugned. Being aggrieved by the said order, the present appeal has been filed by the appellant-FI.

8. Learned counsel for the appellant submitted that the Tribunal below has exceeded its jurisdiction in holding that no security documents had been executed by the borrowers, therefore, the order impugned is not sustainable in the eye of law. It was further contended that Late Yogendra Prasad and Pratima Prasad, who were the father and mother of the respondent no. 1, along with respondent no. 1, Prasad Agrico Industries Pvt. Ltd. and Astin Technology Pvt. Ltd. had initially availed the loan from HDB Financial Services Ltd. for business purpose and also from Axis Bank for purchase of the property situated at Noida. It was further contended that in order to secure the said facilities, the borrowers mortgaged the properties situated at Noida and Dehradun by depositing their original title deeds with the said Banks.

9. Learned counsel further submitted that in order to liquidate the outstanding amount of both the loans taken from the HDB Bank Financial Services Ltd. and the Axis Bank as stated above, the borrowers applied for loan of Rs. 6.00 crores, which was sanctioned by the appellant-F.I. on 30.09.2018 in favour of Late Yogendra Prasad and loan agreement was executed on 30.09.2018. It was further contended that the appellant-F.I. directly made the payments to the said Banks and the remaining amount was transferred to the account of Late Yogendra

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Prasad. Copy of closure letter dated 31.10.2018 issued by HDB Bank is placed at page no. 490 of the paper book and the same was also issued by the Axis Bank, which is also placed at page no. 494.

10. Learned counsel further submitted that in order to secure the afore-mentioned loan facility, the borrowers transferred the charge of mortgaged properties in favour of the appellant-FI. It was further contended that Late Yogendra Prasad, father of the Respondent No. 1, himself applied to the Noida Authority for grant of permission to mortgage the Noida property in favour of the appellant-FI and the same was duly granted by the Greater Noida Industrial Development Authority vide letter dated 14.11.2018, copy of which is at Page No. 496 of the paper book and the charge on the afore-mentioned property was duly registered by the appellant under CERSAI, copy of which is at page No. Page 294 of the paper book.

11. Learned counsel further submitted that that on 02.09.2020, Late Yogendra Prasad approached the appellant to avail Guaranteed Emergency Credit Line ("GECL") loan facility from the appellant during Covid-19 for an amount of Rs. 1,16,07,673 pursuant to the advisories issued by the Government of India during Covid-19 situation and since the appellant was functioning with limited staff, therefore, the appellant-FI handed over the relevant documents for availing the said facility to Late Yogendra Prasad to get the same signed from the other co-borrowers at his request due to Covid-19. It was further contended that the said properties were originally mortgaged in the loan facility availed by the borrowers on 30.09.2018, therefore, the same were extended in the GECL facility also. Copy of the sanction

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letter is placed at page No. 88 of the paper book. It was also contended that the said loan amount was disbursed in the account of Prasad Agrico Industries Pvt. Ltd., in which the Respondent No. 1 was also the Director.

12. Learned counsel further submitted that pursuant to the issuance of the aforesaid notice, the appellant amongst other measures proceeded to sell the aforesaid mortgaged properties and thus the same were legally sold under SARFAESI Act, as the Plot No. 58, NHPC, Greater Noida, Uttar Pradesh to Respondent No.3 and 4 in public auction for an amount of Rs. 1,50,00,000/- and thereafter, issued sale certificate dated 16.09.2022, copy of which is at page No. 466 of the paper book and the property situated at 319-E, Saket Colony, Ajapbur Kalaan, Dehradun, Uttarakhand sold to Respondent No.2 in public auction for an amount of Rs. 5,60,00,000/- and thereafter sale certificate dated 07.09.2022 was issued, copy of which is at page No. 452 of the paper book.

13. It was further contended that the entire case of the Respondent No.1 is that he and his family members had never executed any documents for availing the aforesaid credit facilities and thus all the actions initiated by the appellant were non-est and thus the Respondent No.1 approached the Hon'ble High Court at Allahabad by way of a writ petition bearing no. Writ C. No. 22262/2022 and the Hon'ble High Court vide order dated 30.08.2022 disposed off the said petition granting the Respondent No.1 liberty to approach the Civil Court, but despite availing the aforesaid liberty, the Respondent No.1 rather than approaching the Civil Court, filled the present SA bearing No. S.A. No. 509/2023 on 15.06.2023 i.e. almost after 1 year from the date of passing of the aforesaid order by the Hon'ble High Court.

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14. It was also contended that the Tribunal below in the aforesaid SA filed by the Respondent No.1 without considering the facts and without any jurisdiction has declared the loan documents as null and void. It was further submitted that the Tribunal below has failed to appreciate the fact that the amount was disbursed in the accounts of the Banks and Financial Institutions, from whom father of the Respondent No. 1 i.e. Late Yogendra Prasad had availed the loan and the balance amount was transferred to his account, which was further transferred to other accounts and the same has also been verified by the Police in its closure report. It was further submitted that the Tribunal below without considering the material on record has held that Late Yogendra Prasad has not signed any of documents, however, it is undisputed that the said loan account was only transferred to the appellant and the borrowers purchased the subject property from the amount disbursed by HDB Bank Financial Services and Axis Bank and the liability of the said Banks were paid by the appellant. It was further submitted that the said Banks issued NOC only after receiving the amount from the appellant.

15. It was further contended that all the notices were served upon all the borrowers except Ms. Archana Kumari, as she had given no objection certificate to the loan advanced in favour of her father Late Yogendra Prasad. It was also contended that she has also not inherited any property from the deceased borrowers and has also not claimed her right over the property in question, therefore, she was not required to be served with any of the notices issued by the appellant. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed.

16. Learned counsel for the respondent no. 1 submitted that the instant Securitization Appeal has been preferred by the appellant assailing the order dated 04.11.2023 passed by the Tribunal below in S.A. No. 509/2023, vide which the Tribunal below has set aside the entire SARFAESI proceedings initiated by the appellant observing therein that the appellant had fraudulently disbursed the loan to create an illegal and unsustainable mortgage on the properties of Resp. No. 1 and has directed restoration of both the properties. It was further contended that the loan documents do not bears the signatures of the respondent no. 1, as he was not in India during all the relevant dates and he is outside the India for last more than 20 years. It was further contended that the mother of the respondent no. 1 died on 4.5.2020 much prior to loan documentation relied upon by the appellant for enhancement of loan carried out in Aug, 2020-September, 2020, thus nothing remains to prove the forgery. It was further contended that the signatures of late Yogendra Prasad as well as all other parties on the initial loan documentation and also at the time of enhancement, all are forged and fabricated and the difference in signatures from the specimen available with the appellant is so apparent, which can easily be identified with naked eyes and as such the Tribunal below has rightly concluded the forgery while passing the order impugned.

17. Learned counsel further submitted that the arguments advanced by the learned counsels for the appellant are beyond the pleadings of the case. It was further contended that for the 1st time in the arguments, appellants are coming up with a concocted story that the documents were handed over to the father of the respondent No. 1 for getting the signatures from all the

parties and if that be the case, nothing remains to be adjudicated further. It was also contended that the employee of the appellant, who has done due diligence, has on oath submitted before Hon'ble Supreme Court in his anticipatory bail application in connection with FIR no. 43/2022 dated 18.02.2022 at P.S. Beta-II, Gautam Budh Nagar u/s 420/467/ 468/471 IPC that he never met with the borrowers/co-borrowers and no one signed in his presence rather the documents were handed over to him by his senior Puneet Sachdeva to process. It was further contended that anticipatory bail application was dismissed by the Hon'ble Supreme Court, which further establishes element of fraud involved in the present case.

18. Learned counsel further submitted that the investigating officer in the abovementioned FIR had issued a Notice dated 25.08.2022 U/Sec 102(1) Cr.P.C. seizing the title documents of the mortgaged properties and also restrained from creating any 3rd party interest. It was further contended that the appellant filed applications U/Sec 14 of SARFAESI Act before the District Magistrates, Dehradun and Gautam Budhnagar concealing the fact that order U/Sec 102 Cr.P.C. is in force and the properties have been sold by them without release order from the competent criminal Court and obtained favourable order, which falls within the ambit of fraud.

19. It was also contended that the appellants for the 1st time disclosed before Tribunal below during the hearing of SA No.509/2023 that the properties have been sold by them, as the said fact has not only been suppressed before the District Magistrates, but also in the Writ Petition filed by the appellants before Hon'ble High Court, Allahabad, rather in the Writ Petition appellant had appraised the

Hon'ble High Court that order passed U/Sec 102 Cr.P.C. is causing hindrance in SARFAESI action.

20. Learned counsel further submitted that the auction purchaser, who admittedly agreed to pay Rs. 11.65 crores for the Dehradun property, got the same for only Rs.5.65 crores, therefore, on this ground alone, the present appeal deserves to be dismissed and the impugned judgment passed by the Tribunal below deserves to be upheld.

21. It was further submitted that the Tribunal below in para 15 of the impugned order has recorded a finding that the loan documents were clearly forged and fabricated and on the basis of the same, no liability can be fastened on the respondent no. 1.

22. It was lastly contended that in the present case, serious fraud has been committed by the appellant/FI not only against the deceased parents of respondent no. 1, but also against the said respondent and his sister, therefore, the order u/s 14 SARFAESI obtained by the appellant, that too suppressing material facts, was bad in law and in violation of the provisions of the SARFAESI Act. It was, therefore, prayed that the appeal filed by the appellant may be dismissed with heavy costs.

23. Learned counsel for the respondent-auction purchaser has adopted the arguments as advanced on behalf of the appellant-FI, adding further that he is bona fide auction purchaser of the Dehradun property in question and after deposition of entire sale consideration, sale certificate has been issued and sale deed has been executed and possession has also been handed over by the appellant to the auction purchaser. It was, therefore, prayed that the

order impugned may be set aside and the appeal filed by the appellant-FI may be allowed.

24. Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the loan was sanctioned and disbursed by the appellant-FI to late Yogendra Prasad and the same was utilized by him.

25. It is to be seen that initially, two loans were granted, one by HDB Financial Services Limited and another by Axis Bank. The HDB Financial Services Ltd. had given the loan to late Yogendra Prasad against the property situated at Dehradun for business purpose and the Axis Bank had given the loan to Late Yogendra Prasad for purchase of the property being Plot No. 58, Pocket P-4, Plot No. 6, NHPC, Society Builder Area, Noida, Gautam Budh Nagar. These loans were secured by the mortgage created by the borrower-Late Yogendra Prasad and Smt. Pratima Prasad, which is not disputed by any of the parties.

26. It appears that in the year 2018, Late Yogendra Prasad, who is father of the respondent no. 1, had applied for Home Equity Loan of Rs. 6.00 crores for the purpose of business needs and also to liquidate the dues of the aforesaid Bank and the Financial Institution, which was sanctioned by the appellant-F.I. vide letter dated 30.09.2018, copy of which is placed at page no. 54 of the paper book. The said sanction letter contains the address of the property to be mortgaged as security for the financial assistance, which is House No. 118, Shaket Vihar, Dehradun, Uttarakhand and Plot No. 58, Pocket P-4, Plot No. 6, NHPC, Society Builder Area, G. Noida. The various documents were signed by Late Yogendra Prasad, his wife Pratima Prasad and his son Ashwani Kumar, who is respondent no. 1. Copies of Home Equity Loan

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Agreement, Documentation Checklist, Loan Agreement, Demand Provisionary Note, Letter of Continuity, Letter of General Lien and Set off, General Power of Attorney, Memorandum Recording Past Transaction of creation of mortgage by depositing of title deeds are placed from page no. 56 to 87 of the paper book. From these documents, it is clear that the property in question was validly mortgaged by the Borrowers Late Yogendra Prasad as well as by Co-borrower Late Pratima Prasad and the respondent no. 1, although on the said date, these properties were already mortgaged with the HDB Financial Services and the Axis Bank.

27. So far as the earlier loans in respect of the HDB Financial Services and Axis Bank are concerned, the documents placed at page no. 475 to 480 of the paper book are relevant. The said document is the copy of disbursement memo-Home Equity issued by the appellant-F.I. As per the said documents, the term loan sanctioned by the appellant-F.I. was disbursed on 30.09.2018, which was in part. The page no. 480 reveals that Rs.2,64,41,780/- was disbursed to the HDB Financial Services Ltd. and Rs.1.05 crores to the Axis Bank. Consequent upon the said payments, the closure letter was issued by HDB on 31.10.2018 and no dues certificate was issued by the Axis Bank on 02.11.2018, copies of which are placed at page no. 490 and 495 of the paper book. The page no. 491 and 494 of the paper book also show that the original documents lying with the HDB and Axis Bank were released on 31.10.2018 and 13.11.2018 respectively. The documents released by HDB vide letter dated 31.10.2018 is in respect of the property belonging to Pratima Prasad, but the documents released by the Axis Bank is in respect of the property belonging to Yogendra Prasad. From these documents, it is clear that

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the properties in question only pertain to Late Yogendra Prasad and Pratima Prasad, who are wife and husband. Since the total outstanding dues of these accounts were paid directly by the appellant-F.I. As such it can be said that the said loan accounts of these Banks had been taken over by the appellant-F.I. and it is also not disputed that the documents released by the said Banks were deposited with the present appellant-F.I. for securing the facility advanced in favour of Late Yogendra Prasad.

28. The finding of the Tribunal below that signatures of the borrowers appended upon the loan documents executed in favour of the appellant are not matching with each other, therefore, the mortgage created over the property in question is no-nest, is incorrect and erroneous, because on the basis of the said documents executed by the deceased father and mother of the respondent no. 1, both the loans were sanctioned by the appellant and were also disbursed and the same are admittedly to have been utilized by the deceased father of the respondent no. 1. If the said loan documents had not been signed by the deceased parents of the respondent no. 1, the loan amount disbursed by the appellant-F.I. would not have been utilized by the deceased father of the respondent no. 1 and also he would have made objection before the appellant-F.I. for the same, but no such document has ever been brought on record by the respondent no. 1 either before the Tribunal below or before this Tribunal, which may show that the deceased father of the respondent no. 1 had ever done so. Thus, it is clear that during their lifetime, they have never disputed that they have not signed the loan documents in favour of the appellant. Hence, the respondent no. 1 has no right to dispute the signatures of his deceased parents, because a

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third person has no right to question the authenticity of the signature of the other person. If it was the case of the respondent no. 1 that all the documents were not executed during the lifetime of his deceased parents, then the matter would have been otherwise, but in the present case, all the documents were executed by the deceased parents of the respondent no. 1 and loan amount was disbursed by the appellant and same were utilized by the deceased father of the respondent no. 1. Thus, the present mortgage created by Late Yogendra Prasad and Pratima Prasad in favour of the appellant-F.I. is held to be a valid and legal one in respect of the said loan, but the Tribunal below has not considered this aspect of the matter while passing the order impugned, therefore, the same to this extent is not sustainable.

29. So far as the additional term loan under ECLGS is concerned, it is stated that during Covid-19, the Central Government had issued advisory to the Banks and Financial Institutions for granting emergency credit line loan facility to the borrowers for their survival and saving their account from becoming NPA. Accordingly, Late Yogendra Prasad applied for the same, which was sanctioned by the appellant-F.I. vide letter dated nill, copy of which is placed at page no. 88 of the paper book. The said letter has been signed by the borrower Yogendra Prasad and Pratima Prasad, Ashwani Kumar, Prasad Agrico Industries Pvt. Ltd. and Asting Technology Pvt. Ltd. From the said letter, it is also clear that the applicant was only Yogendra Prasad and rest of the signatories are stated to be co-applicant. No doubt, the said facility was granted by the appellant-F.I. on the basis of the earlier term loan, therefore, the security created in the said loan would be deemed to have automatically been extended in the present loan, because, the said facility was only for

the borrowers and not for the general public. In the present loan, the borrower had given the same security as was given in the earlier loan facility, which is evident from the sanction letter issued by the appellant.

30. In the said loan, there are two questions, first the mortgagor of the property at Dehradun Late Pratima Prasad is stated to have died and the second is that the respondent no. 1 was not in India at the time of sanctioning the present loan. Admittedly, the sanction letter as well as the loan documents are signed by Yogendra Prasad, Pratima Prasad and Ashwani Kumar as well as both the firms. The said loan was sanctioned during the Covid-19 period and the main borrower was Yogendra Prasad and during lockdown, the movement of the people were restricted by the Government of India, therefore, it can be inferred that the Bank would have given the loan documents to the borrower Yogendra Prasad to get the same signed by the other co-applicants. It is undisputed that prior to sanctioning of the said loan, Pratima Prasad, who is wife of the borrower Yogendra Prasad, had died, but her signatures are on each and every documents of the loan, which clearly indicates that the main borrower Yogendra Prasad, who is deceased father of the respondent no. 1, had played fraud with the appellant-F.I. by not informing about the death of his wife Pratima Prasad, instead put the signature on the loan documents of deceased Pratima Prasad. However, non signing of Late Pratima Prasad on the loan documents in respect of the GECL does not matter, because the said loan was granted in continuation of the earlier loan, to which Yogendra Prasad and Pratima Prasad during her lifetime had mortgaged the property in question, which is not disputed even by the Tribunal below while passing the order impugned. For the sake of

the argument, even if it is assumed that the security created in the present loan facility is a defective one, even then the same would not affect the recovery proceedings of the bank, because the earlier security created by the borrowers in favour of the appellant is found to have validly/legally been created by Late Yogendra Prasad and Pratima Prasad during their lifetime.

31. In nutshell, it is stated that the loan was only transferred from HDB Financial Services and Axis Bank to the appellant-F.I. and Late Yogendra Prasad and Pratima Prasad had purchased the property in question from the amount disbursed by the said Banks and the liability of the Banks were paid by the appellant-F.I. and the said Banks have issued no dues certificate only after receiving the amount from the appellant-F.I. The property in question was also registered by the appellant in Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI). As per CERSAI Rule, after creation of mortgage, the same is registered on the website of CERSAI, which is of Government of India. From it also, it is clear that the property in question was mortgaged with the appellant-F.I. Thus, on this count, the order impugned to the extent of holding the mortgage of the property to be invalid is liable to be quashed.

32. So far as non-availability of the respondent no. 1 in India is concerned, on the basis of the passport, the Tribunal below had held that the respondent no. 1 was not in India during the execution of loan documents in respect of the ECLGS loan is not tenable, because the entry made in passport in respect of leaving India of respondent no. 1 was not got verified from the authority concerned by the Tribunal below, as to whether the respondent no. 1 was

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in India or abroad during execution of the loan documents in respect of the GECL loan, therefore, the Tribunal below has erred in relying upon the said entry of the passport of the respondent no. 1 and holding that the loan documents were not signed by the respondent no. 1. In addition to these facts, it is also to be pointed out that the loan amount was disbursed in the loan account of Late Yogendra Prasad, who is husband of Pratima Prasad and father of respondent no. 1, meaning thereby the beneficiary of the said loan was father of the respondent no. 1 and respondent no. 1 has inherited all the properties belonging to his father late Yogendra Prasad and mother late Pratima Prasad, therefore, the respondent no. 1 has no right to raise dispute with regard to the mortgage of the property in question unless and until, the dues of the appellant-F.I. are clear.

33. It has been contended on behalf of the respondent no. 1 that no notices were served upon the respondent no. 1. In this regard, the Tribunal below in para 18 of the order impugned has held that the respondent-Company (appellant) has failed to serve all the notices to one of the legal heirs namely Ms. Archana Kumari despite knowledge of the details of the legal heirs, meaning thereby, all the notices i.e. demand notice, possession notice and sale notice were served upon the respondent no. 1, who is legal heir of the deceased Yogendra Prasad and Pratima Prasad. If the respondent no. 1 had any objection with regard to it, he ought to have challenged the said part of the order impugned by filing separate appeal before this Tribunal, but the respondent no. 1 did not do so, therefore, the respondent no. 1 cannot be permitted to raise the issue regarding non serving of notices upon him in the present appeal filed by the appellant-F.I.

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34. With regard to non-service of notices upon Ms. Archana Kumari, who is one of the legal heirs of the deceased borrowers namely Yogendra Prasad and Pratima Prasad, it is stated that the finding of the Tribunal below is contrary to the facts of the case, as Ms. Archana Kumari had given no objection certificate to the loan advanced by the appellant to her father Late Yogendra Prasad and as per the Will executed by late Pratima Prasad, copy of which is placed at page no. 470 of the paper book, the entire property was bequeathed to her husband Yogendra Prasad, meaning thereby, after death of Pratima Prasad, all the properties belonging to her were inherited by Late Yogendra Prasad and after his death, the respondent no. 1.

35. It is to be noted that after death of her father and mother, Ms. Archana has never come forward to claim her right over the properties belonging to her deceased parents nor challenged any proceedings of the Bank before the court. It is relevant to state that the respondent no. 1 himself has not made her party while filing the writ petition before the Hon'ble High Court and while filing the S.A. before the Tribunal below. Such conduct of the respondent no. 1 itself reveals that Ms. Archana Kumari had no interest in the property of her deceased parents, therefore, she never came in picture of the present case and the respondent no. 1 has also not informed the appellant about her after death of his parents. Thus, there was no occasion for the appellant to serve any notice upon Ms. Archana Kumari and thus the Tribunal below without considering these facts has wrongly held that the appellant has failed to serve the notice upon Ms. Archana and as such the order impugned to this extent also is not sustainable.

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36. The next contention of the respondent no. 1 that the property in question has been sold at a throwaway price cannot be considered in the present case, because the present appeal has been filed by the appellant-F.I. against the order impugned, by which the mortgage is held to be invalid and notices were not served upon Ms. Archana Kumari. It is already held in the preceding paragraphs of this judgment that if there was any grievance against order impugned, the respondent no. 1 being legal heirs of the deceased borrowers ought to have filed his separate appeal, therefore, in absence of any pleadings and prayer, the said issue cannot be dealt with and decided by this Tribunal in the present appeal filed by the appellant-F.I.

37. In view of the discussions as recorded above, the order impugned is set aside and the appeal filed by the appellant-F.I. is allowed with no order as to costs.

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

CHAIRPERSON

VN GIRI,PS