DEBTS RECOVERY TRIBUNAL, JAIPUR

PRESIDING OFFICER: SH. VIMAL GUPTA

SA No.- 461/2025

1. **Mr. Dilip Kumar** S/o Mr. Ram Lal Ji Daya, Aged-57 Years, Address-58, Nayapura, Dehligate, Udaipur (Raj.)
2. **Mr. Hemant Daya** S/o Mr. Ram Lal Ji Daya, Aged-48 Years, Address-58, Nayapura, Dehligate, Udaipur (Raj.)

…….Applicants

Versus

1. **Cholamandlam Investments And Financial Company Limited**, Address - Mali Colony - Tekri Road, Near Padam Light, Udaipur (Raj.)
2. **Cholamandlam Investments And Financial Company Limited**, Address - Chola Crest, C54 & 55, Super B-4, Thiru Vi Ka Industrial Estate, Guindy, Chennai – 600032.
3. **Mr. Mahendra Sahu** S/o Mr. Chiranjeev Lal Sahu, Aged-41 Years
4. **Mr. Vandana Sahu** W/o Mr. Mahendra Sahu Aged-40 Years, Adres - 3, Delhi Gate, Nayapura, Udaipur (Raj)
5. **M/s. Shri Nath Collection**, Address - 3, Delhi Gate, Nayapura, Udaipur (Raj)
6. **Mr. Ram Chandra Teli** S/o Shri Dal Chand Teli R/o House No. 1 Nayapura, Delhi Gate, Udaipur Shastri Circle, Udaipur, Rajasthan 313001.

……. Respondents

Present:

Shri Akshat Kulshrestha, Counsel for the applicant

Shri Avinash Kumbhaj, Counsel for the Respondent No. 1 & 2

Shri Rajkumar, Counsel for the Respondent no. 6

None for the Respondent no. 3 to 5

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(FINAL ORDER)

(19.05.2026)

1. The Securitization Application has been filed by third party claiming its rights on the basis of mortgaged deed dated 20.12.2011 and for sum of Rs. 3.50 Lac, the said mortgaged deed was for 11 years.
2. The applicant claims that thereafter also he has handed over a lot of money to the borrowers of the respondent company and he is entitled to take that money. He submits that some amount has been paid in cash and some amount has been paid through cheque.
3. The matter has been filed before the Civil Court also seeking stay on the action of the bank to take the possession. Definitely, the SA applicant has not moved before the Civil Court claiming the amount paid by them for which the limitation would have been three years only.
4. The amount paid other than the mortgaged deed is without any registration and payment of stamp duty, therefore, the applicant may not be entitled for any recovery being made. Mortgaged deed was to be awarded or new deed should have been executed.
5. The applicant also submits that during the pendency of the mortgaged deed, the said property was gifted to the present borrower of the respondent company. He submits that such gift deed is invalid.
6. The counsel for the applicant further submits that the property was mortgaged with the respondent in February, 2022 is also invalid as that was also done during the current mortgaged deed.
7. Counsel for the respondent bank submits that the applicant has no locus and if he has to recover money, it is only the Civil Court where he has to go and seeks remedy of recovery. He submits that mortgaged deed has already expired on 20.12.2022 and thereafter, no remedy lies with them except goes to the Civil Court for recovery of money.
8. The counsel for the respondent bank raises a question how a gift deed during the pendency of a mortgaged or a loan transaction

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against the said property is invalid. He says that at the most the same could be subject to the amount mentioned in the mortgaged deed.

9. Counsel for the respondent further submits that borrower have not challenged any of the action of the respondent, therefore, it is their deemed consent for sale of the property.
10. Counsel for the auction purchaser submits that all the transactions made are a valid transactions and the statement made by him as pointed out by the applicant's counsel on 11.11.2025 was in the impression that SA has been filed by the borrower, but he has no such instructions.
11. The counsel for the auction purchaser further submits that the applicant could have taken the opportunity and could have closed the account. Be that it may be, he also challenges the locus of the applicant in preferring this SA on the ground that whatever interest in the property he has, it is limited to Rs. 3.50 Lac only and that too expired on 20.12.2022.
12. Counsel for the respondent bank submits that they have got the excess money which till date has not been claimed by the borrower and if this Tribunal orders, the said amount will be paid to the SA applicant and applicant in discharge of his mortgaged deed.
13. Initially, when the SA was filed, the Tribunal was *prima facie* of the opinion that how under the registered mortgaged deed, the bank could have mortgaged the property. Without taking its cognizance Even if anything has to be seen, it has to be seen that under what circumstances that mortgaged was created and what was the condition of that mortgaged.
14. The clause 25 of the mortgage deed states that **"***यह कि रहनशुदा दुकान का कोई किराया नहीं होगा व उसी प्रकार रहनशुदा रहन पेटे ली गई राशि का कोई ब्याज नहीं होगा यानि कि रहन शुदा दुकान द्वितीय पक्षकार के पास रहन सिक्यूरिटी के रूप में रहेगी एवं रहन अवधि के दौरान द्वितीय पक्षकार रहनग्रहिता रहन दुकान अपने स्वयं के उपयोग–उपभोग में ले सकेगा।***"**, in view of that the mortgaged shop will have no rent to be paid and mortgaged money will have no interest to be paid. Therefore, the mortgaged shop will remain as a security with the

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second party and during the mortgaged, the same can be used by them. Taxes were to be paid by the second party.

15. The Tribunal had given ample chances for settlement, but the same could not be done even today, the applicant submits that he is ready and willing to pay entire dues of the bank, but he is not entitled to claim such relief which is only available to the borrowers.
16. The applicant can claim the damages from the mortgagor as per Clause 20 of the said mortgaged deed.
17. Now going to the principle of priority of charges, the charges rank in order of their creation which means the prior charge holder must hold the charge and should be subsequent charge holder shall hold charge thereafter.
18. ***Section 48 of the Transfer of Property Act,1882*** establishes the ***"Doctrine of Priority,"*** which dictates that if a person transfers the same immovable property at different times to different people, the earlier transferee holds priority over later ones. The subsequent transfer is subject to the rights created by the prior transfer. Rooted in ***qui prior est tempore potior est jure***, meaning "first in time is best in law." The purpose is to ensure that a transferor cannot breach an earlier contract by creating new rights for a later transferee. Therefore, it is very clear that first right of mortgaged should have been given priority over the subsequent charge, but even on 20.12.2022 or thereafter he has not demanded the money from the mortgagor, therefore, the applicant is not entitled to challenge any securitization proceedings.
19. Counsel for the applicant submits that he has filed three interim applications i.e. IA no. 411/2026, 412/2026 & 167/2025 which are pending. I.A no. 411/2026 filed for amendment to be taken on record in respect of DM order, IA no. 412/2026 filed for cancellation of DM order and IA no. 167/2025 filed for cancellation of the sale notice.
20. The property was auctioned on 29.08.2025 and the applicant filed this Securitization Application on 08.11.2025. According to the

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respondent company, symbolic possession was taken on 20.02.2025 and if the applicant submits that he was in possession of the shop, he should have come within the limitation from that date. Be that it may be, only right available was Rs. 3.50 Lac and as stated above it was carrying no interest.

21. Now the question is if the applicant has not demanded that money from the mortgagor whether he is still entitled for that or not?

22. According to the counsel for the respondent bank approximately Rs. 20.00 Lac may be lying with them. Since the borrower has not claimed and the applicant will be entitled to get it attached from the Civil Court, but before deciding on the locus and several aspects, the Tribunal is of the opinion that may be the applicant is not entitled for any relief of the subsequent payments being made to the borrowers, but at least the respondent FI can be directed to pay Rs. 3.50 Lac for discharge of their mortgaged liability.

23. The counsel for the respondent company submits that they will make the payment if the Tribunal ordered. Though, according to him, once the mortgaged deed has expired they have no right to recover that amount also.

24. At this stage counsel for the auction purchaser submits that possession of the property may be handed over to them. The counsel for the respondent company submits that it was because of the direction of the Tribunal that they had not taken possession, now they will entitle again for taking possession. Let them do so expedite to handing over the possession because the applicant being a mortgagee have no rights better than given in the mortgaged deed i.e. to recover Rs. 3.50 Lac without interest.

25. All the interim applications stands merged in the original Securitization Application and it is held that the applicant has not challenged the securitization proceedings at any point of time, including notice under Section 13(2), notice under Section 13(4), DM

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order, sale notice or sale conducted because he is only have to concerned with his amount as mentioned in the mortgaged deed.

26. In view of the Section 48 of the Transfer of the Property Act, 1882 any immovable property is subject to hold the mortgaged, therefore, this Securitization Application stands dismissed with no order as to cost.

27. The respondent bank is directed to not to pay Rs. 3.50 Lac to the borrower and balance can be paid if demanded. The respondent is at liberty to take further steps under the Securitization Act.

28. The applicant will be at liberty to take appropriate action for recovery of his money which is subsequently paid according to him to the mortgagor. Though, in the civil suit he is only seeking stay on the possession to be taken. Since the possession is to be taken under the Securitization, the Civil Court has no jurisdiction to stay the possession being taken which according to the respondent company is being taken in the compliance of orders of the Hon'ble High Court.

29. Accordingly, this Securitization Application stands dismissed. File be consigned to record, as per rules. Copy of order be uploaded on website.

(Vimal Gupta)
Presiding Officer
Debts Recovery Tribunal, Jaipur

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