

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CM(M) No.138/2026

CM No. 4338/2026

Reserved on : 06.07.2026

Pronounced on: 09.07.2026

Uploaded on: 10. 07.2026

*Whether the operative part or
full judgment is pronounced: **Full***

1. Nitish Sharma age 36 years
S/o Late Janak Raj Sharma
R/o Village Kartholi Bari Brahmana
Samba
2. Munish Sharma age 40 years
S/o Late Janak Raj Sharma
R/o Village Kartholi Bari Brahmana
Samba

..Petitioner(s)

Through: Mr. Manik Dutt, Advocate

Vs

1. Jammu and Kashmir Bank Ltd.
Through its Authorized Officer
Impaired Assets Portfolio Management Department
Zonal Office Jammu
Central Railhead Complex,
Panama Chowk Jammu.
2. Ayodhya Devi
w/o Late Janak Raj Sharma
R/o Village Kartholi Bari Brahmana
Samba
3. Radhika Sharma
D/o Late Janak Raj Sharma
R/o Village Kartholi Bari Brahmana
Samba

.....Respondents

Through: Mr. Ajay Kumar Gandotra, Sr. Advocate with
Ms. Lakshi Bral, Advocate

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. The petitioners by way of instant petition under Article 227 of the Constitution of India have called in question the order dated 29.04.2026

passed by the Court of Learned Principal District Judge, Samba in case titled Nitish Sharma and another vs. Authorized officer and others in file No. 02/2019/Sarfaesi Act.

2. Learned counsel for the petitioners submit that the petitioners had challenged notices issued by the respondent No.1 under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act). He further submits that the underlying petition had been instituted before the Court below at a time when Section 17-A of the SARFAESI Act was applicable to the erstwhile State of Jammu and Kashmir. Subsequently, upon the adaptation of the Central laws and extension of the jurisdiction of the Debt Recovery Tribunal to the Union Territory, the jurisdiction to entertain such matters came to vest in the Debt Recovery Tribunal, Chandigarh.
3. Learned counsel for the petitioners further submits that in terms of Section 3 read with Section 31 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the proceedings pending before the learned Principal District Judge were required to be transferred to the Debt Recovery Tribunal, Chandigarh. It is contended that the impugned order is contrary to the statutory scheme governing transfer of pending proceedings and has been passed in disregard of the settled legal position. Learned counsel further submits that pursuant to Notification No. S.O. 4717(E) dated 04.10.2022, the territorial jurisdiction of the Debt Recovery Tribunal, Chandigarh stood extended to the Union Territory of Jammu and Kashmir and, therefore, the proceedings ought to have been transmitted to the said Tribunal in accordance with law instead of being returned to the petitioners.
4. It is accordingly contended that the impugned order has been passed without application of mind and also without appreciation of provisions of law, therefore the same is liable to be set aside.
5. Heard learned counsel for the petitioners at length and perused the record.

6. The controversy involved in the present petition essentially turns upon the interpretation of Section 31 of **The Recovery of Debts Due to Banks and Financial Institutions Act, 1993**, which is reproduced hereinbelow for ready reference:

“Section 31 in The Recovery Of Debts Due To Banks And Financial Institutions Act, 1993

31. Transfer of pending cases.

(1) Every suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any Court. [Provided further that any recovery proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002, shall be continued and nothing contained in this section shall apply to such proceedings.] [Inserted by Act No. 1 OF 2013]

(2) 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 [* *] [The words "or de novo" omitted by Act 1 of 2000, Section 13 (w.r.e.f. 17.1.2000).] as the Tribunal may deem fit.*

- 8 A bare perusal of the aforesaid provision makes it amply clear that where the proceedings fall within the jurisdiction of Debt Recovery Tribunal, the Court before which such proceedings are pending is required to transfer the matter and forward the entire record to the said Tribunal. The statutory scheme contemplates transfer of pending

proceedings together with the record to the Tribunal. It does not contemplate requiring the litigant to institute fresh proceedings before the Tribunal by returning the petition.

- 9 The findings recorded by the Ld. Principal District Judge, Samba particularly in para 15 and para 19 of the impugned order dated 29.04.2026 which is under challenge are reproduced hereinbelow:

“15. The present petition u/s 17(A) of the SARFAESI Act filed by the petitioners has been filed beyond the period of limitation i.e 45 days prescribed u/s. 17 (1) of SARFAESI Act.”

“19. With these observations the petition filed by the petitioner u/s. 17 (A) of the SARFAESI Act is returned to the petitioners for filing the same before the competent forum. All other original record shall be kept in office. The all other original record shall be consigned to record after due completion.”

- 10 Once, the learned Principal District Judge has concluded that the jurisdiction earlier exercised under Section 17-A of the SARFAESI Act no longer survived and the matter thereafter fell within the jurisdiction of the Debt Recovery Tribunal, the necessary consequence flowing from Section 31 of the Act of 1993 was to transmit the pending proceedings along with the record to the Tribunal. The Learned Trial Court could not adopt a procedure which is inconsistent with the statutory mechanism.
- 11 This Court finds merit in the submission advanced by learned counsel for the petitioners. Having regard to the settled position of law, the petition filed by the petitioners under Section 17 (A) of the SARFAESI Act, ought to have been transferred to the Debt Recovery Tribunal, Chandigarh. The course adopted by the learned Court below in directing return of the petition to the petitioners for presentation before the competent forum while retaining the original record, is contrary to

the mandate of Section 31 sub-Section 2 Clause (a) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

- 12 It is settled preposition of law that, where a Court declines to exercise jurisdiction on the ground that the matter falls within the exclusive jurisdiction of another forum, it ought not to record findings touching upon the merits of the controversy or procedural objections which fall for consideration before the competent forum. The role of the Court in such circumstances is confined to giving effect to the statutory mechanism governing transfer of the proceedings.
- 13 Furthermore, this Court is of the considered view that once, the learned Principal District Judge had concluded that it lacked jurisdiction to entertain the petition, the learned court couldn't have recorded findings touching upon the question of limitation or any other issue falling within the domain of the competent Tribunal. Such observations were uncalled for and were liable to prejudice the independent adjudication of the matter by the learned Tribunal where the record ought to have been transferred. If such findings are allowed to remain on record, it may create an impression that the learned Principal District Judge was competent to adjudicate the issues which, in fact was required to be adjudicated by the competent forum i.e Debt Recovery Tribunal, Chandigarh.
- 14 At this stage, Mr. Ajay Gandotra, learned Senior Counsel appearing for respondent No. 1-J&K Bank, fairly submits that he has no objection to the setting aside of the impugned order dated 29.04.2026 passed by the learned Principal District Judge, Samba to the extent of the observations made in para 15 and 19 of the aforesaid order and consequently directing him to transfer the record of the file to the said Tribunal in terms of the Section 3 read with Section 31 sub-section 2 clause (a) of the Act of 1993.
- 15 After examining the mechanism provided under the aforesaid statute and also going through the findings recorded by the learned court below, this Court deems it proper to allow the instant petition and the impugned order dated 29.04.2026 passed by the learned Principal

District Judge, Samba, is hereby set aside to the extent of the observations made in paragraph 15 and 19 thereof.

- 16 Consequently, the Learned Principal District Judge, Samba is directed to transfer the proceedings together with the entire original record to the Debt Recovery Tribunal, Chandigarh forthwith, in conformity with Section 3 read with Section 31 sub-section 2 clause (a) of The Recovery of Debts Due To Banks And Financial Institutions Act, 1993.
- 17 The writ petition is allowed in the manner indicated herein above.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
09.07.2026
Vijay

