Reportable/Non-Reportable

Judgment reserved on: 20.07.2026
Judgment delivered on: 28.07.2026

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 14 of 2023
(Arising out of S.A. No. 93 of 2016 in DRT Vishakhapatnam)

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

1. Mr. Ganga Ravi Kumar, son of Kumaryaa, Door No. 9-55, Main Road, Ganapavaram, Nadendla Mandalam, Chilakaluripeta, Guntur District-522619.

... Appellant

-Versus-

1. The Deputy General Manager, Union Bank of India, at Union Bank of India, Kannavarithota Branch, 96-1-95 Main Road, Nagaram Palem, Guntur – 522004.

2. Thubati Veeraiah, S/o Ramachandraiah, Door No. 8-259/5, Shanti Nagar, Ganapavaram Village, Nadendla Mandal, Guntur District – 522619.

... Respondent

Counsel for Appellant ...Mr. Nemani Srinivas

Counsel for Respondents ...Mr. Aurin Chakraborthy (virtual)

JUDGMENT : 28th July, 2026

THE APPELLATE TRIBUNAL:

1. Instant appeal has been preferred against the judgment and order dated 13.04.2018 passed by the Learned DRT Visakhapatnam, dismissing the S.A. 93 of 2016

[redacted]

(Ganga Ravi kumar -vs- The Deputy General Manager, Union Bank of India and Another).

2. As per pleadings of the parties, Appellant is the guarantor of the loan borrowed by the borrower from the Respondent Bank wherein he mortgaged his secured assets as security. There was a default in repayment of the loan hence, bank proceeded under the SARFAESI Act, 2002 for realization of the sale notice dated 23.02.2016 which was published in the newspaper for auctioning the secured assets. The secured assets of the Appellant, Guarantor was to be auctioned for reserve price for Rs. 29,80,000/- which is very low. The market value of the property is about Rs. 90,00,000/- and the valuer assessed the property at Rs. 46,00,000/-. It is stated that no demand notice and possession notice was served upon the Appellant. A representation was made by the Appellant after publication of the auction sale notice but bank did not respond to the same. No action has been taken by the Bank against the property of the borrower, accordingly, relief was sought to stay the proceedings in pursuance of the sale notice dated 23.02.2016 and to quash the same with a further relief to stop the confirmation of the sale. Opposition filed by the bank stating that the Appellant is a guarantor for the loan availed by one M/s. Arya Traders. Appellant created mortgage in favour of the bank. Account became irregular and was classified as NPA on 30.06.2015. Demand notice was issued on 07.07.2015 which was duly served upon the borrower and the Appellant. Possession notice was also

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served and affixed on the secured assets and published in two newspapers on 25.09.2015 in 'New Indian Express' and 'Andhra Jyothi'. Physical possession was also taken by the bank. Notice under Rule 8(6) of the Rules, 2002 was published in the newspaper after obtaining the valuation from the approved valuer fixing the date for auction on 29.03.2016. Auction was conducted on 29.03.2016 for an amount of Rs. 35,00,000/- which was confirmed on 29.03.2016 and sale certificate was issued on 13.04.2016 in favour of the highest bidder.

3. Despite confirmation of sale in favour of the Auction Purchaser, another opportunity was given to the Appellant by issuing a letter on 05.04.2016 asking him to pay loan within seven days after he wants to retain his property.

4. Learned DRT dismissed the S.A. holding that the action of the bank, secured creditor was in accordance of the provisions of the SARFAESI Act. E-Auction sale was conducted as per law and reserve price was fixed on the basis of valuation report and the secured assets were auctioned for an amount of Rs. 35,00,000/-. It is further held that a Writ Petition No. 20800 of 2016 was filed by the Auction Purchaser before the Hon'ble High Court of Judicature for the Stated of Telangana and Andhra Pradesh at Hyderabad wherein vide letter dated 12.05.2016 Hon'ble High Court of Judicature for the Stated of Telangana and Andhra Pradesh directed for the impleadment of the Auction Purchaser, but direction was also issued for amending the S.A. by seeking a relief for setting aside the sale price

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confirmation, but no such prayer was made by the Appellant. Accordingly, there is a relief for setting aside the sale which cannot be granted and the actions of the bank does not suffer from any serious illegality or any procedural irregularities.

5. Feeling aggrieved by the impugned judgement, Appellant preferred the appeal.

6. Learned Counsel for the Appellant would submit that judgement of the Learned DRT suffers from illegality and irregularities. It is submitted that earlier S.A. was disposed of by the Learned DRT on 12.05.2016 by issuing a direction to the Appellant to pay Rs. 35,00,000/- along with expenses incurred by the bank in conducting the sale which is Rs. 50,000/-. On payment of the amount of Rs. 35,50,000/- bank is directed to set aside the sale and sale certificate. In case of failure to comply the same, the Appellant shall be liable to pay the cost of Rs. 1,00,000/- to the bank. Respondents submitted that the Judgement dated 12.05.2016 passed by the DRT was set aside by the Hon'ble High Court but the directions issued by the Hon'ble High Court are not complied by the Appellant. A letter was issued by the bank on 01.04.2016 which was in response of the letter of the borrower thereafter, another letter was sent by the bank on 05.04.2016 again allowing the time of 7 days, meaning thereby that still there is scope for redemption with the borrower. Learned Counsel further submitted that there is violation of Rule 8 (6) and Rule 9 (1) of the Rules, but the same was not considered by the Learned DRT.

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7. Per contra Learned Counsel for the Respondent Bank would submit that no relief or redemption was sought by the Appellant. All the actions were taken by the bank in accordance with law. It is further submitted that no plea of violation of Rule 8(6) and 9(1) of the Rules, 2002 was taken by the secured applicants in the S.A.

8. Bare perusal of the impugned order would reflect that the Learned DRT dismissed the S.A. holding that no illegality has been committed by the Bank. Order dated 12.05.2016 passed by the Learned DRT was set aside by the Hon'ble High Court, hence findings, if any, recorded in that order are not binding upon the DRT. It is further held that despite, giving an opportunity to amend the S.A. by the Hon'ble High court, no prayer was made for setting aside the sale, accordingly, the sale could not be set aside.

9. S.A. was initially decided by the Learned DRT on 12.05.2016 wherein an order was passed for deposit of Rs. 35,50,000/- with a default clause i.e. in case of default, applicant was liable to pay Rs. 1,00,000/-. This amount of Rs. 35,50,000/- was deposited on 16.05.2016. However, order passed by Learned DRT was challenged by the bank by preferring W.P. No. 17408 of 2016 before the Hon'ble High Court of Judicature for the Stated of Telangana and Andhra Pradesh at Hyderabad which was decided by the division bench on 31.08.2016 wherein the Hon'ble High Court of Judicature for the Stated of Telangana and Andhra Pradesh at Hyderabad allowed the Writ Petition by following order.

"6. In our opinion, respondent No. 1 Tribunal has committed a serious illegality in allowing the Securitization Appeal for reasons more

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than one. When the petitioner informed respondent No. 1 Tribunal that the auction was confirmed, the sale certificate was issued and delivery of physical possession was also made in favour of respondent No. 3, respondent No. 1 Tribunal ought not to have allowed the Securitization Appeal without respondent No. 2 impleading respondent No. 3 and amending the Securitization Appeal by seeking the relief of setting aside the sale and it confirmation. Moreover, once the sale is confirmed, the sale certificate is issued and the property is delivered, respondent No. 1 Tribunal has no jurisdiction to set aside the same, unless it is satisfied that holding of the sale suffers from serious illegalities or procedural irregularities. Respondent No.1 Tribunal has not rendered any finding whatsoever in this regard. For these reasons, we hold that the order of respondent No.1 Tribunal in allowing the Securitization Appeal cannot be sustained in law.

7. The impugned order, dated 12.05.2016, in Securitization Appeal No.93 of 2016 of respondent No.1 Tribunal is, accordingly, set aside. The matter is remanded to respondent No.1 Tribunal. Respondent No.2 shall implead respondent No.3 to the Securitization Appeal within a period of four weeks from today. On such impleadment, respondent No.1 Tribunal shall hear the Securitization Appeal afresh and pass a fresh order, on merits.

Now we have to see as to whether the order of the Hon'ble High Court was complied with or not?

10. Hon'ble High Court issued the direction for impleading the auction purchaser and further to amend the securitization appeal by seeking a leave of the relief for setting aside the sale and its confirmation. The auction purchaser is impleaded in the securitization appeal, but no relief for setting aside the sale and its confirmation was amended in the securitization appeal. Further, no ground was taken on what basis sales suffers from serious illegalities or procedural irregularities. Even no ground of violation of Rule 8(6) and Rule 9(1) of the Rules was taken in the securitization appeal.

11. Law is well settled that a plea which has not been pleaded in the pleadings could not be considered. It has

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been held in **Bachhaj Nahar -vs- Nilima Mandal & another [(2008) 17 SCC 491]** wherein it was held in paragraphs 12 , 13 and 17 that :

12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties and to prevent any deviation from the course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to seek a particular relief. If such relief is not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result, the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties, being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in Bhagwati Prasad and Ram Sarup Gupta referred to above and several other decisions of this Court following the same cannot be construed as diluting the well-settled principle that without pleadings

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and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party put forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu.

12. Order of Hon'ble High Court for amending the S.A. seeking relief for setting aside the sale and its confirmation is not carried out in the S.A. by the securitization applicant. Further, no ground for violation of Rule 8(6) and Rule 9(1) of the Rules, 2002 was taken. Accordingly, those, pleas could not be considered by the Learned DRT.

13. Earlier order passed by Learned DRT on 12-5-2016, asking the securitization applicant to deposit Rs.35,50,000/- also Could not be held in the securitization appeal, although amount is deposited in compliance of the order, but order dated 12-5-2016 of the learned DRT was set aside by the Hon'ble High Court in the writ petition. Hence, that order dated 12.5.2016 became non-est. Hence, no advantage can be extended in favor of the securitization applicant on the basis of order dated 12.5.2016. In the securitization application, a challenge was made on the ground that the notice under Section 13(2) and 13(4) of the Act, 2002 was not issued and served in accordance with law. Reply of letter dated 23-03-2016 was not given by the bank. The bank is proceeding against the properties of the created guarantor without realizing its dues from the borrower property.

14. Demand notice under section 13(2) was issued on 07.07.2015, which was duly served upon the borrowers, as

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they themselves received the same on 17.07.2015. Possession notice dated 21.09.2015 was also issued and served and published in two newspapers thereafter. Order of the District Magistrate, Guntur, was obtained on 20.11.2015 under section 14 of the Act and possession was taken by preparing the inventory. Valuation report was obtained from the approved valuer, and the property was sold after issuing the notice as required under the law. The actions of the bank are made in accordance with law.

15. Accordingly, we do not find any infirmity in the impugned order passed by learned DRT. Appeal lacks merit and is liable to be dismissed.

<u>ORDER</u>

Appeal is dismissed. Impugned order dated 13.04.2018 passed by Learned DRT-Visakhapatnam in SA No. 93 of 2016 (Ganga Ravi Kumar -vs- Deputy General Manager, Union Bank of India and Another) is confirmed.

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.

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(Anil Kumar Srivastava,J)
Chairperson

28.7.2026

Dated: 28th July, 2026
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