Presented on:	20.11.2025
Registered on:	18.02.2026
Decided on:	30.04.2026
Duration:	Y M D
	0 5 10

IN THE DEBTS RECOVERY TRIBUNAL AT PUNE

(Before Shri Dilip G. Murumkar, Presiding Officer)

MISCELLANEOUS APPLICATION No.10/2026

1. Mrs. Vrushali Vinod Kadam
   Adult
   Address: At Post Mahalunge, Taluka Devgad, District Sindhudurg – 416 613.
   And
   Flat No.201, Sagar Darshan Co.op. Society, S.No.161, Andheri (West), Mumbai – 400 053.
2. Mr. Vinod Babu Kadam
   Adult
   Address: At Post Mahalunge, Taluka Devgad, District Sindhudurg – 416 613.
   And
   Flat No.201, Sagar Darshan Co.op. Society, S.No.161, Andheri (West), Mumbai – 400 053.

... Applicants

Versus

1. State Bank of India, A Banking Company constituted under the

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State Bank of India Act, 1953 and having its Corporate Office at State Bank Bhavan, Nariman Point, Madam Cama Road, Mumbai – 21
And its Branch at State Bank of India, Kankavli Branch, Guruprasad Building, Mumbai Goa Highway, Bazar Peth, Kankavli, District Sindhudurg – 416 602.

2. Mr. Shrikat Kathale
   At Post Mhalunge, Taluka Devgad, District Sindhudurg – 416 613.
3. Anuradha Kathale
   At Post Mhalunge, Taluka Devgad, District Sindhudurg – 416 613.
4. Shrikat Kathale
   At Post Mhalunge, Taluka Devgad, District Sindhudurg – 416 613.

...Defendants

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APPEARANCES

For the Applicant	Mr. Herbert A. Noronha a/w Mr. Shubham F. Sakore - Advocate
For Defendant No.1	Mrs. Sudha Koloti – Advocate
None present for other defendants	

Judgment
(Delivered on 30th April, 2026)

1. The present application is filed u/s 22(2)(g) of the Recovery of Debts And Bankruptcy Act, 1993 and the applicants have claimed following reliefs:

   a. That the Hon'ble Presiding Officer, DRT, Pune may be pleased to order and call for the entire records and proceedings of the Original Application No.46 of 2019 and after examining the legality and propriety thereof, be pleased to quash and set aside the Order and Judgment dated 13th February, 2020 passed in Original Application No.46 of 2019.

   b. That the Hon'ble Presiding Officer, DRT, Pune may be pleased to order and call for the entire records and proceedings of the Original Application No.46 of 2019 and after examining the legality and propriety thereof, be pleased to quash and set aside the Recovery Certificate No.50 of 2020 issued in pursuance to the Judgment and Order dated 13th February 2020 passed by the Hon'ble In-charge Presiding Officer DRT, Pune in OA No.46 of 2020.

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c. That the Hon'ble Presiding Officer, DRT, Pune may be pleased to order and call for the entire records and proceedings of the said account and after examining the legality and propriety thereof, be pleased to restrain the Defendant No.1 Bank to initiate further measures under the Recovery of Debts and Bankruptcy Act, 1993 in pursuance of the Judgment and Order dated 13th February, 2020 passed by the Hon'ble In-charge Presiding Officer DRT, Pune in OA No.46 of 2019.

2. The averments in the application can be summarized as under:

It is contended by the applicant (original defendant Nos.1 and 2 in OA No.46/2019) that Original Application No.46 of 2019 was placed before the Ld. Registrar on 7th January, 2019 and was adjourned to 18th January, 2019. On 18th January, 2019 the matter was placed before the Hon'ble Presiding Officer for direction and the matter was adjourned to 7th March, 2019. On 7th March, 2019 the learned Advocate for defendant bank (original applicant Bank in OA No.46/2019) filed claim affidavit and documents and accordingly, the Registrar was directed to

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issue summons and matter was adjourned to 14th March, 2019 and thereafter to 8th May, 2019.

3. It is further contended that on 8th May, 2019 the learned Advocate for defendant No.1 Bank filed self-affirmed Affidavit stating that OA, Documents, Claim Affidavit has effected by Speed Post AD to all the defendants i.e. D1 to D5. The notice served to defendant Nos.4 and 5 through RPAD returned back. However, notices sent to defendant Nos.1 to 3 never returned nor acknowledgment has come back. It was stated in the Affidavit that the OA, claim affidavit and documents were sent to the last known/proper address as per records of the Bank.

4. It is further contended that thereafter, the matter was adjourned to 14th August, 2019, 17th October, 2019, 22nd January, 2020 and 12th February, 2020. The Roznama of 12th February, 2020 records that applicant has filed Service Affidavit, defendant Nos.1 to 5 called out absent, no representation and set ex parte. Heard the Learned Advocate for the applicant Bank, perused the documents and call for orders on 13th February, 2020. On 13th February, 2020 Hon'ble In-charge Presiding Officer passed

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an Ex parte Order and Judgment.

5. It is further contended by applicants that defendant No.1 Bank issued summons to the applicants at Devgad address which has not returned back as per the affidavit. However, defendant No.1 Bank did not send summons to Flat No.201, Sagar Darshan Co-op. Society S.No.161, Andheri (West) Mumbai. Hence, it cannot be presumed that summons were served upon the applicants. Further, the applicants were not residing at Devgad address in the year 2019-2020. Further, the defendant No.1 bank deliberately neither served the summons nor has served the copy of the affidavit of proof upon the applicants and has deprived applicants to get an opportunity to represent their case. The Recovery Certificate is not maintainable as it is issued ex –parte behind the back of the applicants.

6. It is further contended that if Ex parte Order and Judgment dated 13th February, 2020 is quashed and set aside, no harm or prejudice would be caused to defendant No.1 Bank and OA No.46/2019 would be decided on merits by giving an opportunity to the applicants to defend and represent their case.

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On these grounds, the applicants have claimed reliefs as aforementioned.

7. The defendant No.1 Bank resisted the application by filing Reply (Exhibit-6) contending that the present application is not maintainable on the grounds that the applicants have neither challenged the Orders of the Hon'ble DRT Pune before the Hon'ble DRAT nor the Recovery Certificate. By challenging the ex parte order dated 13th February, 2020 the applicants are attempting to challenge the final order passed in the Original Application. The Ex parte Order has been challenged after five years and ten months. The applicants have full knowledge of the Order of the Hon'ble Tribunal and also recovery proceedings since September, 2021 and the applicants have appeared in the recovery proceedings. Now, when the Recovery proceeding is at the stage of confirmation of Auction sale, the applicants have filed this Application to obstruct the recovery of bank dues. Therefore, the application may be dismissed.

8. The following points arise for my determination and I record my findings as under:

(1) Whether applicants (original defendant Nos.1 and

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2) made out case for setting aside ex parte Order and Judgment dated 13th February, 2020?

(2) Whether applicants are entitled for reliefs as claimed?

(3) What order?

Findings:

1. Point No.1 – In the negative
2. Point No.2 – In the negative
3. Point No.3 – As per final order.

Reasons

9. I have heard arguments of learned Advocate for applicants and defendant No.1 Bank. Both the parties reiterated the facts mentioned in the Application and Reply.

10. The learned Advocate appearing for the applicants relied upon the following Judgments:

(1) *Mr. Sunil Gupta and others Vs. Asset Reconstruction Company (India) Ltd.,* [Writ Petition No.4885 of 2022 decided by Hon'ble Bombay High Court on 12th September, 2022].

(2) *Janak Raj Vs. Gurdial Singh and Swaran Singh* reported in Vo. XIX-(2) Indian Law Reports 593.

(3) *Lalmani Ramnath Tiwari Vs. Bhimrao Govind Pawar* reported in 2001(3) Bom.C.R. 21.

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(4) *Hajrabi Abdul Gani Vs. Abdul Latiff Azizulla* reported in LAWS(BOM)-1995-12-46.

Meghji Kanji Patel Vs. Kundanman Chamanlal Mehtani reported LAWS(BOM)-1967-11-2

11. The learned Advocate appearing for defendant No.1 Bank relied upon the following Judgments:

(1) *N. Parameswaran Unni Vs. G. Kannan and Ors.* reported in MANU/SC/0327/2017

(2) *Usha Vs. Raviraj Yuvraj Chavan and Ors.* reported in MANU/MH/4956/2025

(3) *Vishwabandhu Vs. Krishna and Ors.* reported in MANU/SC/079/2021.

(4) *Krishna Ramchandra Jadhav @ Yadav & Ors. Vs. Smt. Shankari B. Ajimal* reported in 2005(4) ALL MR 185.

(5) *Paras Bharat Chheda Vs. Piyush Gangji Chheda* reported in 2025 BHC OS: 7766

(6) *Kirshna Kumar Gupta Vs. Manoj Kumar Sahu* S.C.C. Revision No.144/2018 decided by Ahmedabad High Court.

(7) *Vasco Urban Co-op. Credit Society Ltd., Vs. Shobha D. Korgaonkar* reported in MANU/MH/1270/2004.

(8) *Basant Singh and Ors. Vs. Roman Catholic Mission* reported in MANU/SC/0855/2002.

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Point Nos.1 and 2

12. According to applicants, the applicant No.1 was borrower and applicant No.2 and defendant Nos.2 to 4 were guarantors to the loan taken from defendant No.1 Bank. As they defaulted in repayment of loan, defendant No.1 Bank filed OA No.46/2019 for recovery of outstanding loan amount. The summons were issued to the applicants and other three guarantors and mortgagors at address Village Mahalunge, Taluka Devgad, District Sindhudurg. Though two properties i.e. Flats at Mumbai were mortgaged as collateral security by giving address thereof, apart from property at Village Mahalunge, summons were not issued at Mumbai address also. The summons issued at Village Mahalunge address to applicants did not come back, though summons of other two defendants (guarantors and mortgagors) returned with Report as "Served". As per, DRT Rules and Regulations when summons report of applicants did not receive, it was the duty of defendant No.1 Bank to make substitute service by pasting summons on the address of applicants and publication in newspaper but this exercise had not taken by the defendant No.1

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Bank. On the contrary, defendant No.1 Bank Authorised Officer filed Service Affidavit to this Court stating that "notice served RPAD has come back in respect of defendant Nos.4 and 5 (guarantors and mortgagors). However, notice sent to defendant Nos.1, 2 and 3 i.e. applicants and one more guarantor neither returned nor the acknowledgment has come back. As per settled legal position, when the summons sent to the correct address has not returned back it is deemed to be served as per the provisions of Section 27 of the General Clauses Act and also as per DRT Regulations. The summons are deemed to be served to defendant Nos.1, 2 and 3 i.e. applicants herein and one more guarantor. Therefore, it is presumed that notice has been duly served to all the defendants."

Therefore, ex parte hearing order was passed and thereafter, ex parte Order/Judgment was passed against present applicants and other three who are guarantors and mortgagors.

13. Thereafter, Recovery Certificate was issued and recovery proceeding was initiated by the Recovery Officer and mortgaged suit properties situated at Village Mahalunge,

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Taluka Devgad and flats at Mumbai were sold in auction. The sale is to be confirmed. In these circumstances, the applicants are claiming aforementioned reliefs.

14. I called upon the Record & Proceeding of OA No.46/2019 and scanned it. It appears that though two flats at Mumbai were mortgaged as collateral security, the loan documents glaringly show that applicants have mentioned only one address i.e. address of Village Mahalunge, Taluka Devgad and not of Mumbai. Therefore, question of sending summons at Mumbai address of applicants would not arise. The summons was duly served to other defendants (guarantors and mortgagors) at address of Village Mahalunge, Taluka Devgad. The summons along with paper book sent to applicants and one more guarantor did not come back. Even RPAD receipt did not come back. Service Affidavit (Exhibit-16) filed in OA No.46/2019 shows that summons to applicants were sent on proper address at Village Mahalunge, Taluka Devgad which is seen from Postal Receipts annexed to copy of summons (Exhibit-8) Therefore, as per provisions of Section 27 of General Clauses Act and DRT Regulations summons were

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deemed to be served on the applicants and one more guarantor.

15. Before arriving at conclusion, it is to be noted that after Recovery Certificate was issued in pursuance to ex parte Order/Judgment passed in OA No.46/2019, recovery proceeding began before the Recovery Officer. The Recovery Officer has sold suit properties at Village Mahalunge, Tal. Devgad and Mumbai in auction. Auction Purchasers have purchased the same and have paid full amount. The Sale Certificate is yet to be confirmed.

16. It is pertinent to note that applicants appeared in the recovery proceeding but never took objection at any time and acted as fence sitter and when suit properties are sold in auction, they have filed the present Application.

17. In view of these observations, I hold that summons of OA No.46/2019 were duly served upon the present applicants and as they remained absent ex parte Order/Judgment was passed. Therefore, applicants are not entitled for reliefs as claimed in this Application.

18. With great regard, I mention that Authorities cited supra by applicants are not applicable to present case as facts in

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that case turn on different points than facts of the present case. At the same time, I hold that Authorities cited supra by defendant No.1 Bank are squarely applicable to the present case.

Therefore, by answering these points accordingly, I pass the following order:

ORDER

A. The application is hereby dismissed with costs.

Pronounced in open Court

Sd/-
(Dilip G. Murumkar)
Presiding Officer
Debts Recovery Tribunal, Pune

Place : Pune
Date 30.04.2026

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