IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1594 of 2017

UCO Bank (formerly known United Commercial bank)
Vs.
Madhuri Gupta also known as Jaiswal (since deceased) represented by her legal heirs, Ashish Gupta @ Bunty & Ors.

For the Petitioner	:	Mr. Sourya Roy
For the opposite party No. 1(a)	:	Mr. Supratic Roy Mr. Shuvajit Roy
Heard on	:	28.01.2026
Judgment on	:	15.05.2026

Dr. Ajoy Kumar Mukherjee , J.:

1. In this Application, UCO Bank has assailed an order dated March 30, 2017 passed by the Debts Recovery Appellate Tribunal at Calcutta(in short DRAT) in Appeal No. 442 of 2013 arising out of SA No. 722 of 2011. By the said order, DRAT dismissed the bank's appeal and affirmed the order of the Debts Recovery Tribunal, Kolkata(in short DRT) dated November 7, 2013, by which he allowed opposite party no. 1's application filed under section

17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(in short SARFAESI Act of 2002). Said application under section 17 was filed challenging a notice under section 13(2) dated April 26, 2010 and a possession cum sale notice dated July 29, 2010 issued by the Bank.

2. While answering the question as to whether notice under section 13(2) was issued in accordance with SARFAESI Act of 2002 or not, DRT held that the bank failed to establish that its mortgage right/security interest was not time barred under Article 62 of the Limitation Act 1963(in short Act of 1963) either before the mortgage suit was filed or before the notice under section 13(2) was issued and it was held that the notice was not in accordance with the provision of the SARFAESI Act of 2002 and the bank is not entitled to initiate action under the SARFAESI Act of 2002 for enforcement of mortgage, since the claim of the bank is time barred, within the meaning of Section 36 of the Act of 2002 read with Article 62 of the Act of 1963.

3. The DRT further set aside the possession cum sale notice dated July 29, 2011 including the sale conducted by the authorized officer of the bank in furtherance to such notice. The bank was directed to refund the sale price along with interest applicable to term deposits to the purchaser within a period of 45 days of the order, subject to the purchaser joining with the defendant/bank in cancelling the conveyance deed.

4. Aforesaid order of the DRT was challenged before DRAT in an appeal filed by the bank, which was dismissed by the impugned order dated 30th March, 2017.

5. Being aggrieved by the aforesaid orders learned counsel for the petitioner Mr. Roy submits that the bank instituted a suit in the Barasat Court on February 29, 1992. The suit was for enforcement of mortgage under the provision of Order XXXIV of CPC. The petitioner herein as plaintiff claimed for a declaration that the suit properties being the immovable properties described in scheduled II of the plaint remain mortgaged to the plaintiff as security for payment of the plaintiff's claim. The petitioner herein also claimed decree under Order XXXIV, Rule 4 of CPC in respect of the mortgaged/scheduled mentioned properties. The averments in the plaint clearly demonstrates that the petitioner relied upon the balance sheet as on June 30, 1988, signed by the first defendant and in the said balance sheet, the claims of the petitioners have been acknowledged and admitted within the period of limitation and such suit was for enforcement of mortgage but both the DRT and DRAT failed to appreciate the factum of institution of suit under order XXXIV of CPC within the period of limitation, which has a direct bearing on the secured creditor's right to take all or any of the measures under Section 13 and more particularly under Section 13(4), of the Act of 2002.Therefore the embargo in Section 36 of the Act of 2002 that a secured creditor shall not be entitled to take all or any of the measures under section 13(4) unless such secured creditor has lodged a claim in respect of the financial assets within the period of limitation, did not apply to the petitioner/bank. In support of such contention petitioner relied upon a judgement passed by the Division Bench of the High Court of Delhi reported in **2012(129) DRJ 654** ***(Somnath Manocha Vs Punjab and Sind Bank and another).***

6. He further argued that here the petitioner bank lodged its claim in respect of the financial assets being the mortgaged assets within the period of limitation which is evident from the suit and therefore the measures taken by the petitioner bank under section 13(2) and 13(4) of the Act of 2002 are well within the period of limitation and the same ought not to have been set aside by the DRT or DRAT.

7. Therefore the finding that measures taken by the bank under Section 13 of the Act of 2002 was barred by law cannot be applied to the facts of the present case. The mortgaged property stands sold in public auction in favour of Smt. Nivedita Ghosh. Therefore the petitioner/bank has prayed for setting aside the aforesaid orders passed by DRT and DRAT.

8. Learned counsel appearing on behalf of opposite party no 1(A)argued that the concurrent findings of DRT and DRAT that the proceeding under the Act of 2002 are time barred, are well reasoned and disclose no jurisdictional error or perversity or illegality warranting interference of supervisory jurisdiction, to be invoked under Article 227 of the Constitution of India. Section 36 of the Act of 2002 expressly provides that no secured creditor shall take any measure under Section 13(4) unless the claim in respect of the financial asset is made within the period of limitation prescribed under the Act of 1963. For enforcement of payment of money secured by a mortgage or charge upon immovable property, Article 62 of the Act of 1963 prescribes a period of 12 years from the date when the money becomes due. In the present case, the dues crystallized and the accounts become NPA by 31.12.1991. The 12 year limitation expired on 31.12.2003. Even if the acknowledgement in the balance sheet signed on

25.01.1990 is taken into account, limitation got expired by 25.01.2002. The Section 13(2) notice issued on 26.04.2010 is therefore hopelessly time barred.

9. He further argued that the petitioner tried to demonstrate that his claim is in respect to the secured asset but as soon as the suit got transferred under section 31 of the Recovery of debts due to Banks Financial Institution Act, 1993 (in short Act of 1993), the suit lost its nature and is now pending as a simple money claim, under section 19 of the Act and as such no suit and/or claim is pending as against the secured asset before any court of law from the date, the suit got transferred to DRT in 1996.

10. Referring the decision passed by this High Court in ***Dr. Dipankar Chakraborty Vs. Allahabad Bank and Ors.,*** **WP No. 16511(W) of 2016,** (supra), he further contended that the issue of limitation under section 36 of the Act of 2002 is independent of any proceeding pending under the Act of 1993 and pendency of a recovery application under section 19 of the Act of 1993 does not stop or extend the running of limitation for measures to be taken under the SARFAESI Act 2002. Said Act provides a new means of enforcing a pre-existing right i.e. the right to sell mortgaged property and recover the secured sum. If that pre-existing mortgage enforcement right stands extinguished by efflux of time, under Article 62 of the Act of 1963, it cannot be revived by invoking provision under the Act of 2002. Since the Bank had not enforced the mortgage within the 12 year limitation period, the right got extinguished.

11. Relying upon the judgment of this Court in ***Din Dayal Kayan Vs. Canara Bank and another*** , **WPO 580/2024 (9th July, 2024)**, he argued that the 12 year limitation for mortgage enforcement begins from the date, the money becomes due (i.e. the debt when it became NPA) and a notice under section 13(2), being a precursor to measures under section 13(4), cannot be issued beyond 12 years. Any proceeding under the Act of 2002 is essentially for enforcement of mortgage right and are therefore governed by the same limitation as a mortgage suit under Article 62. Therefore once the mortgage enforcement right stands extinguished, provision under the Act of 2002 cannot be invoked. Upon transfer of the original mortgage suit under section 31 of the Act of 1993, the suit lost its character as a mortgage suit and become a recovery proceeding under section 19 of the Act of 1993, being TA no. 738 of 2001. Therefore no subsisting claim as a mortgage suit remained for the purpose of preserving or extending limitation for the proceeding under the Act of 2002. In fact, the transfer under section 31 merely shifts the forum for recovery but does not preserve the mortgage enforcement right beyond the expiry of limitation period under Article 62. The pendency of TA no. 25 of 1996 is therefore wholly irrelevant and does not save the action under the SARFAESI Act of 2002 from the bar of limitation. Furthermore, the Revisional Court is not supposed to re-appreciate evidence or substitute findings of fact and therefore the instant proceeding is liable to be dismissed.

Decision

Abovementioned background of the case principally raised two issues for consideration

(i) Whether institutions of a suit for enforcement of mortgage under Order XXXIV of the Code of Civil Procedure (CPC) stops the clock of the limitation.

(ii) If the institutions of the suit for enforcement of mortgage within the period of limitation prescribed under the Limitation Act of 1963 is a proceeding for lodging a claim in respect of financial asset, can the secured creditor then be entitled to take all or any of the measures under section 13(4) of the Act of 2002.

12. In the present case the bank instituted a suit in the Barasat Court on February, 29,1992. As would appear from the plaint and also from the relief claimed, the suit is one of the enforcement of the mortgage under the provisions of order XXXIV of CPC. The petitioner has claimed declaration that the suit property, being the movable properties, described in schedule II of the plaint remained mortgage to the plaintiff as security for payment of the plaintiffs claim. The plaintiff/petitioner herein/Bank also claimed decree under order XXXIV rule 4 of CPC in respect of the mortgage of immovable property mentioned in scheduled II of the Plaint.

13. From the averments made in the plaint, it is also clear that the plaintiff/petitioner has relied upon the balance sheet as on June 30, 1988 that was signed by the defendant no.1 on January, 25, 1990. In the said balance sheet the claims of the petitioner have been acknowledged and admitted by the defendant. These claims are also secured by mortgaged immovable property as averred in the plaint. It is on the basis of the admission in the balance sheet that the petitioner's cause of action in such suit arose on January 25, 1990. The suit being Title (mortgage) Suit No.

116 of 1992 having been instituted in Barasat Court on 29th February, 1992, said Suit is well within the period of limitation prescribed under Article 62 of the Limitation Act 1963. After the promulgation of the Act, of 1993, the suit then pending in the court of Assistant District Judge, 1st Court Barasat was transferred under section 31 of the Act of 1993 to the DRT, Kolkata and renumbered as T.A no. 25 of 1996. Under section 31(2) of the Act of 1993 where a suit transferred from any court to the DRT under section 31(1), the court was under an obligation to forward the record of such suit to the DRT, who on receipt of such record proceed to deal with such suit as far as may be in the same manner as in the case of an Application made under section 19, from the stage which was reached before such transfer or from any earlier stage as the Tribunal may deem fit. In this Context it would be appropriate to reproduce section 31(2) of the 1993 Act which states as follows:-

> *Where any suit or other proceeding stands transferred from any Court to a Tribunal under sub-section (1),*
> *(a)the Court shall, as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal; and*
> *(b)the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made under section 19 from the stage which was reached before such transfer or from any earlier stage as the Tribunal may deem fit.*

14. Neither section 31 nor section 19 of the Act of 1993 require an original application to be filed by a bank upon transfer of a pending suit. Subsection (2) of section 31 of the Act of 1993 clearly prescribes the procedure which is required to be followed by the DRT upon transfer of a suit. It is the record of the suit which gets transferred to the DRT and the DRT may on receipt of the record proceed to deal with such suit in the same manner as in the case of an application made under section 19 of the

Act of 1993 from the stage which was reached before such transfer or from an earlier stage as DRT may deem fit.

15. Learned Counsel for the opposite party argued strenuously that as soon as the suit got transferred under section 31, the suit lost its nature and is now pending as a simple money claim under section 19 of the Act of 1993 and as such there is no suit and or claim pending as against the secured assets before any court of law from the date, the suit got transferred to DRT. In this context, his main contention is that the issue of limitation under section 36 of the SARFAESI Act of 2002 is independent of any proceeding pending under the Act of 1993 and the pendency of a recovery application under section 19 of the Act of 1993 does not stop or extend the running of limitation for SARFAESI Act measures because SARFAESI Act provides a new means of enforcing a pre-existing right and if such pre-existing mortgage enforcement right stands extinguished by efflux of time under Article 62 of the Limitation Act, it cannot be revived by invoking SARFAESI Act. Accordingly his argument rests on the issue that the bank had not enforced the mortgage within 12 year period and therefore the right stood barred and notices under section 13(2) and 13(4) of the SARFAESI Act are liable to be quashed.

16. In my view when a mortgage suit is transferred from a civil court to a Debt Recovery Tribunal under section 31 of the Act of 1993, it does not loss its character as a mortgage suit or becomes a simple money recovery suit. The DRT in such case acts as a specialized tribunal to adjudicate the debt, but the nature of the claim, which involves security interest, remains that of mortgage suit allowing for the sale of mortgaged property to recover the

debt. The transfer merely changes the forum i.e. from the Civil Court to the Tribunal but not the substantive right of the parties or the nature of the debt secured by the mortgage. The lender still hold the security interest and the borrower still has equity of redemption. The DRT is empowered to determine the debt and authorized the sale of the mortgaged property which is a key characteristic of a mortgage suit, not merely a money suit. A simple money suit does not involve specialized recovery against a specific, pledge, or mortgaged property. Here in the instant case the transferred suit specifically involves a mortgage, it remains a mortgage claim. Therefore, the suit retains its character as a mortgage suit throughout the proceeding before the DRT.

17. Now, the question is whether in the facts and circumstances of the present case the embargo in section 36 of the Act of 2002, that a secured creditor shall not be entitled to take all or any of the measures under section 13 (4), unless such secured creditor has lodged a claim in respect of the financial asset within the period of limitation, would apply to the petitioner/bank or not. In this context it would be necessary to read section 36 of the SARFAESI Act of 2002 which runs as follows:-

> ***"36. Limitation.***
>
> *- No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963."*

18. In ***Somnath Manocha Vs. Punjub and Sindh Bank and anr***. reported in **2012 (129) DRJ 654**, the question that arose for consideration before a Division Bench was with regard to the interpretation to be

accorded to section 36 of the Act of 2002. Needless to say that prior to the coming into force of the Act of 2002, the machinery for enforcing the remedy existed under the provisions of order XXXIV rule 4 to 6 of CPC. The procedure was to file a suit for sale of mortgaged property which has been done in the present case. The said procedure does not require the mortgagee to file a prior suit for recovery of money. However in ***Somnath Manocha Case*** (Supra) the relief was not granted in favour of Bank as the Bank never filed any suit under order XXXIV of CPC. In paragraph 11 of the said judgment the Division Bench held that the expression *'claim in respect of financial asset'* in section 36 must relate to the claim made under the SARFAESI Act, however the same would depend upon the bank filing a suit for enforcement of the mortgage under the provision of order XXXIV CPC and not merely a suit for recovery of money. In paragraph 14, said Division Bench after considering a Gujrat High Court judgment observed that section 36 only provides that the claim in respect of the financial assets is to be made within the period of Limitation Act.

19. The petitioner bank did lodge its claim in respect of the financial asset being the mortgaged asset within the period of limitation as appearing from the schedule and prayer portion of the plaint. It was further held in para 13 of the Somanth Manocha judgment that this remedy is in addition to the ordinary remedy of civil suit therefore, merely because bank had earlier filed a suit for recovery of an amount would not mean that it is precluded from enforcing the security under SARFAESI Act.

20. Gujarat High Court in the case of ***Ivee Injecta Ltd. and anr. Vs. Junagarh Vibhagiya Nagarik Sahakari*** reported in **(2006) 129 complaint Case 529 (Gujrat)** held as follows:-

> *The submission of the learned counsel for the appellant also overlooks the scheme of the Securitisation Act which is different from the proceedings under the Code of Civil Procedure. While the Civil Procedure Code provides for two separate and distinct stages- (i) adjudication by the Court of the mortgagee's claims resulting into a decree and (ii) the subsequent stage of execution of the decree with judicial intervention; the Securitisation Act confers power on the mortgagees, which are financial institutions, to enforce security without the intervention of any Court or Tribunal and notwithstanding anything contained in Sections 69 and 69A of the Transfer of Property Act, 1882. Of course, the measures for enforcement of security are to be taken after giving the borrower a notice in writing to discharge in full his liabilities of the secured creditors within 60 days from the date of notice and if the borrower gives a reply raising any dispute about the amount due including dispute about interest, the financial institution will have to meaningfully consider the reply and take the decision and thereafter proceed under sub-section (4) of Section 13. Section 17 of the Securitisation Act confers a right of appeal before the Debts Recovery Tribunal to any person (including the borrower) aggrieved by any of the measures taken by the secured creditor under Section 13(4) of the Act. Hence, when the secured creditor has already obtained a decree of a Civil Court/Debts Recovery Tribunal, issuance of notice under Section 13(2) of the Securitisation Act is not to be construed as institution of a suit in a Civil Court for enforcement of the mortgage, but the proceeding would be in the nature of execution of the decree.*

21. Though in ***Somanth Manocha Vs. Punjab and Sindh Bank and Another*** (Supra) the impugned proceeding vitiated on the ground that bank did not file suit for recovery under order XXXIV of the CPC but the court specifically held in para 19 that position would have been different if the Bank had filed mortgage suit and such a suit was pending. In **Ivee Injectaa Ltd. Case** (Supra) mortgage suit was filed and therefore it was held that claim for enforcing mortgage right was subsisting as it was pending for adjudication. The court even held, if the period of 12 years had not been expired under Article 62 of the schedule to the Limitation Act and there was still time to file the proceedings of mortgage suit, even that would

have shaped the right of the bank to enforce the provision of SARFAESI Act.

22. Section 36 of SARFAESI Act provides that no secured creditor shall be entitled to take all or any of the measures under sub section (4) of section 13 unless his claim in respect of the financial assets is made within the period of limitation. What is meant by financial asset has been defined in section 2 (1) (I) of the Act of 2002, which states as follows:-

> *"financial asset means debt or receivables and includes*
> *(i)a claim to any debt or receivables or part thereof, whether secured or unsecured; or*
> *(ii)any debt or receivables secured by, mortgage of, or charge on, immovable property; or(iii)a mortgage, charge, hypothecation or pledge of movable property; or*
> *(iv)any right or interest in the security, whether full or part underlying such debt or receivables; or*
> *(v)any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent;or*
> *(va)[any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or [Inserted by Act No. 44 of 2016.]*
> *(vb)any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or;*
> *(vi)any financial assistance."*

23. The SARFAESI Act confers power upon the mortgagee, which are financial institutions to enforce security creditor without the intervention of any Court or Tribunal. Moreover section 13 (1) of the Act starts with a non-obstanti clause stating *"not withstanding anything contained in section 69 or 69 A of the Transfer of Property Act 1882"*. Of course the measure for an enforcement of security are to be taken after giving the borrower a notice in writing to discharge in full his liabilities of secured creditor within 60 days from the date of notice and if the borrower gives a reply raising any dispute

about the amount due including dispute about interest, the financial institutions will have to meaningfully consider the reply and take the decision and thereafter shall proceed under sub section (4) of section 13.

24. By the notice under section 13 (2) in the instant case, the petitioner bank does not invoke the jurisdiction of the Tribunal to grant any fresh relief based on a new cause of action. In fact every application which seeks to enforce right or seeks a remedy or relief, on the basis of any cause of action in civil suit, unless otherwise provided, will be subject to the law of limitation. But when an application does not invoke the jurisdiction of the court to grant any fresh relief based on any new cause of action but merely made a prayer before the tribunal to pass order for sale and realization of the suit properties mentioned in schedule by public auction to satisfy his claim, such relief is not based on any cause of action and therefore there is no question of any limitation. Such an application in a suit which is already pending, which contains no fresh or new prayer for relief, is not one to which Limitation Act 1963 would apply.

25. The cases cited by the opposite party is clearly distinguishable in the facts and circumstances of the case. In the case of ***Din Dayal Kayan Vs. Canara Bank*** (supra) there was no suit for mortgage under order XXXIV of the CPC pending, therefore there was no existing or subsisting right qua mortgage on the date when the claim in respect of financial asset was made. In **Dr. *Dipankar Chakraborty Vs. Allahabad Bank*** (supra) the bank has issued the notice under section 13 (2) of the SARFAESI Act 2002, 19 years after the account has become NPA, without there being any pending suit for enforcement of mortgage. In ***Somanth Manocha Vs.***

Punjab and Sindh Bank (Supra) also there was no suit for enforcement of mortgage.

26. In view of aforesaid discussion the instant criminal revisional application is liable to be allowed and the impugned order of DRT as well as order of DRAT which confirms the order of the DRT are required to be set aside.

27. **C.O. 1594 of 2017** is allowed.

28. The impugned judgment passed by Kolkata Debt Recovery Tribunal II in SA No. 722 of 2011 and the judgement of the Debt Recovery Appellate Tribunal dated 30th March, 2017 passed in appeal no. 442 of 2013 are hereby set aside. The conveyance deed executed by defendant no.2 in favour of Smt. Nivedita Ghosh is declared as valid and therefore the question of refunding the sale price by the defendant bank does not arise.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)