IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

CO. 3021 OF 2025

M/S. JAINCO PROJECTS (INDIA) LIMITED
VS.
UCO BANK & OTHERS

For the Petitioner	: Mr. Dwaipayan Banjeree, Adv. Mr. AhaRnish Ghosh, Adv. Mr. Tarupriyo Roy, Adv.
For the Bank	: Mr. Shashwat Nayak, Adv. Ms. Antalina Guha, Adv. Ms. Shinjita Ray, Adv. Ms. Sweta Barman, Adv.
Heard on	: 20.05.2026
Judgment on	: 20.05.2026

OM NARAYAN RAI, J.:-

1. This revisional application under Article 227 of the Constitution of India is directed against an order dated July 11, 2025 passed by the learned Debts Recovery Appellate Tribunal (hereafter "DRAT") at Kolkata in Misc. Appeal Diary No. 494 of 2025. By the said order the petitioner's application praying for waiver of the pre-deposit required to be made under Section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter "SARFAESI Act, 2002") was disposed of by directing the petitioner to make a pre-deposit of 50 per cent of Rs. 4.95 crore which is stated to be debt due as on the date of the order.

2. The petitioner had availed of certain credit facilities from the opposite party no. 1. Upon the petitioner defaulting on repayment of the said credit

facilities, the petitioner's loan account was classified as a Non-Performing Asset. Thereafter, the opposite party no. 2 initiated action under SARFAESI Act, 2002. Assailing such action of the opposite party nos. 1 and 2 the petitioner has approached the Debts Recovery Tribunal, Kolkata (hereafter "DRAT") by filing SA 109 of 2019 (hereafter SA).

3. In the said SA, the petitioner filed two interlocutory applications being IA 725 of 2025 and IA 726 of 2025. IA 725 of 2025 was an application praying for setting aside an auction sale notice.

4. IA 726 of 2025 was an application seeking the following directions:-

> *"a) For direction on the bank to send or issue the principal OTS Approval annexed with the said Circular being No. HO Circular No. CHO/RCR/09/21-2022 or implement the said circular dated 27/07/2021 towards settlement and in compliance of solemn order of the Ld. Tribunal as well as in compliance of the said directive to settle the account under the said circular under which the applicant has many times applied for settlement of the account;*
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> *b) To keep the upfront amount of Rs. 70 Lacs in FD account without any lien until refund the same to the petitioner along with upto date interest;*
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> *c) And to pass such other order orders as the Hon'ble Tribunal may deem fit and proper."*

5. IA 726 of 2025 was disposed of by the DRT by an order dated March 20, 2025 observing that proposal for OTS and settlement were matters between the borrower and bank where DRT had "*nothing to do*". By the said order the DRT left the matter to the bank to take a decision.

6. Assailing the said order, the petitioner approached the DRAT by filing the aforesaid appeal. In the said appeal, the petitioner filed an application praying for waiver of the condition of pre-deposit under the second proviso to Section 18(1) of the SARFAESI Act, 2002 which was disposed of by the order impugned.

SUBMISSIONS OF THE PETITIONER:

7. Mr. Banerjee, learned advocate appearing for the petitioner submits that since the order dated March 20, 2025 passed by the DRT is a procedural order therefore, the petitioner could not have been directed to make any pre-deposit in terms of the second proviso to Section 18 of the SARFAESI Act, 2002.

8. In support of his contention, he relies on a judgment of the Hon'ble Supreme Court in the case of ***Sunshine Builders and Developers vs. HDFC Bank Limited & Others***[1].

SUBMISSIONS OF THE OPPOSITE PARTY NOS 1 & 2:

9. Mr. Nayak, learned advocate appearing for the opposite party nos. 1 and 2 submits that the order dated March 20, 2025 passed by the DRT is not a procedural order at all. He submits that by the interlocutory application, the petitioner had prayed for a direction upon the bank to implement its One Time Settlement (OTS) circular in the petitioner's favour; hence the prayer made therein cannot be said to pertain to a procedural aspect. He submits that the petitioner had claimed a substantive relief through the said application.

10. Mr. Nayak invites of this Court to the observations of the Hon'ble Supreme Court at paragraph 15 of the aforesaid judgment in ***M/s. Sunshine Builders and Developers*** (supra) and submits that the same were *prima facie* observations.

11. He next relies on a judgment of the Hon'ble Division Bench of the Hon'ble Bombay High Court in ***M/s. Sunshine Builders and Developers vs. HDFC***

[1] Civil Appeal No. 5290/2025, Special Leave Petition (Civil) No. 10875/2025, Diary No. 13444/2025, decided on April 17, 2025

Bank Limited[2] and submits that upon the matter being remanded to the Hon'ble Bombay High Court by the judgment and order dated April 17, 2025 passed by the Hon'ble Supreme Court in the case of ***Sunshine Builders and Developers*** (supra), cited by the petitioner, the Hon'ble Bombay High Court reheard the matter and held that orders refusing to condone delay and implead auction purchasers in the pending SARFAESI application are not procedural orders.

12. It is further submitted that the judgment of the Hon'ble Bombay High Court ***M/s. Sunshine Builders and Developers*** (supra) was carried in SLP before the Hon'ble Supreme Court which stood dismissed on March 20, 2026.

ANALYSIS & DECISION:

13. Heard the learned advocates appearing for the respective parties and considered the material on record.

14. In the case of ***Sunshine Builders and Developers*** (supra) the Hon'ble Supreme Court had observed as follows:-

> *"**15.** We are of the view, of course prima facie that the expression "any order" should be given some meaningful interpretation. Should any and every order that may be passed by DRT, if sought to be challenged, be made subject to pre-deposit?*
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> ***16.** One can understand that if any final order is passed by the DRT, determining the liability of the borrower or any other liability of any person, and an appeal is preferred under Section 18 of the SARFAESI Act to the appellate tribunal, the provision of pre-deposit would come into play. However, what would be the position if an order like the one passed in the present litigation, i.e., declining to implead the auction purchaser in the pending proceedings before DRT is concerned?"*

15. The aforesaid observations were made in the context of a case where DRT had refused the applicant's prayer to condone delay and implead the auction purchaser.

[2] Writ Petition No. 3929 of 2024, decided on February 06, 2026

16. By the order dated March 20, 2025 passed by the DRT, the petitioner's prayer for a direction upon the bank *inter alia* "*to send or issue the principal OTS Approval annexed with the said Circular being No. HO Circular No. CHO/RCR/09/21-2022 or implement the said circular dated 27/07/2021 towards settlement*" has been rejected. Such an order, in the considered opinion of this Court cannot be said to be a procedural order.

17. It is not in dispute that the petitioner is the borrower and that it has defaulted on repayment of loan. A direction to the bank to implement a scheme for one time settlement in support of a borrower would amount to alteration of the debt due to the bank. In such view of the matter, it cannot be said that an order whereby a prayer seeking implementation of an OTS Circular or Scheme in favour of a borrower has been rejected, is merely procedural in nature. The application if allowed would have interfered with the core substratum of loan, and having been refused has left the loan liability as it is. The DRT order does not merely manage court timelines or case progression or the like which would make it procedural. Instead, it disposes of a substantive plea of the borrower. This Court is therefore unable to come to the conclusion that the order dated March 20, 2025 passed by the DRT is a procedural order.

18. It is well settled that even if an appeal is carried to DRAT against an interlocutory order, passed by the DRT, the borrower is required to make the statutory pre-deposit in terms of Section 18(1) of the SARFAESI Act, 2002. This aspect was considered by the Hon'ble Supreme Court in the case of ***Union Bank of India vs. Rajat Infrastructure (P) Ltd.*** and the legal

position stated in the case of ***Narayan Chandra Ghosh v. UCO Bank***[3] was reiterated thus:-

> *"**9.** We may make it clear that we are not going into the merits of the case in view of the fact that we agree with the High Court that the matter must be decided by DRAT. The only issue is whether the High Court was right in holding that no pre-deposit was required. We may refer to Section 18 of the SARFAESI Act, which reads as follows:*
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> *"**18. Appeal to Appellate Tribunal**.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under Section 17, may prefer an appeal along with such fee, as may be prescribed to an Appellate Tribunal within thirty days from the date of receipt of the order of the Debts Recovery Tribunal:*
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> *Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:*
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> *Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:*
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> *Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso."*
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> ***10.** This Court in Narayan Chandra Ghosh v. UCO Bank, held that keeping in view the language of Section 18 even if the amount or debt due had not been determined by DRT, the appeal could not be entertained by DRAT without insisting on pre-deposit. DRAT, at best could, after recording the reasons, have reduced the amount to 25% but could not have totally waived the deposit. This Court also held that the right of appeal conferred under Section 18(1) is subject to the conditions laid down in the second proviso therein which postulates that no appeal shall be entertained unless the borrower has deposited 50% of the amount of debt due from him as claimed by the secured creditors or determined by DRT, whichever is less. The third proviso enables DRAT, for reasons to be recorded in writing, to reduce the amount of deposit to not less than 25%.*
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> ***11.** The following observations of this Court in Narayan Chandra Ghosh case are relevant:*
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> *"7 … Thus, there is an absolute bar to the entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be*

[3] (2011) 4 SCC 548

entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity."

12. *In view of the law laid down by this Court, we are clearly of the view that the observation made by the High Court was totally incorrect.*

13. *We are not in agreement with the submission of Mr Chaudhri that the High Court has exercised its discretionary powers under Article 226 of the Constitution. The order of the High Court does not show any exercise of such discretionary powers but according to the High Court on an interpretation of the section, pre-deposit was not required. We are also not impressed with the argument of Mr Chaudhri that his client is not a borrower. A guarantor or a mortgagor, who has mortgaged its property to secure the repayment of the loan, stands on the same footing as a borrower and if he wants to file an appeal, he must comply with the terms of Section 18 of the SARFAESI Act.*

14. *Furthermore, we may add that the High Court has no powers akin to powers vested in this Court under Article 142 of the Constitution. The High Court cannot give directions which are contrary to law."*

19. The aspect that the aforesaid order had been passed by the Hon'ble Supreme Court in the context of a challenge thrown before the DRAT to an interlocutory order passed by the DRT will be evident from the facts noted by the Hon'ble Supreme Court in paragraphs 1 to 12 of the sequel/sister case of, ***Union Bank of India vs. Rajat Infrastructure (P) Ltd***[4].

20. In such view of the mater the observations of the Hon'ble Supreme Court in the case of ***Sunshine Builders and Developers*** (supra) cannot be successfully relied upon by the petitioner in support of its present case.

21. Given the fact that the petitioner itself is the borrower and that the only reason cited by the petitioner to seek a waiver of pre-deposit in its application is that the underlying SA is pending adjudication and the appeal before DRAT *"has been filed for proper adjudication of RBI circular and Bank's own binding OTS and NDND Scheme which is binding on the bank",*

[4] (2023) 10 SCC 232

there was hardly any material before the DRAT to pass an order different from the one impugned herein.

22. For all the reasons aforesaid, this Court does not find any reason to interfere with the order passed by the Debts Recovery Appellate Tribunal.

23. CO. 3021 of 2025 stands dismissed. There shall be no order as to costs.

24. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)

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