CGHC010193212026 2026:CGHC:36151-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WA No. 675 of 2026

Smt. Archana Mishra (In Person) W/o Shri R.N. Mishra Aged About 56 Years Through- Authorized Representative R.N. Mishra S/o Late R.S. Mishra 60 Years L I G-636, C G H B Colony Tatibandh Raipur (C.G.) 492099 Mob- 9329104332

... Appellant(s)

versus

1 - Andhra Bank Through Authorized Officer Chief Manager Fafadih Branch Raipur (C.G.)

2 - Union Bank Of India Through Authorized Officer Chief Manager Fafadih Branch 557/13, Timber Market Road Near Dr. Mishra Hospital Fafadih Raipur (C.G.) 492001 Mobil No. 93249-85713 Email - Ubin084932@Unionbankfindia Bank

... Respondent(s)

(Cause-title taken from Case Information System)

For Appellant(s)	:	Smt. Archana Mishra, Petitioner in Person and Mr. R. N. Mishra, (authorized representative)
For Respondent No. 2	:	Mr. Ankit Pandey, Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge
Judgment on Board

***Per* Ramesh Sinha, Chief Justice**
14/08/2026

1 Heard Smt. Archana Mishra (petitioner in person) and Mr. R. N. Mishra (authorized representative). Also heard Mr Ankit Pandey, learned counsel for the respondent No. 2, on I.A. No.04/2026, which is an application for condonation of delay of 43 days in preferring the present appeal.

2 On due consideration the grounds assigned in the application (I.A. No.04/2026), the same is allowed. Delay of 43 days in preferring the present writ appeal is hereby condoned.

3 The instant writ appeal has been preferred by the appellant under Section 2(1) of the Chhattisgarh High Court (Appeal to Double Bench) Act, 2006, calling in question the legality and correctness of the order dated 09.02.2026 passed by the learned Single Judge in W.P.(C) No.110 of 2026, whereby the writ petition preferred by the appellant under Article 226 of the Constitution of India challenging the sale proceedings initiated by the respondent-Bank in respect of her mortgaged residential property came to be dismissed.

4 The appellant-in-person and her authorized representative would submit that the appellant, Smt. Archana Mishra, had mortgaged her residential property with Andhra Bank in connection with the credit facilities availed by M/s. Shyama Rama Structural & Power Pvt. Ltd. According to them, the account of the borrower-company was not liable to be classified as a Non-Performing Asset (NPA) as on 01.04.2010; nevertheless, the respondent-Bank initiated measures under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, the ‘SARFAESI

Act'). The borrower-company challenged the said measures by filing S.A. No.198/2010 before the Debts Recovery Tribunal, Jabalpur (in short, the 'DRT'). The DRT, vide interim order dated 27.12.2010, restrained the Bank from taking physical possession of the appellant's residential property under Section 14 read with Section 13(4) of the SARFAESI Act till disposal of the securitisation application on merits. The borrower-company thereafter filed a review/modification application on 27.01.2011. As the DRT declined to exercise the power of review, the borrower-company preferred an appeal under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal (in short, the 'DRAT'), Allahabad. The DRAT dismissed the appeal on 16.03.2011 on the ground of limitation, holding that it had no power to condone the delay.

5 The borrower-company thereafter approached this Court by filing W.P.(C) No.1804/2011, which was disposed of on 20.03.2012 with a direction to the DRT to decide the matter concerning the loan transaction and the mortgaged property within the stipulated period. The DRT, however, vide order dated 17.04.2013, dismissed the proceedings principally on the ground that the borrower-company had failed to comply with the condition regarding deposit of the amount and, according to the appellant, did not adjudicate the challenge to the SARFAESI measures on merits. The subsequent appeal, being Appeal No.256/2013, was dismissed by the DRAT on 03.07.2013 on the ground that no appeal lay against the order passed on the review application and, alternatively, that the appeal was barred by limitation. The borrower-company consequently filed W.P.(C) No.731/2013 before this Court. In the said writ petition, the learned Single Judge, vide order dated 29.10.2018, stayed the auction proceedings pursuant to the sale notice dated 23.07.2018 and directed the matter to be listed for final hearing. W.P.(C) No.731/2013 was subsequently dismissed on 18.04.2024, but in W.A. No.417/2024, this Court, vide order dated 04.07.2024, set aside the said order dated 18.04.2024 passed by learned Single Judge in WPC No. 731/2013 and remanded the matter to the learned Single Judge for fresh consideration on merits after considering the pending applications for amendment and for taking documents on record. The said writ petition is pending till date and is fixed for further hearing on 15.09.2026.

6 They would further submit that during the pendency of W.P.(C) No.731/2013, the respondent-Bank initiated fresh sale proceedings in respect of the appellant's residential property. It is submitted that the respondent-Bank issued the sale notice and proceeded to conduct the proposed e-auction without serving the requisite notice upon the borrowers, guarantors and mortgagors and without complying with the mandatory requirements of Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. It is further submitted that the said action of the respondent-Bank was also in disregard of the orders earlier passed by this Court. They would further submit that the Bank issued a sale notice for an e-auction scheduled on 11.09.2025 and thereafter published a public sale notice in respect of the e-auction scheduled on 30.12.2025, against which the appellant approached this Court by filing W.P.(C) No.110/2026. The said writ petition was dismissed by the learned Single Judge vide order dated 09.02.2026, which is under challenge in the present writ appeal.

7 The appellant-in-person would further submit that the respondent-Bank has initiated the subsequent sale proceedings in respect of the appellant's residential property in disregard of the order dated 29.10.2018 passed by in W.P.(C) No.731/2013, whereby the auction proceedings pursuant to the earlier sale notice dated 23.07.2018 were stayed and the matter was directed to be listed for final hearing, and the said writ petition is still pending consideration. It is submitted that, during the subsistence of the said order and pendency of W.P.(C) No.731/2013, the respondent-Bank could not have initiated fresh sale proceedings in respect of the same secured asset without obtaining appropriate orders from this Court. The appellant would submit that the sale notice dated 28.07.2025 and the consequential e-auction dated 11.09.2025 are, therefore, contrary to the aforesaid order of this Court and are liable to be set aside. It is further submitted that the learned Single Judge has dismissed the writ petition filed by the appellant on the ground of availability of an alternative remedy under Section 17 of the SARFAESI Act before the DRT, without appreciating the fact that W.P.(C) No.731/2013 is already pending before this Court in respect of the same loan transaction and the mortgaged property.

8 The appellant-in-person would also submit that the sale notice dated 28.07.2025 is defective and does not comply with the mandatory requirements of Rules 8(5), 8(6), 8(7) and 9(1) of the Security Interest (Enforcement) Rules, 2002. According to the appellant, the notice does not contain proper particulars of the issuing Bank, the addressee and the reference/dispatch details and does not disclose the requisite particulars in the prescribed form under Appendix IV-A. It is further submitted that the terms and conditions of sale, though stated to have been enclosed with the notice, were not actually supplied to the appellant, nor were the necessary particulars regarding the outstanding dues, valuation and reserve price of the secured property properly disclosed. The appellant would also submit that the mandatory public notice in two leading newspapers, including one vernacular newspaper having wide circulation in the locality, was not duly published. It is, therefore, submitted that the very foundation of the proposed sale was vitiated for non-compliance with the mandatory statutory procedure. The respondent-Bank has also been making debits in the loan account without furnishing proper details or prior intimation and, despite having already received sale proceeds of approximately Rs.7.44 crores against the demand of approximately Rs.7.09 crores raised under Section 13(2) of the SARFAESI Act, has raised further claims and instituted O.A. No.18/2013 before the DRT, Jabalpur. It is further submitted that, in the earlier proceedings, the respondent-Bank had represented before this Court that the sale pursuant to the tender dated 28.03.2011 would not be confirmed before the next date of hearing, whereas the sale had already been confirmed on 30.03.2011. On these premises, the appellant-in-person submits that the writ petition was maintainable and ought to have been considered along with W.P.(C) No.731/2013 and decided on merits instead of being dismissed on the ground of availability of an alternative remedy.

9 The appellant-in-person would also submit that on the earlier date of hearing, the writ petitioner had sought time to place her submissions before the learned Single Judge; however, due to personal difficulties and medical reasons, she could not appear before the learned Single Judge on 09.02.2026. It is submitted that, thereafter, the learned Single Judge, without affording an effective opportunity of hearing to the petitioner, proceeded to pass the impugned order and dismissed the writ petition on the ground of availability of an alternative remedy under Section 17 of the SARFAESI Act, relying upon the judgment of the Hon'ble Supreme Court in ***PHR Invent Educational Society v. UCO Bank and Others*****, reported** in 2024 (6) SCC 579**.** The appellant-in-person would submit that, since W.P.(C) No.731/2013 concerning the same loan transaction and mortgaged property is already pending consideration before this Court and has been remanded for consideration on merits, the present writ petition ought to have been considered along with the said writ petition and the objection regarding availability of an alternative remedy ought not to have been invoked in the peculiar facts of the case. It is, therefore, submitted that the impugned order passed by the learned Single Judge may be set aside and the matter may be directed to be considered on merits along with W.P.(C) No.731/2013.

10 Learned counsel appearing for Respondent No. 2 on advance copy would submit that the present writ appeal has been filed through authorized representative but there is no proper authorization to file and prosecute the appeal on behalf of the appellant Smt. Archana Mishra. Though the authorized representative is her husband but in absence of any legal authorization he cannot appear or make submission on behalf of the appellant, therefore, is a defect of filing of the present writ appeal. In support of his submission he would reply upon the judgment of Madras High Court reported in 2015 SCC Online Mad 12019 **(K. Anand rep. by Power Agent Mr. T. Ashok Surana vs. The Hon'ble Chairperson Debt Recovery Appellate Tribunal and Another)**. He would also submit that before the learned Single Judge the date of hearing of 09.02.2026 was fixed on the request of the authorized representative of the appellant vide order dated 23.01.2026, however, he could not appear on the date fixed by the learned Single Judge, and there was no representation on that day and sent an e-mail for adjournment of the proceedings on his medical grounds. The learned Single Judge has dismissed the writ petition on the ground of availability of an alternative remedy to approach before the DRT. He would also submit that the issue involved in WPC No. 731/2013 and the present writ petition are entirely different, which cannot be decided together by bypassing the alternative forum. Therefore, the order passed by learned

Single Judge is justified and the writ appellant can approach before the DRT for redressal of her grievance.

11 We have considered the submissions advanced by the appellant-in-person, her authorised representative and learned counsel appearing for respondent No.2 and have also perused the impugned order as well as the documents placed on record of the writ appeal as well as writ petition.

12 So far as the objection raised by learned counsel for respondent No.2 with regard to the authority of the authorized representative to represent the appellant is concerned, we find that the appellant herself, namely, Smt. Archana Mishra, is present before us and has personally addressed the Court and argued her case. Therefore, in the peculiar facts of the present case, when the appellant herself is before the Court and has prosecuted the present appeal in person, we do not find it necessary to examine the objection regarding the authority of her authorized representative. The question of authorization of the authorized representative, therefore, would not come in the way of consideration of the present writ appeal. We have accordingly proceeded to examine the controversy on its own merits, particularly the question whether the learned Single Judge was justified in dismissing W.P.(C) No.110/2026 solely on the ground of availability of an alternative remedy under Section 17 of the SARFAESI Act.

13 From the facts brought on record, it appears that the dispute between the parties is not confined merely to the subsequent sale notice dated 28.07.2025. The appellant's residential property had been mortgaged in connection with the credit facilities availed by the borrower-company and the respondent-Bank had earlier initiated measures under Section 13(4) of the SARFAESI Act, which were challenged by the borrower-company before the DRT in S.A. No.198/2010. The DRT had passed an interim order dated 27.12.2010 restraining the Bank from taking physical possession of the appellant's residential property. The subsequent proceedings before the DRT and DRAT ultimately led to the filing of W.P.(C) No.731/2013 before this Court. In the said writ petition, the learned Single Judge, vide order dated 29.10.2018, had stayed the auction proceedings pursuant to the sale notice dated 23.07.2018. Though W.P.(C) No.731/2013 was subsequently dismissed on 18.04.2024, the said order was set aside by this Court in W.A. No.417/2024 vide order dated 04.07.2024 and the matter was remanded to the learned Single Judge for fresh consideration on merits after considering the pending applications for amendment and for taking documents on record. Thus, the earlier proceedings concerning the same loan transaction and the same secured assets have not attained finality and W.P.(C) No.731/2013 is admittedly pending consideration before the learned Single Judge and is presently fixed for further hearing on 15.09.2026.

14 It is in the aforesaid background that the respondent-Bank initiated the subsequent sale proceedings in respect of the appellant's residential property by issuing the sale notice dated 28.07.2025 and proceeding with the e-auction scheduled on 11.09.2025. The appellant has raised specific objections regarding the legality of the said proceedings, including alleged non-compliance with Rules 8(5), 8(6), 8(7) and 9(1) of the Security Interest (Enforcement) Rules, 2002, non-disclosure of the requisite particulars concerning valuation and reserve price, non-supply of the terms and conditions of sale and non-compliance with the requirement of publication of the sale notice. The appellant has also raised a grievance that the subsequent sale proceedings were initiated notwithstanding the pendency of W.P.(C) No.731/2013 and the orders passed therein. We are not expressing any opinion at this stage on the correctness of these allegations or on the validity of the subsequent sale proceedings. However, what is material for the present purpose is that the subsequent sale proceedings relate to the same secured asset and arise out of the same underlying loan transaction which is already the subject matter of consideration in W.P.(C) No.731/2013. In such circumstances, we are of the considered view that the present controversy cannot be viewed as an entirely independent cause of action so as to mechanically relegate the appellant to the alternative remedy under Section 17 of the SARFAESI Act, particularly when the connected and foundational dispute concerning the same loan transaction and secured assets is already pending adjudication before this Court. The appellant has also specifically contended that the learned Single Judge, while dismissing the present writ petition on the ground of alternative remedy, did not take into consideration the pendency and nature of the proceedings in W.P.(C) No.731/2013.

15 In view of the aforesaid facts and circumstances, and without expressing any opinion on the merits of the respective claims of the parties, we are of the considered view that the interest of justice would be served if the present writ petition is considered and decided along with W.P.(C) No.731/2013, rather than compelling the appellant to pursue a separate remedy before the DRT in respect of the subsequent sale proceedings concerning the very same secured assets and loan transaction. Such a course would also avoid the possibility of parallel proceedings before two different forums and inconsistent findings in relation to the same transaction and property.

16 Accordingly, the impugned order dated 09.02.2026 passed by the learned Single Judge in W.P.(C) No.110/2026 is **set aside** and the matter is remitted back to the learned Single Judge for consideration and decision on its own merits, along with W.P.(C) No.731/2013, after affording due and effective opportunity of hearing to all the parties concerned. The present writ petition should be clubbed with W.P.(C) No. 731/2013 and directed to be listed together.

17 Since W.P.(C) No.731/2013 is already fixed for hearing on 15.09.2026, we request the learned Single Judge to decide the present writ petition along with the WPC No. 731/2013 within a further period of four weeks from 15.09.2026. It is made clear that we have not expressed any opinion on the legality or otherwise of the sale notice dated 28.07.2025, the e-auction proceedings, the alleged violation of the Security Interest (Enforcement) Rules, 2002, or the rival claims of the parties and availability of the alternative forum, and all such issues shall remain open for consideration by the learned Single Judge on their own merits.

18 It has also been informed by the appellant in person and learned counsel appearing for the respondent-Bank that with respect to issuance of the e-auction sale notice dated 28.07.2025, e-auction dated 11.09.2025 and subsequent e-auction notice dated 30.12.2025, the borrower company is prosecuting a contempt case No. 347/2026 in which the notices have been issued to the officers of the respondent-Bank and is also pending for its consideration. In view of the facts and circumstances of the case, the further proceedings of the said Contempt Case No. 347/2026 shall remain stayed till the disposal of WPC No. 731/2013 and WPC No. 110/2026.

19 Since the respondent has raised an objection regarding the authority of the authorized representative to institute and prosecute the writ petition/writ appeal on behalf of the petitioner/appellant, in the absence of any duly executed legal authorization, it is expected that the petitioner/appellant shall herself remain available and cooperate with the learned Single Judge in the smooth, effective and expeditious conduct and disposal of the proceedings and shall not cause any unnecessary obstruction or delay. In case the petitioner is not conversant with the legal procedure or finds herself unable to effectively represent her case in person, she shall be at liberty to engage a counsel of her choice or avail the assistance of the appropriate Legal Services Authority, in accordance with law.

20 With the aforesaid observations and directions, the present writ appeal is **allowed**.

21 All other pending applications, if any, shall stand **disposed of**.

Sd/-	Sd/-
(Ravindra Kumar Agrawal) **Judge**	(Ramesh Sinha) **Chief Justice**

Alok