DEBTS RECOVERY TRIBUNAL No.1, MUMBAI

ORDER
In
SECURITISATION APPLICATION NO. 41 OF 2020
(Delivered on 10.08.2026)

1. ALEIXO ARNOLFO PEREIRA

2. MRS. MARIA C.B. PEREIRA ... Applicant/s

Versus

GOA STATE CO-OPERATIVE BANK LTD. ... Respondent

Advocate Charles De Souza a/w Adv. Alok Mishra and Adv. Rupak Sawangikar for the Applicants.

Advocate Arvind Kumar Sharma a/w Adv. Aniteja Sharma for the Respondent.

ORDER

1. The applicants who are spouses have filed the present SA and the petition averments in brief are as follows:-

2. Four credit facilities were availed from respondent by Applicant No.1 for his hotel project which are as follows:-
    a. Rs.50,00,000/- (Rupees Fifty Lakhs) on 24.05.2014.
    b. Rs.3,50,00,000/- (Rupees Three Crores fifty lakhs) on 26.05.2014
    c. Rs.2,00,00,000/- (Rupees Two Crores) on 09.06.2014
    d. Rs.1,50,00,000/- (Rupees One Crore fifty lakhs) on 23.05.2014.

3. Applicant No.2 is guarantor only for the 3rd facility, along with two others, and she is a co-borrower with Applicant No.1 to the 4th facility. She became a co-borrower, only after renewal of the 1st facility on 17.05.2016, and for the same, a registered mortgage deed was executed with respect to the secured asset herein by both the applicants on 20.06.2014. The deed of further charge created for the 2nd, 3rd and 4th facility, on the secured asset, was not registered, and so they are not enforceable. The notice issued under Section 13(2) SARFAESI Act, by respondent initiating proceedings against the premises herein, wherein applicant No.2 is a co-owner, is bad in law. Applicant No.2, who is a co-owner of the same, is not a borrower or guarantor and the deeds of further charge credited, are not registered. The objections raised by Applicant No.1 to the notice were not responded to by the respondent, till the day of Symbolic possession on 10.08.2018, and the steps for the same, were taken prior to the respondent complying with Section 13 (3A).

4. So, by way of this petition, the applicants seek to set aside the notices issued under Section 13(2), the symbolic possession effected, and to restrain the respondent from, enforcing the mortgage which is not valid or proper, as according to applicants.

5. The respondent/bank had filed a reply denying the petition averments, which in brief as follows.

   Four facilities are granted to applicants, by them creating a registered mortgage for the secured asset herein. Indemnity was given by Applicant No.2, effecting hypothecation, with an affidavit of undertaking filed by both applicants. Deeds of further charge as continuation and part of English Mortgage dt.20.06.2014 were executed which are duly registered. Indemnity by A2, and irrecoverable Power of attorney by both applicants in favour of the respondent, were given. Applicant No.2 is a co-borrower to all the facilities, and she has affixed her signature in all the concerned records. Respondent/bank had replied under Section 13(3A) to the objection raised by the applicant, to the notice issued to them. Notice is also issued by respondent/bank to the applicants, regarding symbolic possession and publication is also effected. Applicants have filed objections to symbolic possession also. Applicant No.1 then issued a notice of counter claim, demanding a sum of Rs.2,00,00,000/- (Rupees Two Crores only) as compensation for mental agony and harassment, and another sum of Rs.2,00,00,000/- (Rupees Two Crores only) towards loss of reputation and as damages, to which, reply is given by respondent/bank. The Ld. Magistrate had passed the order under section 14 of SARFAESI Act and Mamalldar had issued notice for physical possession. The present SA is filed by applicants raising untenable contentions, and hence the same is to be dismissed with costs.

6. The points that arise for consideration are :-
    1. Whether the Applicant no.2 is a borrower or guarantor as claimed by respondent?
    2. Whether the applicants have any valid cause of action to sue?

3. Whether Applicants are entitled to any relief sought for by them?
4. Whether Applicant no. 1 is entitled to receive any amount as compensation as claimed by him?
5. Relief and Costs?

Point no. 1 to 3

7. The applicants contend that, four facilitates were sanctioned to them by the respondent/bank, on 24.05.2014, 26.05.2014, 09.06.2014 and 23.05.2016 for Rs.50,00,000/-, Rs.3,50,00,000/-, Rs.2,00,00,000/- and Rs.1,50,00,000/- respectively. On 20.06.2014 registered mortgage deed was executed by both applicants to secure the facility for Rs.50,00,000/- granted on 24.05.2014. They then executed a deed of further charge on 05.07.2014 over the secured asset herein to secure the 2nd facility for Rs.3,50,00,000/-.

8. Applicants further contend that, except for the 1st sanction facility which is secured by a registered mortgage, all other security documents are unregistered and unstamped. So, no valid enforceable security interest is created by the said records. Further Applicant No.2 was neither a borrower nor a guarantor to the 2nd sanctioned facility. The demand notice issued by respondent are invalid for want of details under Section 13(3). Applicant No.2 is not a party in the Section 14 proceedings, and the order passed by Ld. Magistrate is illegal in allowing the attempt of the respondent, to enforce multiple causes of action, through a single proceeding and by misrepresentation.

9. Respondent contends that, there is no denial to the availing of loan,

default and initiation of proceedings by respondent on the loan accounts becoming NPA. The applicant, who had defaulted in paying public money, to the tune of Rs.17 crores, cannot be allowed to go scot free. Both applicants are borrower and co-borrower in all the loans. All the proceedings are completed by respondent, in accordance to rules and so the contentions of the applicants are only to be dismissed.

10. Heard both sides.

11. According to the applicants, Applicant no. 2 was neither a borrower nor guarantor to the 2nd facility for Rs.3,50,00,000/- but she had guaranteed the 3rd sanction facility for Rs.2,00,00,000/- and was a co borrower to the 4th facility for Rs.1,50,00,000/-. She had executed the mortgage deed on 20.06.2014, in her capacity as co-owner of the property under the Portuguese Civil Code, despite the fact that she is neither a borrower nor guarantor to the 1st credit facility for Rs.50,00,000/-. The deed of further charge executed by applicants on 06.06.2014 for 3rd and 4th facility, and on 05.07.2014, for the 2nd facility, in favour of Respondent/bank, cannot be considered, as they are not registered. So the charges therein are unenforceable.

12. Perusal of records furnished by respondent/bank, and which are not produced by applicants, shows that, the contention of applicant that Applicant No.2 is not a borrower nor guarantor cannot be accepted. In all the sanctioned facilities dt.24.05.2014, 26.05.2014, 09.06.2014, 23.05.2016, and renewal deed dt.17.05.2016, Applicant No.2 is seen to be a co-applicant/co-borrower.

13. The loan application dt.02.05.2014 shows that, Applicant No.2 is a co-applicant therein, and the sanctioned loan on 24.05.2014 shows that, Applicant No.2 is a signatory therein. The renewal deed dt.17.05.2016, for the first sanctioned facility shows that, Applicant No.2 is a co-applicant. It is seen that, the form dated 02.05.2014 for furnishing information to be supplied by co-applicant, bears the name of applicant No.2, and that she is a signatory in the said form.

14. The renewal agreement for the said loan of Rs.50,00,000/- (Rupees Fifty lakhs only) is seen executed with the bank by both applicant No.1 and applicant No.2 whose names are stated in column No.1 of the agreement. Column No.8 of the said agreement shows that, both applicants are signatories therein as borrowers. The indemnity bond dt. 07.06.2016 and the hypothecation of goods to secure the loan, and the promissory note enclosed are all signed by both applicants as 1 and 2.

15. So the contention of applicants that, the liability of applicant No.2 initiated, only from renewal of the first facility granted, cannot be accepted in view of the original loan application signed by applicant No.2 on 02.05.2014, which liability is seen to have been continued, in the renewal agreement dt. 07.06.2016.

16. The documents furnished, alongwith the reply by respondent/bank, shows that, the contentions of the applicants that, applicant no. 2 Maria, w/o Applicant no.1 Alexo, is not a borrower or guarantor is incorrect. As stated above, the application form for loan furnished to Respondent/bank on 02.05.2014 shows that applicant no. 1 is the

principal borrower and Applicant no. 2 Maria is the co-applicant cum guarantor to the said loan granted to applicant No. 1 on 02.05.2014. She is seen to have furnished, and signed the co-applicant form on 02.05.2014.

17. The second loan dated 26.05.2014 for Rs.3.5 crores shall be addressed. Now, the document produced by respondent/bank alongwith the reply shows that, applicant no.1, applicant no.2 and two guarantors have signed therein. The sanction letter, bearing GSCB/ L and A/ free Com/ 2014-2015/ Section 17 sanctioning Rs. 3.50 crores shows that both applicants are signatories therein. The agreement dt. 04.07.20214 for the loan of Rs.3.5 crores, entered into by applicant no. 1 and applicant no.2 (Maria) with the bank, in column No.6 shows that the property as Compasta is pledged by them, for the said loan.

18. In column No. 8 of the said form, shows that, applicant No.2 Maria is a coapplicant therein, along with applicant No. 1. Both seem to be signatories in the affidavit also in the deed of hypothecation of machinery, in the deed of hypothecation of goods for the loan of Rs.3.50 crores.

19. Though the aforesaid pledge is admitted by applicants also, their contention is that, applicant no. 2 Maria had signed in the said document, as she also was having co-ownership right over the said property. The said contention is seen to be incorrect as per the signature affixed by applicant no. 2 in the column 8 of the loan agreement, stating her as a co-applicant, undertaking to be jointly and severely liable to the bank, for due repayment of loan. She is seen to be

a signatory in the promissory note dated 04.07.2014 alongwith applicant no. 1 and two other guarantors, for the repayment of Rs.3.50 crores.

20.The affidavit dated 05.07.2014 prepared by Applicant no. 1 and applicant no. 2, for availing the aforesaid loan, states that, they have been sanctioned this loan, and the deed of hypothecation is seen signed by them. So the contention of the applicants that, Applicant no. 2 was never a borrower for the 2nd loan of Rs.3.50 crores is seen to be incorrect.

21.Now the 3rd sanction for Rs.2crores on 09.06.2014 shall be considered. The agreement for the loan shows the name of applicant no. 1 as borrower. She is seen to have signed the said loan agreement, alongwith applicant no. 1, and two other guarantors. There also, para no. 8 of the loan application shows that, she has signed as co-applicant alongwith guarantors. The indemnity bond/promissory note, the deed of hypothecation of machines, hypothecations of goods for the loan, and the irrevocable power of attorney in favour of banks are seen signed by both applicants.

22.Now the last loan dt. 23.05.2016 for Rs. 1.50 crores shall be continued. Both the applicant are seen to be the borrowers therein. The loan agreement, and column No. 8 therein, show both the applicants as 1 and 2 as the borrowers. The demand promissory note dt. 08.06.2016 for the said loan, continued guarantee deed dt. 08.06.2016, deed of hypothecation of machinery, deed of hypothecation of goods dt. 08.06.2016, the irrevocable power of attorney in favour of bank, are all seen signed by both the applicants herein.

23. The applicants do not offer any explanation for the aforesaid records offered by respondent/bank which show that both applicants as applicant no. 1 and applicant no. 2 are borrowers to the financial facilities availed for all the loans stated above. So the contention of the applicants that, applicant no. 2 is not a borrower or guarantor to the said loans cannot be accepted. The contentions of respondent/bank that, the act of the applicants in deliberately suppressing the fact of execution of these records, wherein, both are seen to be borrowers, amounts to wilful suppression of material facts, cannot be ignored.

24. It is next contended by the applicant that, demand notices issued are bad in law, as they do not disclose the NPA date, do not provide the breakup, floating rate of interest and do not mention the facility u/s13(8), and do not bear the name of the signatory as the authorised officer. The 1st demand notice is not addressed to Applicant No.2 and mere stating of service by 'cc' is not good service.

25. It is the stand of applicants that, notice issued by respondent to repay the outstanding overdues, and the notice under Section 13(2), are wrongly issued to Applicant No.2. From the discussion made above, it is seen that Applicant No.2 is a borrower along with Applicant no.1 in all the loan facilities granted and had also guaranteed the same. So, the contentions that the notices are wrongly issued to Applicant no.2 cannot be accepted.

26. Applicants contend that, after marriage as all items of properties are jointly owned by both spouses in accordance to Portuguese Civil

Code, even though property may be jointly owned, separate 13(2) notice is required to be issued to each spouse. No notice is addressed to applicant no. 2. Simply noting her as 'cc' therein, is not a good service of notice.

27. It is pertinent to note that, none of the objections to the notices now raised by the applicants, are seen stated in their reply to Section 13(2) notice. The said reply merely states about waiving of penal interest, extension of moratorium upto October 2018, rescheduling of monthly instalments, and reduction of interest rate from 13% to 9%. The grievances for the notices are seen raised only at the time of hearing and in the argument notes by the applicants. As applicants did not raise the grievances now made, even in their reply, it must be stated that they had waived their objections, which cannot now be allowed to be raised by them.

28. The demand notices issued show that the loan accounts have been declared NPA, mentions the recall notice dated 16.10.2017, direct to pay the entire amount plus interest and state the principal outstanding amount, outstanding EMI, the additional interest and the rate of interest. The notice is stated to be signed by Mr. Malla Fernandes, as the authorised officer as per clause 10 of the notice. The demand notice dated 30.01.2018 is addressed to applicant, and to guarantors, including Applicant no. 2.

29. The objections now raised to the notice, are seen to be new factual objections, as they are not seen stated in the reply sent by applicants to them. The same therefore have to be treated as unpleaded objections.

All objections to the notice must be stated in the reply because, the secured creditor is obligated to apply its mind to them. Failure to plead a crucial objection in the reply, results in the secured creditor lacking notice of the same and so they now cannot be allowed to be raised at the stage of arguments.

30.The reply to the notice is signed by applicant no. 1 and there is no averment that, applicant no. 1 is replying for applicant no. 2. The notice states, the loan agreement, terms of payment, monthly instalment and NPA clarification in para 03. The notice sent by registered post in the name of applicant no. 2 and the acknowledgement card produced by respondent shows the name of applicant no. 2. So without raising any such objections earlier, in the reply by the applicants, now the applicants cannot be allowed to raise such points at the stage of arguments.

31.It is the admitted case of applicants that, they had executed a mortgage deed with respect to the property as Composta and applicant no. 2 is also a mortgagor alongwith applicant no. 1. As stated above, the contention of applicants that Applicant no.2 is not a borrower or guarantor to any of the loans is found against them. As is seen from the records produced and the acknowledgment card produced in the name of applicant no.2, applicants cannot stick to the contention that, no notice was given to applicant no.2.

32.If a carbon copy is seen noted for Applicant No. 2 in notice to Applicant No. 1, it merely stated that Applicant No. 2 is also made aware of the notice directed at Applicant No. 1. Even otherwise both

Applicant No. 1 and Applicant No. 2 being co-owners to the secured premises herein, and both them availing loan as is seen from the loan documents produced by Respondent/bank, it must be taken that Applicant No. 2 was aware and was conscious of all proceedings initiated in the matter. It is not normal to accept that, even if a carbon copy of the notice is marked to Applicant No. 2, she would remain passive, without making any enquiries to her husband as Applicant No. 1, about it.

33. In Prabin Ram Vs State of Assam Hon'ble Apex Court highlighted the crucial legal distinction between, the complete non-service of notice and a mere procedural irregularity in service of notice. The Hon'ble Supreme Court outlined that, if a person already has actual knowledge of the proposed action, any action taken, cannot be invalidated simply, by pointing out technical procedural lapses in the service of notice.

34. Applying the dictum laid down by Hon'ble Apex Court in Prabin Ram Phukan Vs State of Assam, (2015) 3 SCC 605, Applicant no.2, who had signed the records as mortgage deed, alongwith Applicant no.1, loan records of all the facilities and the renewal deed, should be stated to be aware of the proceedings and must be stated to be having actual knowledge of the intended action by respondent. This is more so as Applicant no.2 is the wife of applicant no.1. So the contention that she was not served with the notice under Section 13(2) SARFAESI Act cannot be accepted.

35. It cannot be expected that a wife, as applicant No.2 who had signed in

the loan records and mortgage deed for property, would remain passive, without attempting to get any clarification on the point from her husband as applicant No.1, as to why a copy of a notice to her husband is marked to her. The contention now offered that, applicant no. 2, was not aware of the proceedings, are not in accordance with the ordinary course of common conduct, particularly when the parties are seen to be spouses.

36. It is contended by the applicants that without complying Section 13(3A) respondent/bank had proceeded for symbolic possession. It is seen that the reply under Section 13(3A) was made by registered letter dated 07.05.2018 which is seen returned unclaimed which is seen as good service. The contention of respondent that the same issue was raised earlier before this Tribunal on 23.10.2023 and 01.12.2023, and on production of the A/D receipt by respondent, to show that objections were responded to by respondent, is not seen denied by the applicants.

37. The version of respondent that, the copy of the response by the bank and the A/D card were handed over to applicants is also not now seen denied by the applicants. So, the contention of the applicants that symbolic possession was taken before complying with Section 13(3A) is seen to be incorrect.

38. The applicants next contend that, the order passed by Ld. Magistrate. Under Section 14 SARFAESI Act is not proper. According to applicants, applicant no.2 is not a party in the proceeding and multiple and distinct causes of actions are attempted by a single

Section 14 application which is not permissible. It is pertinent to note that, no allegations are levelled against the order Under Section 14 SARFAESI Act in the SA filed by the applicants.

39. Applicants are against the order of Ld. Magistrate Under Section 14 on two grounds. One is that, applicant no.2 who is admittedly a co-owner of the premises is not a party in the application. Further as according to applicants, if the case of respondent is that applicant no.2 is a borrower, then she ought to have been a party in the section 14 proceedings. So the order obtained under Section 14 without impleading her as a necessary party is a nullity.

40. It is to be noted that, Section 14 order is intended to assist the secured creditor in taking physical possession of the secured premises. As the notice under section 13(2) is already served on both applicants and as applicant No.2 is seen to be fully aware of the proceedings initiated by bank, the omission to include Applicant No.2 in the cause title of the Section 14 petition is not fatal to the proceedings. Section 14 does not require the borrower to be made a necessary party as there is no hearing in the proceedings. As stated earlier, the SA does not state any objection on the Section 14 order. So, the contention of the applicant that A2 is not a party to Section 14 proceedings cannot be fatal to the proceeding.

41. The core requirement is whether all borrowers have received Section 13 (2) demand notice. Despite the denial by the applicants that A2 is not in receipt of notice the records produced by the respondent show that the borrowers were served with notice and that both borrowers

were fully aware of the intended proceedings by the respondent. The action of Ld. CMM is an administrative non-adjudicatory capacity under Section 14, and his duty is only to verify the lender's affidavit confirming that, statutory steps were followed and not to adjudicate the dispute. So non inclusion of all borrowers in the cause title of Section 14 application is not detrimental to the case of the respondent.

42.The powers executed by the Ld. Magistrate under Section 14 SARFAESI Act are only ministerial steps and as stated above are not adjudicatory. As is directed in the dictum of the Hon'ble Apex Court in Balkrishna Rama Tarle (Dead) The LR's & Anr Vs Phoenix ARC Private Ltd & Ors (2023) 1 SCC 662, once all requirements under Section 14 of the SARFAESI Act are compiled with by the secured creditor, it is the duty cast on Ld. Magistrate to assist the secured creditor in obtaining the possession. At that stage Ld. Magistrate is not required to adjudicate the dispute between the borrower and the secured creditor. So in this case as there is no adjudication intended, by Ld. Magistrate, the non-mentioning of Applicant no.2 in the cause title of Section 14 proceedings is not 'detrimental' to the case of the respondent.

43.The next objection raised by applicants is inclusion of multiple cause of action in a single Section 14 proceedings. This argument also will not survive. Here, the parties to all the loans are one and the same. The mortgage is executed for a property which is jointly owned by them, for the amounts sanctioned on different dates to them. The secured creditor is also the same entity. So the loans granted to the same parties on different dates by the same creditor, for different amounts, on the same security cannot be said to be independent transactions for the purpose of proceedings under Section 14 SARFAESI Act.

44. The guidelines by Reserve Bank Of India and judicial guidelines mandate that, banks initiate recovery proceedings borrower-wise, rather than facility-wise. If the borrowers debts and property are identical, the facts disclose a single cause of action. To avoid claims of duplication, it is only proper that multiple loan accounts be combined to a single Section 14 application provided the underlying collateral is the same. Here as all the borrowers, secured creditor and the collateral of mortgage remain the same, the combination of different loans on them, on different dates cannot be stated to be improper for Section 14 proceeding.

45. Another contention raised by applicants is that, the deeds of further charges dated 05.07.2014 and 06.06.2016 are unregistered records and hence cannot be admitted in evidence. According to the applicants, the English mortgage executed on 20.06.2014 for the 1st facility cannot be extended to or secure any subsequent facilities unless expressly and validly extended through a registered document. The registered English mortgage did not secure the subsequent facilities.

46. The applicant again contends that, the unregistered documents, record, the quantum of sanctioned facilities, rate of interest and the obligation to respondent. This deed of further charge does not record a past transaction, but evidence the terms of the transaction between the parties, and form an integral part of the transaction. So the same ought

to be registered under Section 17 of Registration Act and so the said records for want of registration are inadmissible.

47.According to the applicant if the mortgage deed records terms and conditions, it has to be registered. All three mortgages being the same, they state the terms of the transaction. But only the 1st sanction is registered. The rest of the documents are not registered and so the debt therein cannot be stated to be a secured debt. So SARFAESI Act cannot apply to those debts.

48.The said contention of applicants cannot be accepted. The deed of further charge mentions that, English mortgage dated 20.06.2014 is duly registered in the office of Sub-Registrar. Loan is obtained on the deposit of title deeds of the property described in the schedule. It also states about the loan application dated 24.05.2014 and about the additional loan of Rs.3.5 crores. The averment in Clause (12) of the deed specifies that the deed of further charge does not require registration.

49.The deed of further charge dated 06.06.2016 states about the deed of English Mortgage dated 20.06.2014 and the deed of further charge dated 05.07.2014 for the additional loan of Rs.2cores, and Rs.1.5 crores. The property scheduled by the English mortgage dated 20.06.2014 is secured for payment of subsequent charge. There is no effective denial to the contention of respondent that, it is exempted from payment of stamp duty as per notification published in Official Gazette Series 11 no. 15 dated 10.07.2003.

50.Here, charge was created for the property in question by deposit of title deeds for the premises as Composta. The contention of the respondent that, this does not require registration under Section 17 Registration Act on the further charge has to be accepted. A charge already registered does not require re-registration of the same charge on the property, which is already registered.

51. The applicants next urge that, the respondent had not registered its charge with the Central Registry, prior to taking SARFAESI measures against them. Section 26D of SARFAESI Act, bars enforcement of security interest unless it is duly registered with Cersai. Hence according to the applicants all enforcement actions taken prior to the Cersai registration are illegal.

52. The respondent contends that, the Cersai registration was not compulsory prior to 24.01.2020. But after necessary formalities, it was registered on 30.05.2022. Such a contention is not stated or raised in SA and the said point is raised by way of pursis, which was allowed only in part, as per order dated 23.10.2023 by this Tribunal.

53. The contentions of the applicants cannot be accepted as such. It is seen that, the initiation of SARFAESI measures by respondent will be valid, even if Cersai registration is effected subsequently. It is to be taken only as a curable irregularity, rather than as an illegality, that vitiates the entire process.

54. When banks initiate recovery steps prior to registering the charge, the subsequent registration of the security interest, serves to cure the procedural defect. Measures taken, prior to coming of Section 26D into operation, do not vitiate subsequent proceedings, provided the

security interest is registered, with Cersai, before enforcement of the actual action takes place. Registration is a mandatory procedure, but belated registration can cure initial defects if any.

55.If the initial measures such as issuance of demand notice under Section 13(2) SARFAESI Act, and taking symbolic possession under Section 13(4) were initiated and completed before Section 26D came into force, those initial steps are to be held as legally valid under the framework, which existed at that time. They do not get automatically vitiated simply because the Cersai Registration requirement was not yet in effect at that time.

56.When proceedings progress to final enforcement, i.e. steps such as finalising a sale, or an auction, after Section 26D is in active operation, then the secured creditor must have the security interest registered with the Cersai. As stated above, belated Cersai registration obtained before the final step does not vitiate the underlying SARFAESI proceedings.

57.Here in this particular case, the notices under Section 13(2) SARFAESI Act are dated 30.01.2018, 23.02.2018 and the steps for symbolic possession are initiated on 10.08.2018. Section 26D SARFAESI Act came into force with effect from 24.01.2020. So the validity of these steps taken on 30.01.2018, 23.02.2018 and 10.05.2018 cannot be considered on the basis of a mandate, which was absent on the said dates, and which had come into operation nearly 02 years later to the said steps.

58.Applicant contends that, Section 14 application is filed before Ld.

Magistrate by the respondent on 19.05.2020 when there was no Cersai Registration. This can be taken only as a curable irregularity rather than as a fatal illegality, as the borrower herein admits the liability and the bank has ultimately registered the charge. No satisfactory material is established by the applicants to bring out the actual prejudice caused by the belated registration of Cersai charge.

59.Further the physical possession intended to be effected on 26.10.2021 had been adjourned. As stated earlier the SA is silent on the lack of Cersai charge. As is directed by Hon'ble High Court New Delhi in the dictum laid down in Captain Raminder Singh Wadhwa VS Axis Bank Ltd & Ors. (2024) SCC Online Delhi 4269; the delay in registering the transaction of security interest on the Cersai portal by bank, does not extinguish its right to enforce its claims under the SARFAESI Act. So the contention raised by applicants on that ground also cannot be accepted.

60.None of the points urged by applicants stand established in any manner. So as the applicants have not established a valid cause of action for them, it has to be held that they are not entitled to the relief sought for by them in this application. These points are found against the applicants.

<u>Point 4 and 5</u>

61. The applicant no.1 is seen to have issued a notice demanding a sum of Rs. 2 crores each from respondent/bank, for loss of reputation and mental agony and harassment by respondent. This Tribunal has no competency to pass any order under any of the claims made by the

applicant. Such an aspect is to be decided by the Civil Court. This Tribunal is expected to verify only the validity or defects, if any, in any of the measures adopted by respondent in the recovery proceedings. Decision on any other points such as for claim for damage, mental agony etc are outside the competency of this Tribunal. So the said claim by applicant No.1 is not being considered.

62.None of the contentions of the applicants raised in this petition stand established in any manner and hence they are dismissed. Parties to suffer costs.

63.The petition as SA 41 of 2020 is dismissed.

64.Parties to suffer costs.

(Dictated to my Stenographer, transcribed by her corrected and signed by me and pronounced in open forum on 10.08.2026)

Presiding Officer
Debts Recovery Tribunal,
Mumbai-I
(Sreekala Suresh)

Date: 10.08.2026