Reportable/Non-Reportable

Judgment reserved on: 13th July, 2026
Judgment delivered on: 23rd July, 2026

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Misc. Appeal No. 37 of 2025
(Arising out of I.A. 1337 of 2025 in S.A. 234 of 2025 in DRT-III, Kolkata)

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

1. Yes Bank Limited, Ground and Mezzanine Floor, Stephen House, Dalhousie Square East, Kolkata – 700 001;

2. The Authorised Officer, Yes Bank Limited, Ground and Mezzanine Floor, Stephen House, Dalhousie Square East, Kolkata – 700 001.

... Appellants

-Versus-

1. Deshna Sirkar, AE-336, Sector-I, Salt Lake City, Kolkata 700 064;

2. Madhu Chanda Sirkar, AE-336, Sector-I, Salt Lake City, Kolkata 700 064;

3. Mainak Sirkar, AE-336, Sector-I, Salt Lake City, Kolkata 700 064.

... Respondents

Counsel for Appellants	...	Mr. Pankaj Kumar Mukherjee Mr. Sayak Ranjan Ganguly Ms. Chaitali Acharjee
Counsel for Respondent No. 1	...	Mr. Debasish Chakrabarti Mr. Ajit Keshari
Counsel for Respondents No. 2&3	...	Mr. Nimish Mishra Mr. Debjit Mukherjee

JUDGMENT : 23rd July, 2026

THE APPELLATE TRIBUNAL:

1. Instant appeal has been preferred against order dated 01.4.2025 passed by the Learned DRT-III, Kolkata staying operation of the order dated 3.3.2025 passed by Learned Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas under Section 14 of the SARFAESI Act, 2002 (hereinafter referred to as the 'Act').

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2. As per pleadings of the parties, a Securitization Application No. 234 of 2025, under Section 17 of the Act, was filed by Respondent No. 1, Deshna Sirkar, challenging the Notice dated 13.02.2023, under Section 13 (2) of the Act, Possession Notice dated 24.5.2023 under Section 13 (4) of the Act, publication dated 27.5.2023 and order dated 03.3.2025, passed by Learned Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas with consequential reliefs for restraining the Secured Creditor from proceeding with the order and for declaration that Defendants No. 1 and 2, i.e., the Secured Creditor, have no security interest over the secured assets.

3. As per the pleadings, Securitization Applicant, Deshna Sirkar, is neither a Borrower nor a Guarantor of the Bank. She is married daughter of Late Mohan Sirkar while Opposite Party No. 3, viz., Madhu Chanda Sirkar, is the wife and Defendant No. 4, Mainak Sirkar is the son of Late Mohan Sirkar. Mohan Sirkar was the lessee of the secured assets and was in possession. He died intestate on 07.4.2012 leaving behind his wife, son and daughter. They jointly inherited the secured assets and acquired equal right over the secured assets. Their names were also mutated in the Municipal records and the Mutation Certificate was issued. All the documents were accordingly amended. No security interest was ever created in the secured assets.

4. The Securitization Applicant came to know that on the application of the Bank, an order under Section 14 of the Act is passed by Additional Chief Judicial Magistrate, Bidhan

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Nagar, North 24 Parganas on 03.3.2025 with respect to the secured assets. Perusal of the order would reflect that Notice under Section 13 (2) of the Act was issued by the Bank on 13.02.2023 claiming an amount of Rs.3,95,68,895.89/-. Possession Notice, dated 24.5.2023, was also issued which was published in the newspaper on 27.5.2023. Hence, Securitization Application was filed by the Securitization Applicant with an I.A. 1337 of 2025 for staying operation of the order of the Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas dated 03.03.2025.

5. Opposition is filed by the Bank stating that no illegality could be pointed out in the impugned order of the Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas. Defendants No. 3 and 4 approached the Bank on 26.11.2019 for financial assistance which was allowed to an extent of Rs.3,19,00,000.00. Equitable mortgage of the secured assets were also created in favour of the Bank. Indemnity-cum-Undertaking dated 30.11.2019 was also executed by them that they are the only legal heirs of Mohan Sirkar and action under the Securitization Act was initiated by the Bank in accordance with law.

6. Learned DRT in the impugned order records that admittedly, Securitization Applicant is neither a Borrower nor a Guarantor nor related with the loan account. It is also not disputed that the Securitization Applicant is the married daughter of Late Mohan Sirkar who died intestate on 07.4.2012 leaving behind the Securitization Applicant, his

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daughter, his wife and son who have equal share in the secured assets. Learned DRT, after placing reliance upon the documents as well as the Mutation in favour of the Securitization Applicant, arrived at a finding that the Bank was not diligent enough to ascertain the legal heirs of Mohan Sirkar before creation of the mortgage. Securitization Applicant has 1/3rd right in respect of the secured assets. Accordingly, stayed the order of the Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas, passed under Section 14 of the Act.

7. Feeling aggrieved by the impugned order, Appellant Bank preferred the appeal.

8. Learned Counsel for Appellant would submit that Respondent No. 1, Securitization Applicant, has sought for declaration in the Securitization Application under Section 17 of the Act which is not permissible under the law. Learned Counsel has placed reliance upon the judgment in ***Central Bank of India -vs- Smt. Prabha Jain (2025 SCC OnLine SC 121) and Sandeep Goenka -vs-Yes Bank Limited (2025 SCC OnLine Cal 1559).*** It is further submitted that even for the sake of argument , if it is accepted that the Securitization Applicant has 1/3rd share in the secured assets, the property is indivisible; hence, any attempt to partition the same would result in violation of the clauses of the Lease Deed executed in favour Mohan Sirkar.

9. Learned Counsel further submits that the Mutation Certificate dated 23.12.2019, allegedly filed by the Securitization Applicant, wherein the name of the

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Securitization Applicant is mentioned, was issued after sanction of the loan.

10. It is further submitted that an S.A. was also filed by the wife and son of Mohan Sirkar wherein no plea was taken that one more legal heir of Mohan Sirkar, viz., Deshna Sirkar, is also a shareholder.

11. Per contra, Learned Counsel for Respondent No. 1 would submit that 1/3rd share of the Securitization Applicant could not be disputed rather it is admitted but no due diligence was made by the Bank at the time of sanctioning the loan. In support of the submission, Learned Counsel has placed reliance upon an affidavit dated 24.6.2019 signed by wife, son and daughter of Mohan Sirkar. Learned Counsel has further placed reliance upon the Mutation Order dated 23.12.2019 wherein the name of the Securitization Applicant is mentioned. Learned Counsel has vehemently argued that even the loan account was restructured on the request of Madhu Chanda Sirkar and Mainak Sirkar on 12th July, 2021. Even at that stage, no effort was made by the Bank to ascertain the legal heirs of Mohan Sirkar. It is further submitted that no declaration is sought for by the Securitization Applicant in the S.A.

12. Learned Counsel for Respondents No. 2 and 3 would submit that Respondent No. 1, Securitization Applicant, is the daughter of Mohan Sirkar. Learned Counsel has placed reliance upon principles of 'Caveat Emptor' wherein it is submitted that principles would also be applicable upon the Bank as the Bank should have taken all care and caution at

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the time of sanctioning of the loan and creation of the mortgage regarding secured assets that no other legal heir of Mohan Sirkar exists.

13. Some of the facts are undisputed. Undisputedly, one Mohan Sirkar was the lessee of the secured assets who died intestate on 07.4.2012. It is also not in dispute that the Securitization Applicant is his daughter while Respondents No. 2 and 3, viz., Madhu Chanda Sirkar and Mainak Sirkar, are his wife and son respectively. It is also not in dispute that Respondents No. 2 and 3 are Borrowers of the Appellant Bank who have created equitable mortgage by depositing title deeds of the secured assets in favour of the Bank.

14. Order passed by Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas is challenged on the ground that Securitization Applicant is one of the legal heirs of Mohan Sirkar who has 1/3rd share in the secured assets and she is neither Borrower nor Guarantor of the Bank.

15. Mutation of the legal heirs of Mohan Sirkar was carried out in the Municipal records and the Mutation Certificate was issued on 23.12.2019. An Undertaking-cum-Indemnity was given by Respondents No. 2 and 3 stating that:

> *"AND WHEREAS the said Property was originally owned and possessed by one Shri. Mohan Sirkar, since deceased, son of Shri Krishna Gopal Sirkar resident of Kolkata*
>
> *AND WHEREAS the said Shri. Mohan Sirkar, had died intestate on Madhu Chanda Sirkar, Mainak Sirkar leaving behind surviving the Obligors Nos. 2 and 3 hereto as his only legal heirs and successors;"*

16. Undertaking given by Respondents No. 2 and 3 could not be binding upon the Securitization Applicant. Initially it

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was the duty of the Bank to ascertain the legal heirs of the deceased Mohan Sirkar. Necessary legal heir document/certificate should have been called for from the competent authorities.

17. Further when the loan account was restructured in 2021 at that time Mutation Order was already in existence which was issued on 23.12.2019. Even at that stage, no steps have been taken by the Bank to ascertain the legal heirs of Mohan Sirkar which was the duty of the Bank. Principle of 'Caveat Emptor' to some extent would be applicable in this case.

18. Enormous powers have been assigned to the Authorised Officer under the SARFAESI Act, 2002. Bank is the custodian of the public money. It is expected from the Bank that the loan should be disbursed strictly in accordance with law. Principle of 'Caveat emptor' is applicable to the sale of goods. But the degree of caution, which a purchaser is expected to exercise, could also be applicable to the Bank at the time of disbursing the loan or creation of equitable mortgage. 'Caveat emptor' means "let the purchaser beware".

19. In ***Wallice -vs- Russell [1902 2 IR 557 (CA)] at page 615*** it was held:

> "Caveat emptor does not mean either in law or in Latin that the buyer must take chances. It means that the buyer must take care."

20. In In ***Commissioner of Customs (Preventive) -vs- Aafloat Textiles India Private Limited [(2009) 11 SCC 18]*** it was held that:

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"15. "Caveat emptor is the ordinary rule in contract. A vendor is under no duty to communicate the existence even of latent defects in his wares unless by act or implication he represents such defects not to exist." (See William R. Anson, Principles of the Law of Contract 245, Arthur L. Corbin, ed., 3d Am. Edn. 1919.) Applying the maxim, it was held that it is the bounden duty of the purchaser to make all such necessary enquiries and to ascertain all the facts relating to the property to be purchased prior to committing in any manner.

16. Caveat emptor qui ignorare non debuit quod jus alienum emit. A maxim meaning "let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another". (Hob. 99; Broom; Co., Litl: 102 a: 3 Taunt. 439.) As the maxim applies, with certain specific restrictions, not only to the quality of, but also to the title to, land which is sold, the purchaser is generally bound to view the land and to enquire after and inspect the title deeds; at his peril if he does not.

17. Upon a sale of goods the general rule with regard to their nature or quality is caveat emptor, so that in the absence of fraud, the buyer has no remedy against the seller for any defect in the goods not covered by some condition or warranty, expressed or implied. It is beyond all doubt that, by the general rules of law there is no warranty of quality arising from the bare contract of sale of goods, and that where there has been no fraud, a buyer who has not obtained an express warranty, takes all risk of defect in the goods, unless there are circumstances beyond the mere fact of sale from which a warranty may be implied. (Bottomley v. Bannister and Ward v. Hobbs (Latin for Lawyers). No one ought in ignorance to buy that which is the right of another. The buyer according to the maxim has to be cautious, as the risk is his and not that of the seller."

21. As has been observed earlier that the principles of 'Caveat emptor' are applicable in the case of sale of goods or for purchaser but as far as precautions which the purchasers are expected to take similarly applies to the Bank at the time when the security interest is being created by a borrower. It was the duty of the Bank to ensure as to whether the Borrowers were competent to create equitable mortgage in favour of the Bank. Mere declaration by the Borrower would not be sufficient to satisfy the Bank about

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their competence. Due diligence has to be exercised by the Bank. Due diligence means that the Bank should take all measures to ensure that its loan account is secured by the mortgage created by the Borrower.

22. In the present case, a mere declaration-cum-indemnity was filed by the son and wife of Mohan Sirkar that they are the sole owners of the property. Based upon the declaration, loan was sanctioned and equitable mortgage was created in the secured assets. It is established from the material available on record that Securitization Applicant, viz., Deshna Sirkar, is the daughter of Mohan Sirkar who has 1/3rd share in the secured assets but she was not a party to the proceedings. Accordingly, the order passed by Learned Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas was vitiated to the extent of 1/3rd share of Securitization Applicant.

23. Accordingly, Learned DRT has rightly arrived at the conclusion that the order, passed by Learned Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas, cannot sustain and stayed operation of the order dated 3.3.2025, passed by Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas. However, since the Securitization Applicant has only 1/3rd share in the secured assets, the order of Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas can only be stayed to the extent involving the share of the Securitization Applicant. Accordingly, appeal is liable to be partly allowed to this extent.

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24. Accordingly, appeal is liable to be partly allowed to that extent.

ORDER

Appeal is partly allowed. Order dated 01.4.2025 passed by the Learned DRT-III, Kolkata is modified to the extent that operation of the order dated 3.3.2025 passed by Additional Chief Judicial Magistrate, Bidhan Nagar, North 24 Parganas, under Section 14 of the SARFAESI Act, 2002 shall remain stayed so far as it relates to the share of the Securitization Applicant.

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
23.07.2026

Dated: 23rd July, 2026
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