IN THE DEBTS RECOVERY TRIBUNAL-II, BANGALORE

Dated this 24th Day of July, 2026

PRESENT: SHRI T. RAJESH
Hon'ble Presiding Officer

NDN (SA) No. 3533 of 2025

BETWEEN:

Ms. Rakshitha Basavaraj Martur
D/o. Basavaraj Martur
Aged about 22 years
R/at. H.No.8-232, Krishna Bazar Road,
Near Rangeen Masjid, Dama Galli,
Kalaburgi, Karnataka-585104 **. . . Applicant**

AND:

1. Canara Bank Specialized ARM Branch
Sy.No.412C, Plot No.2, Srushti Colony,
Main Road, Vijayapura – 5861041
Rep. by Authorized Officer Canara Bank
Also at Canara Bank, MRMC Branch
Plot No.9, CTS No.178/19, Near RTO Cross,
Badepur, Sedam Road, Kalaburagi-585102

2. M/s. Dhanalaxmi Textiles
Through its Prop. Smt. Chandrakala
W/o. Nagaraj
Adarsh Vidyalaya, Asif Gunj No.8-232
And 8-233 Dhanalaxmi Textile Super Market
Main road, Kalaburagi-585101

3. Smt. Chanrakala
W/o. Ningaraj
Proprietor M/s. Dhanalaxmi Textiles
H.No.97, Aurad B Mahagoan
Kalaburagi – 585313

4. M/s Wilbur Machines
No.56 & %7, DPM Street, kancharapalem
Vishakapatnam, Andhra Pradesh-530008

5. M/s. Balaji Garments and Enterprises
No.2-908/LIF – 17 2nd Phase Ground Floor,
Near Andola Hospital Ring Road, Adarsha Nagar,
Kalaburagi – 585105

6. Sri. Basavaraj
S/o. Mallappa Martur
h.No.8-323 Kirana Bazar
near Rangeen Masjid, Damagalli,
Mominpura Kalaburagi-58510 **. . . Respondents**

<u>Ld. Counsels on record / appeared: -</u>

Counsel for Applicant	:-	Sri. Rajath M
Counsel for Respondent	:-	M/s. George & Co., Advocates

: - O R D E R - :

1. This Securitization Application (SA) is filed under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act" or "the Act"). The applicant claims to have coparcenary interest over the schedule property is impugning the measures taken by the respondent leading to the procurement of S.14 Order passed by Ld. Senior Civil Judge and JMFC, Kalaburagi in Crl.Misc.No.79/2025 on 09.10.2025. This SA is filed with a delay of 4 days.

2. The case of the applicant is as follows:

The applicant is the coparcener of the Hindu Undivided Family and is in joint possession of the schedule property. It is also stated that, the applicant came to know that the 1st respondent bank had extended a facility for Rs.3,50,00,000/- to the 2nd defendant entity managed by its proprietor, the 3rd defendant, for the purpose of purchase of heavy-duty textile weaving machines. The sum of Rs.2,80,00,000/- had been disbursed to M/s. Wilbur Machines i.e. the 4th defendant herein and sum of Rs.55,00,000/- to M/s. Balaji Garmented and enterprises i.e. 5th respondent for funding the furniture. The remaining 15,00,000/- out of the total loan amount sanctioned was retained in the borrower's loan account i.e. 2nd respondent as a working capital. It is also contended that, no weaving machines whatsoever has been supplied and all happened due to the involvement of Bank Managers who sanctioned the huge loan without even seeing to them there is due purchase of machineries sought to be purchased using the funds allotted. Hence, the applicant alleges that, the bank officials are in collusion with the borrower in getting the loan disbursed. It is also admitted that, the 6th respondent the father of the applicant has stood as a guarantor and the property was given as collateral by him and as he is vice of drinking habits, he have consented for the same. In respect of title of the property, it is the case of the applicant that, the immovable property is an ancestral property of the applicant and her siblings allotted to the share of his father i.e. 6th respondent by virtue of partition deed dated 29.06.2025 duly registered, bearing document

No.4203/2015-16 before SRO Gulbarga. Hence according to the applicant, the mortgage deed executed by the father of the applicant is not binding on her, as the applicant is having coparcenary interest over the schedule property.

3. The applicant further contends that, the suit for partition is filed as OS.No.212/2025 before the Civil Judge & JMFC Kalaburagi, in respect of the schedule property and the same decreed on 17.10.2025. It is also stated that, in pursuant to the decree the property had been partitioned and khata being mutated as per the decree. Hence, the applicant contends that, the partition decree operates in remand bank is bound to honor the same. On the above grounds the applicant contends that, measures taken by the bank through the back of the applicant when a partition decree is already decreed declaring her right over the property is bad and is to interfered with. Along the with SA, the applicant had produced the following documents.

i. The true copy of the sanction letter dated 24.07.2024
ii. The true copy of the newspapers cutting being widely published in the news media including the local newspapers of instant case scam.
iii. The ditigial copy of the Memorandum of Partition Deed dated 29.06.2015

iv. The digital certified copy of the impugned simple mortgage deed dated 16.08.2023

v. The certified copy of the decree in OS No.212/2025

vi. The Certified copy of the said impugned order in Crl. Mic.No.79/2025 dated 09.10.2025

vii. The photos of the said residential building being tried to be occupied by the defendant – Bank

viii. Certificate under Section 63 of BSA for electronic evidence for the photos

ix. The Digital certified copy of the Encumbrance certificate dated 06.02.2023

x. True copy of the legal scrutiny report dated 22.04.2023 by the advocate

xi. True copy of the certified impugned report by the local branch manager dated 04.09.2024

xii. True copy of the auction notice and E-auction scheduled on 18.12.2025

4. The respondent filed their objections, contending that the borrower had availed the term loan of Rs.3,35,00,000/- for his business need of his proprietary concern in the year 2023. The total project cost was Rs.4,22,50,000/- out of which the promoters contribution was Rs.87,50,000/- and the 6th respondent stood as a

guarantor and created security in favour of the respondent bank. The amounts were financed by respondent bank and as the repayments had not properly made, the account has become NPA on 22.05.2025. After classifying the account as NPA, the demand notice dated 23.05.2025 is issued and as no payment was forthcoming despite of the issuance of the above, the impugned symbolic possession notice was issued. The respondent bank has initiated proceedings under S.14 of the SARFAESI Act in accordance with law by filing Crl.Misc.No.79/2025 before the Ld. Prl. Senior Civil Judge & CJM Kalaburagi.

5. It is contended by the respondent that, the demand notice issued by the respondent was duly served on the borrowers. The symbolic possession notice was issued which according to the respondent is duly served, published and affixed as mandate under the statute.

6. It is further contended by the respondent that, since the borrower had caused obstruction in taking physical possession, the S.14 measures had been resorted to, resulting the Ld. Magistrate issuing the Order which is sought to be impugned in the SA.

7. Apart from the above, the respondent had given point to point rebuttal of the contentions as taken in the SA. Along with the objections the respondent had produced the following documents:

i. Loan application
ii. Sanction letter
iii. Simple mortgage deed
iv. Common hypothecation agreement
v. Term loan agreement
vi. Guarantee agreement
vii. Demand promissory note
viii. Overdraft request letter
ix. Demand notice date 23.05.2025
x. The copies of possession notice dated 29.07.2025

8. Heard and perused the available records.

9. The following issues arise for the consideration:

i. Whether the applicant is having the right over the property which entitles him to scuttle the measures taken by the respondent leading to the procurement of impugned S.14 order?

ii. Whether the measures continued by the respondent in following the procedures mandates as stipulated under the act.

iii. Whether this Tribunal have got the power to condone the delay in filing the SA?

Issue No. i:

10. The applicant contends that, the property belongs Hindu Joint Family and being a coparcener she is entitle to have coparcenary share

of the property which according to the applicant stood established by a preliminary decree of partition is also effected pursuant to which a partition between the parties therein. The applicant is not disputing the fact that, the 6th respondent had mortgaged the property in favour of the applicant bank towards the liability of 2nd and 3rd respondent. Even though the applicant is putting forth a contention that, the credit facility was sanctioned for the purchase of machineries from the 4th and 5th respondent and the bank officials has colluded in disbursement of the loan without ascertaining the availability and release of the machineries, this Tribunal is not adverting to the same as the execution of mortgage in lieu of security for the facility admitted. In the absence of any challenge as to the liability by the borrower or the guarantors this Tribunal is not enticed to go into the above issue and entered into a finding therein

11. In respect of the claim of the applicant as put forth in the SA is concerned, the applicant is admitting that a family partition which according to the applicant took place on 29.06.2015 got documented on 26.09.2015 by execution of Memorandum of Family Partition whereby the C schedule property is allotted to the 6th respondent. Going by the partition deed so executed, it is clear that, the property has been partitioned and allotted to 6th respondent. Nowhere in the partition deed is stated that, the partition is for the benefit of other

siblings of the person who is in its favour, the property is allotted and in the absence of the same in the partition deed, this Tribunal is of the view that, the partition deed as produced by the applicant will not come in aid of the applicant. The applicant is also raising reliance on a decree passed by the Civil Court and it is seen that, the decree is passed based on a compromise entered into between the parties. The applicant is harping her claim on the basis of a Compromise Decree and so claimed partition in pursuant to the said Compromise Decree. Even though this Tribunal is not in a position to advert to the proceedings taken before the Civil Court much reliance cannot be given to a partition decree obtained by compromise that too without bank being made a party to therein. The partition suit is claimed to have been filed only on 27.06.2025 wherein the mortgage deed created in favour of the respondent bank is created as early as on 16.08.2023 and the demand notice is issued on 23.05.2025. As on the date of creation of mortgage, the 6th respondent is in absolute ownership and possession of the property as evident by declaration is given by the 6th respondent who subsequently shifted his stand and gone for a compromise in the partition suit filed by the applicant herein. Even going by the memorandum of family partition dated 29.06.2015 also the 6th respondent is the absolute owner of the popery and based on the said right he had mortgaged the property in favour of the bank.

Taking into consideration that the entire scenario, this Tribunal is of the view that, the partition decree i.e. passed on a basis of Compromise decree passed as consented by the 6th respondent, who had mortgaged the property claiming that he is owner of the property by virtue of the Memorandum of the Family partition deed cannot be taken as a defense to the SARFAESI measures. Hence, the issue no. I is decided against the applicant.

Issue No.II

12. Since the applicant is neither the borrower nor the guarantor the contention as to the legality of the measures need not be gone into in view of the fact, this Tribunals is already entered into a finding that the applicant is having no right to challenge the measures taken by the respondent on the basis of the security interest which is created as early as on 16.08.2023.

Issue No.III

13. In deciding this issue even though no contention as to the power of this Tribunal to condone the delay is put up by the repsondnet in their objections, this Tribunal is going into in the said issue as the issue of limitation being a mixed question of law and facts and which will go the route of the case.

14. Based on the fact that the application of the Limitation Act is not excluded specifically, the provisions contained in section 4 to 24 shall apply to the extent to which they are not expressly excluded. In considering as to whether there is any exclusion as to the applicability of Limitation Act a reference to section 17 of the Act is appropriate

17. 2 [Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,1 [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,— (a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and (b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.] (4 If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding

anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

[(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,— (a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

15. It is relevant to note that whether the Debt Recovery Appellate Tribunal have got power to condone the delay in filing an Appeal under section 18 is no more *res integra.* In respect of section 18 it is to be noted that there is an express provision for condonation of delay. So

far as section 17 is concerned, the statute is silent as to the application of said power. The wording of the statute also mandates the application to be filed "within 45 days" from the cause of action. By application of legal maxim "*expression unius est exclusion alterius*", it is to be understood and red as the Legislature had intentionally and consciously intended the application of Limitation Act to be excluded. The statute is enacted for the purpose of enabling financial institutions to securitize the Asset without intervention of the court. As far as section 17 is concerned it is evident that there is no express exclusion. However, the SARFAESI Act being a complete code by itself, the implied exclusion and clear mandate of a time limit of 45 days also throws light to the fact that the Securitization Application is to be filed "within 45 days". It is also relevant that a time limit is also fixed for disposal of a section 17 application.

16. The Hon'ble Supreme Court in **Mardia Chemical Vs. Union of India** (2004) 4 SCC 311had laid down the scope and ambit of section 17 of the Act and held as follows:-

"59. We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit

which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court in Ganga Bai v. Vijay Kumar [(1974) 2 SCC 393] where in respect of original and appellate proceedings a distinction has been drawn as follows: (SCC p. 397, para 15) "There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

17. Hence on the basis of above it is evident that the proceedings under section 17 is of the original nature and not that of an appeal. It is also to be noted that the section 17 came to be amended and by virtue of which the remedy provided is that of an "Application". Hence by prescription of 45 clear days for filing the application and in the absence of enabling provision to condone the delay the Legislature intent is clear.

18. The 1st and foremost decision on the point as referred by parties is **Prakash Malli Vs. Authorized Officer** (MANU/KA/1058/14) which

deals only with the power of Appellate Tribunal to condone the delay and that the power under section 18 is pari materia with subsection 7 of 17 of the Act. The next decision of the Division Bench is that **V. Shobha Vs. Asset Reconstruction Bank Company (India) Ltd and Ors.** (MANU/KA/3039/2025) which directly on the point where the Hon'ble Division Bench had held in affirmative as to the power of this Tribunal in entertaining an application to condone delay. However, in **Kailasam Vs. Karnataka Bank Ltd** (MANU/KA/0620/2025) another Division Bench of Hon'ble High Court of Karnataka had considered the issue in detail and held that the Tribunal does not possess the jurisdiction to entertain an application to condone the delay in filing Section 17 Application.

19. The above discussion narrows down the enquiry point to the question whether Kailasam Judgment (supra) or V. Shobha Judgment (supra)is binding on this Tribunal. To address this issue a reference to the **National Insurance Company Ltd Vs. Pranay Sethi and Ors.** (2017) 16 SCC 680 is necessary, wherein a larger Bench (Five Judge Bench) of the Hon'ble Supreme court had decided the issue as to the binding nature of conflicting decisions and held as follows:-

"19. In this regard, we may refer to a passage from Jaisri Sahu v. Rajdewan Dubey, 1961 KHC 325 : AIR 1962 SC 83 : 1961 KLT SN 18 : 1962 (2) SCR 558 : 1962 (1) MLJ (SC) 258: "11. Law will be bereft of all its utility if it

should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in Seshamma v. Venkata Narasimharao that the decision of a Court of appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, 3rd Edn., Vol. 22, para 1687, pp. 799-800: "The Court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of a co - ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords." In Virayya v. Venkata Subbayya it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in Bilimoria v. Central

***Bank of India. The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court." 20. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforestated pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline*".**

Furthermore, in para 29 and 30 the Hon'ble Supreme Court held as

"29. We are compelled to state here that in Munna Lal Jain (supra), the three - Judge Bench should have been guided by the principle stated in Reshma Kumari which has concurred with the view expressed in Sarla Devi or in case of disagreement, it should have been well advised to refer the case to a Larger Bench. We say so, as we have already expressed the opinion that the dicta laid down in Reshma Kumari being earlier in point of time would be a binding precedent and not the decision in Rajesh".

" 30. In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra and Another 2014 (16) SCC 623 which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity

of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a Statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a coequal or Larger Bench. There can be no scintilla of doubt that an earlier decision of co - equal Bench binds the Bench of same strength. Though the judgment in Rajesh's case was delivered on a later date, it had not apprised itself of the law stated in Reshma Kumari (supra) but had been guided by Santosh Devi (supra). We have no hesitation that it is not a binding precedent on the co - equal Bench".

20. In view of the above settled position this Tribunal is of the considered view that the judgment of the Hon'ble Division Bench in Kailasam's case (supra) which is passed on 28/2/2025 is to be followed as V. Shobha's (supra) case is passed on 16/9/2025. It is also to be noted that while deciding Shobha's case the Hon'ble Court had not considered the earlier decisions on the point by another Division Bench. In view of the law laid down by Apex Court in *"National Insurance Company Case (supra) this Tribunal is bound to follow the dictum laid down by the Division Bench of the Hon'ble High Court of Karnataka in Kailasam P Vs. The Karnataka Bank Ltd and Ors. (MANU/KA/620/2025)"* which laid down the preposition that the 45 days' time provided under section 17 of the Act is the mandatory time

limit and this Tribunal cannot entertain an Application under section 17 beyond said period, after condoning the delay. Hence, in view of the above, this issue is also be decided against the applicant.

21. In view of the discussions as held above,

i. NDN.No.3533/2025 is dismissed.

ii. All pending IAs stand closed.

iii. The parties to bear their respective costs.

iv. Copy of this order be communicated to the parties concerned.

(Dictated to the Stenographer (PR), after her transcription and necessary corrections, signed and Order passed on this 24th day of July 2026)

(T. RAJESH)
PRESIDING OFFICER