

DEBTS RECOVERY TRIBUNAL – 1, KOLKATA
Jeevan Sudha Bldg. 9TH Floor, 42/C, J.L.Nehru Road,
Kolkata - 700071
Before Shri Ambuja Mohan Das, Presiding Officer

RA/01/2024

SA No. 90 of 2019

1. Praridevi Chabiraj Steels Pvt. Ltd., having office at 38 & 39/27, Jaya Bibi Road, Ghusuri, Howrah - 700107

2. Sri Binay Pandey, residing at 375, Prince Anwar Shah Road, Tower-III, Flat 26L, Kolkata – 700068.

3. Smt. Susmita Pandey, residing at 375, Prince Anwar Shah Road, Tower-III, Flat 26L, Kolkata – 700068.

- Applicants

Vs

1. Authorised Officer, Stressed Assets Group-East, Axis Bank Ltd., 1, Shakespeare Sarani, 4th floor, A.C.Market Building, Kolkata 700071.

2. Axis Bank Ltd., SME Centre, 1, Shakespeare Sarani, 3rd floor, A.C.Market Building, Kolkata 700071.

Defendants

Present:

For Applicant: Mr. Arijit Bardhan, Ld. Senior counsel.
Mr. Souritra Ganguly
Mr. Gourav Mondal and
Ms. Archita Roy, Ld. Advocates.

For Defendant: Mr. Abhishek Guha,
Ms. Shreyasi Sen Ld. Advocates

J U D G M E N T

Delivered on 16th June, 2026

1. The Review Applicants have filed this application for review of judgment and order dated 22nd November 2023 passed in S.A. 90 of 2019.

2. Ld. Advocate for Respondent Bank has challenged maintainability of the Review Application contending that the Tribunal has passed a contested judgment in S.A. 90 of 2019 on 22nd November 2023. Ld. Advocate for Respondent Bank also submitted that Applicants if aggrieved have to prefer Appeal against the judgment not review and has referred to Rule 5A of DRT Procedure Rules, 1993. Respondent Bank has relied upon judgment of i) Hon'ble DRAT in State Bank of India & Anr. -vs- Shri Bihariji Cold Rollers Private Limited & Ors., in Misc. Appeal No. 30 of 2023 decided on 8th October, 2024; paras - 14 & 17. ii) judgment of the Hon'ble Supreme Court in Hardevinder Singh -vs- Paramjit Singh & Ors., reported in (2013) 9 SCC 261, para 17 and judgment of the Hon'ble Supreme Court in Banarasi & Ors. -vs- Ram Phal, reported in (2003) SCC 606, paras - 8 to 13.

3. Ld. Advocate for the Review Applicant has submitted that Review Applicant has challenged in the SA classification of account as NPA and the Tribunal has not given any finding regarding NPA and relied upon judgment of i) Hon'ble High Court, Calcutta in the matter of Bangla Bijuli Power Technologies pvt. Ltd. Vs. Authorised Officer, IDBI Ltd. In W.P. No. 27330 (W) of 2016 dated 17/01/2017 ii) Hon'ble Supreme Court in Mohd. Akram Ansari -vs- Chief Election Officer & Ors., reported in (2008) 2 SCC 95, para 14.

4. Ld. Advocate for the Review Applicant has submitted that in the SA at paragraph 6.41 and 6.42 pleaded that the Bank committed wrongful identification of the account of Applicant no. 1 as SMAO and SMA1 which Applicant has objected vide letter dated 23/10/2018.

5. Applicant in the SA has submitted representation to the Demand Notice which was not replied by Bank and also challenged possession Notice

and in the relief, Applicant prayed for setting aside Demand Notice and Possession Notice along with other prayers as the Defendant Bank is not entitled to initiate or continue proceedings under the Sarfaesi Act and declared classification of loan account illegal and in violation of the RBI Guideline. It is also submitted by the Ld. Advocate for the Review Applicant that the Tribunal has not given finding on NPA in the judgment.

6. Perused the judgment dated 22/11/2023 wherein it appears that the Sarfaesi Applicant only prays against the Demand Notice and in the pleadings, alleged wrongful identification and declared NPA of the account of Applicant no. 1 as SMAO and SMA 1. Ld. Advocate for the Review Applicant only concentrated regarding details of account in the Demand Notice which is in contravention of Section 13(3) of the Sarfaesi Act.

7. At the time of argument Ld. Advocate for the Review Applicant did not press regarding NPA only argued on details of loan not given in the Demand Notice. Accordingly, SA was allowed. Demand Notice dated 27/08/2018 and Possession Notice dated 08/01/2019 were held bad in law and set aside.

8. Ld. Advocate for the Review Applicant has drawn attention to review of judgment u/s 22(2)(e) of the RDB Act, 1993 which are as follows:

“22. Procedure and powers of the Tribunal and the Appellate Tribunal. —

(1) The Tribunal and the Appellate Tribunal shall not be bound the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in

(h) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

IBC Laws | www.ibclaw.in

unless it is accompanied by an affidavit verifying the application. (3) Where it appears to the Tribunal that there is no sufficient ground for a review, it shall reject the application 6 [but where the Tribunal is of opinion that the application] for review should be granted, shall grant the same: PROVIDED that no such application shall be granted without previous notice to the opposite party to enable him to appear and to be heard in support of the order, a review of which is applied for.”

10. Ld. Advocate for the Review Applicant has relied upon the judgment of i) Hon’ble High Court, Calcutta in the matter of Bangla Bijuli Power Technologies pvt. Ltd. Vs. Authorised Officer, IDBI Ltd. In W.P. No. 27330 (W)of 2016 dated 17/01/2017.

11. Hon’ble High Court, Calcutta has examined Section 17 of the Sarfaesi Act and Section 22(2)(e) of the RDB Act, 1993 and observed that DRT has power of review of its own jurisdiction in terms of section Section 22(2)(e) of the RDB Act, 1993. Hon’ble High Court also referred to Rule 5A of the Debts Recovery Tribunal (Proceeding) Rules, 1993 which prescribes the manner in which an application for review is to be dealt with. It also prescribes a procedure for filing the application for review.

12. Hon'ble Supreme Court in Mohd. Akram Ansari -vs- Chief Election Officer & Ors., reported in (2008) 2 SCC 95 at paragraph para 14has observed that:

“14. In this connection we would like to say that there is a presumption in law that a judge deals with all the points which have been pressed before him. It often happens that in a petition or appeal several points are taken in the memorandum of the petition or appeal, but at the time of arguments only some of these points are pressed. Naturally a judge will deal only with the points which are pressed before him in the arguments and it will be presumed that the appellant gave up the other points, otherwise he would

have dealt with them also. If a point is not mentioned in the judgment of a court, the presumption is that that point was never pressed before the learned judge and it was given up. However, that is a rebuttable presumption. In case the petitioner contends that he had pressed that point also (which has not been dealt with in the impugned judgment), it is open to him to file an application before the same learned Judge (or Bench) which delivered the impugned judgment and if he satisfies the Judge (or Bench) that the other points were in fact pressed, but were not dealt with in the impugned judgment, it is open to the court concerned to pass appropriate orders, including an order of review. However, it is not ordinarily open to the party to file an appeal and seek to argue a point which even if taken in the petition or memorandum filed before the court below, has not been dealt with in the judgment of the court below. The party who has this grievance must approach the same court which passed the judgment and urge that the other points were pressed but not dealt with."

13. Hon'ble DRAT in State Bank of India & Anr. -vs- Shri Bihariji Cold Rollers Private Limited & Ors., in Misc. Appeal No. 30 of 2023 dated 8th October, 2024 and at paragraph 39 and 40 has observed that:

"39. As far as statutory review is concerned, no error apparent on the face of record could be shown by the SARFAESI Applicants which makes out a case for review. As far as procedural defect is concerned, the ground taken by the SARFAESI Applicants for review does not bear out from the records. Judgment dated 29.03.2022 was passed after offering an opportunity of hearing to the SARFAESI Applicants. Detailed judgment on merits was passed by Learned DRT. Judgment was delivered after preponing the date which cannot said to be an illegality. 40. Accordingly, there was no procedural error in passing the impugned judgment dated 29.03.2022 by the Learned DRT. Accordingly, SARFAESI Applicants cannot take any advantage

of the law laid down by the Hon'ble Apex Court in the case of Kapra Mazdoor Ekta Union (supra)."

14. The Hon'ble Supreme Court in Banarsi And Others v. Ram Phal, reported in (2003) SCC 606, wherein Hon'ble Supreme Court examined scope of Appeal under Order 41 Rule 22(1) of CPC and at paragraph 10 and 11 observed that :

"10. The **CPC** amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended **Order** 41 **Rule** 22 sub-**rule** (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-**rule** (1) makes it permissible to file a cross-objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is partly in favour of the appellant and partly in favour of respondent.

(ii) The decree is entirely in favour of respondent though an issue has been decided against the respondent.

(iii) The decree is entirely in favour of respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against respondent.

11. In the type of case (i) it was necessary for respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his

favour, he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre-amendment **CPC** did not entitle nor permit respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended **CPC**, read in the light of the explanation, though it is still not necessary for respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-**rule** (1), read with the explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-**rule** (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any finding by respondent shall still be available to be adjudicated upon on merits which remedy was not available to respondent under the unamended **CPC**. In the pre-amendment era, withdrawal or dismissal for default of the original appeal disabled respondent to question the correctness or otherwise of any finding recorded against respondent."

15. It appears from this judgment of the Hon'ble Supreme Court that any person who is aggrieved by judgment may prefer appeal and if a part of the judgment is not in favour of a party, he may prefer cross-objection.

16. Ld. Advocate for Respondent Bank has relied upon the judgment of the Hon'ble Supreme Court in Hardevinder Singh -vs- Paramjit Singh & Ors., reported in (2013) 9 SCC 261, and paragraph 22 Hon'ble Supreme Court has observed that:

"22. At this juncture, we may usefully reproduce a passage from Banarsi (2003) 9 SCC 606, AIR 2003 SC 1989 wherein it has been stated thus:

"8. Sections 96 and 100 CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree, he is not entitled to file an appeal. [See Phoolchand v. Gopal Lal AIR 1967 SC 1470, Jatan Kumar Golcha v. Golcha Properties (P) Ltd. (1970) 3 SCC 573, AIR 1971 SC 374 and Ganga Bai v. Vijay Kumar (1974) 2 SCC 393, AIR 1974 SC 1126.] No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 CPC provide for an appeal against decree and not against judgment".

17. Thus, from the above decision relied by both the parties, Review Application is maintainable, if it conforms Rule 5A of the DRT Procedure Rules, 1993. Rule 5A speaks that any party if aggrieved by an order made by the Tribunal on account of some mistake or error apparent on the face of the record desires to obtain a review of the order made against him, may apply for a review of the order which is maintainable if it is filed within 30 days. Judgment passed on 22/11/2023 and Review Application filed on 04/01/2024. Applicant obtained certified copy of judgment on 07/12/2023. Hence, Review Application is filed within limitation of 30 days.

18. On perusal of the judgment, it appears that when the Applicant pleaded in the SA that classification of account as NPA is bad but same was not argued at the final hearing of SA. The judgment speaks that Ld. Advocate for the Applicants only pressed regarding Demand Notice that there is no details of account given in the Demand Notice. The SA was allowed and both demand notice and possession notice were set aside.

19. Hon'ble Supreme Court has held that though it is presumed that the judgment is passed on all points, if the Applicant is able to establish that argument was made by the party which was not dealt with by Tribunal, then the party can approach the same court for review. As per Rule 5A of the DRT Procedure Rules 1993 if there is any mistake or error in the judgment then only review application is maintainable.

20. On perusal of the judgment, it is found that Ld. Advocate for the Applicant had not made any argument regarding NPA. Hence there is no error or mistake on the face of the judgment, so Review Application is not maintainable. It is ordered as follows:

O R D E R

1) RA/01/2024 arising out of SA/90/2019 is dismissed as not maintainable.

Copy of the judgement/final order be uploaded in the Tribunal's website.

File be consigned to the Record Room.

(Dictated to P.S. transcribed by her and corrected and signed by me and delivered in court on this the 16th day of June, 2026)

(AMBUJA MOHAN DAS)

PRESIDING OFFICER
DRT-I, KOLKATA

Order Sheet (continuation)		
Case No. RA/01/2024 arising out of SA/90/2019		Pyaridevi Chabiraj Steels Pvt. Ltd. & Ors. vs. Axis Bank & Anr.
Date of Order	Order with signature	Office action with date and dated signature of parties when necessary
16/06/2026	Present: For Applicant: Mr. Souritra Ganguly Mr. Gourav Mondal and Ms. Archita Roy, Ld. Advocates. For Defendant: Mr. Abhishek Guha, Ms. Shreyasi Sen Ld. Advocates In this matter Judgement delivered in the Court, which is kept in separate sheets containing ten pages. Gist of the order as follows: <u>O R D E R</u> 1) RA/01/2024 arising out of SA/90/2019 is dismissed as not maintainable. Copy of the judgement/final order be uploaded in the Tribunal's website. File be consigned to the Record Room. (Dictated to P.S. transcribed by her and corrected and signed by me and delivered in court on this the 16th day of June, 2026) (AMBUJA MOHAN DAS) PRESIDING OFFICER DRT-I, KOLKATA	

