HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HONOURABLE SMT. JUSTICE RENUKA YARA

WRIT PETITION NO.22762 OF 2026

DATE: 06.08.2026

BETWEEN:

Sri Alluri Mahesh Raju

…Petitioner

AND

Indian Bank and Five Others.

…Respondents

Mr. Namineni Pavan Kumar, learned counsel representing Mr. Suman Kumar Balijepalli, learned counsel appearing for the petitioner.

Mr. N.V. Pruthvi Raju, learned counsel appearing for the respondent No.1.

Mr. J. Srinath Reddy, the learned Standing Counsel appearing for the respondent No.2.

ORDER: (Per Hon'ble Justice Moushumi Bhattacharya)

1. The petitioner has challenged an order passed by the Debts Recovery Appellate Tribunal at Kolkata ('DRAT') dated 28.04.2026 allowing Misc. Appeal No.71 of 2025 filed by the respondent No.1 - Indian Bank from an order passed by the Debts Recovery Tribunal - I, Hyderabad ('DRT') in an application filed in the Bank's O.A.No.219 of 2010 on 12.11.2018.

The order passed by the DRT was set aside by the DRAT by way of the impugned order dated 28.04.2026.

2. The petitioner claims to be the guarantor of a loan taken by the respondent No.2 from respondent No.1/Indian Bank. The respondent No.1/Bank filed O.A.No.219 of 2010 before the DRT under the provisions of The Recovery of Debts and Bankruptcy Act, 1993 ('the RDB Act') for recovery of the debt from the borrower. The petitioner (guarantor) filed I.A.No.1823 of 2018 in O.A.No.219 of 2010 seeking permission to cross-examine AW-1 (respondent No.1/Bank's witness) in the O.A.

3. The DRT, by its order dated 12.11.2018, allowed the I.A. and appointed an Advocate as Commissioner to record the cross-examination of AW-1. The Bank challenged the DRT's order before the DRAT in Misc. Appeal No.71 of 2025. By the impugned order dated 28.04.2026, the DRAT allowed the Appeal and set aside the order passed by the DRT on 12.11.2018.

4. Learned counsel appearing for the writ petitioner/guarantor submits that the DRAT erred in dismissing the plea of the petitioner for permission to cross-examine the Bank's witness. Counsel submits that the petitioner raised a credible ground of under-valuation of the secured assets,

namely, the agricultural lands. The issue of under-valuation was required to be considered by the DRT under section 17 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'). Counsel further submits that the DRAT ought to have considered the petitioner's contentions under the SARFAESI Act as both proceedings are inter-connected. Counsel submits that the petitioner had also argued the issue of fraud which the DRAT was bound to consider.

5. The learned Standing Counsel appearing for the respondent No.1/Indian Bank urges that the DRT does not have any jurisdiction to adjudicate any matters falling under the SARFAESI Act. Counsel submits that the petitioner has already filed an application under the SARFAESI Act which is pending as on date and that the petitioner can take its arguments of under-valuation in those proceedings. Counsel further submits that the petitioner has not established any ground for cross-examining the Bank's witness in the O.A. pending before the DRT.

6. We have considered the competing submissions in light of the material placed before us.

7. The undisputed facts presented to the Court may be summarised as follows.

8. The respondent No.1/Indian Bank filed the Original Application (O.A.No.219 of 2010) before the DRT under the provisions of the RDB Act. Admittedly, the petitioner has also approached the DRT by way of an application under the provisions of the SARFAESI Act. The impugned order records that the petitioner's application under the SARFAESI Act was dismissed on the ground of limitation and the Appeal from the said dismissal was pending as on the date of the impugned order.

9. The petitioner filed the interim application (I.A.No.1823 of 2018) before the DRT in the Bank's O.A. for permission to cross-examine AW-1 (the respondent No.1/Bank's witness). The DRT allowed the I.A. by its order dated 12.11.2018.

10. It is significant to note that on 12.11.2018 after recording the competing submissions of the petitioner (defendant No.2 in the O.A.) and the respondent No.1-Bank, the DRT proceeded to allow the I.A. by appointing the Advocate Commissioner for recording the cross-examination of AW-1 without assigning any

reasons. The relevant paragraph of the DRT's order dated 12.11.2018 simply records the following.

> *"Whether the petitioner has made valid grounds for grant of relief as sought for?*
>
> *It is the main contention of the petitioner that he is disputing the amounts claimed by the Bank in the O.A. and in order to rebut the evidence of the respondent Bank it is necessary to cross examine AW.1 to dismiss the claim of the Bank against them.*
>
> *In view of the above facts and circumstances of the case, I.A. is allowed and Sri A. Naresh Kumar, Advocate is appointed as Commissioner to record the cross examination of AW-1 on behalf of defendant No.2 on 28.11.2018, failing which I.A. shall stand dismissed."*

11. The respondent No.1/Bank challenged the order before the DRAT consequent to which the DRAT allowed the Bank's Appeal resulting in the impugned order dated 28.04.2026. The reasons given by the DRAT for setting aside the DRT's order are as follows.

(i) Rule 12(9) of The Debts Recovery Tribunal (Procedure) Rules, 1993 ('the 1993 DRT Rules') requires the Tribunal to record that sufficient ground has been made out for cross-examination of the witness.

(ii) Hence, sufficient ground has to be made out by the applicant for permission to cross-examine the witness.

(iii) In the application for permission to cross-examine the witness, the only ground taken by the writ petitioner was that the secured assets were sold at an under-valuation.

(iv) Under-valuation of the secured assets can be looked into by the DRT under section 17 of the SARFAESI Act. The petitioner has already filed such an application under the SARFAESI Act.

(v) Section 19 of the RDB Act and Section 17 of the SARFAESI Act are independent of each other.

(vi) The order passed by the DRT dated 12.11.2018 was cryptic and un-reasoned.

(vii) Hence, the DRT's order was liable to be set aside.

12. We find the reasons given by the DRAT in allowing the Bank's Appeal and setting aside the DRT's order to be in accordance with law.

13. Rule 12(9) of the Debts Recovery Tribunal (Procedure) Rules, 1993 permits the Tribunal to, at any time, for sufficient reason, order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable.

The proviso to Rule 12(9) permits the Tribunal, at the stage subsequent to filing of the affidavits by the respective parties, to order with sufficient reasons recorded, the production of a witness for cross-examination if it appears to the Tribunal that the applicant/defendant desires the production of such witness for cross-examination and it is necessary to do so.

14. Hence, the proviso to Rule 12(9) makes it clear that either of the parties can apply for the production of a witness for cross-examination, while the right of either party to be granted such relief is not automatic. The Tribunal may allow the plea only after recording its reasons with due regard to sufficiency of the same and must also be of the opinion that the production of a witness for cross-examination is necessary for the adjudication of the dispute before the Tribunal.

15. The last limb of the proviso with regard to the effect of the witness not appearing for cross-examination and the Tribunal's power to consequently disregard the affidavit for the purpose of evidence and further not permit any oral evidence other than that given in the proviso, makes it clear that the Tribunal's powers to order production of a witness for cross-examination

shall only be applicable where such cross-examination is required and not to delay the proceedings in any manner.

16. The Tribunal's obligation to record reasons for the necessity of production and cross-examination of a witness, even after filing of affidavits, may be tested against the reasons given by the applicant for production and cross-examination of a witness.

17. In the present case, the only reason indicated in the writ petitioner's affidavit (paragraphs 3-4 therein) is that the secured assets were sold at a '*throw away price by playing fraud on me*'. The writ petitioner also states that the Bank did not follow the procedure contemplated under the SARFAESI Act and breached the provisions of the SARFAESI Act. The third reason given is that the property sold by the respondent No.1/Bank is fertile agricultural lands which are prohibited under the SARFAESI Act. The writ petitioner however admits in the affidavit that the petitioner filed proceedings under the SARFAESI Act for setting aside the sale of the properties and the same is pending adjudication.

18. The above reasons, by no stretch of the imagination would fulfil the requirements under Rule 12(9) of the DRT Rules.

19. The statements in the petitioner's affidavit suggests that the petitioner is fully relying on the provisions of the SARFAESI Act whereas the petitioner has already approached the DRT under section 17 of the said Act and the proceedings are pending as on date, or at least were pending on the date of the impugned order passed by the DRAT.

20. The onus cast on the Tribunal to record its reasons for allowing the cross-examination of a witness at a belated stage, after the filing of affidavits, was also not satisfied by the DRT in its order dated 12.11.2018. As extracted in the above paragraphs, the DRT, simply reproduced the submissions made on behalf of the parties and allowed the application. The DRT failed to record any reason for allowing the application. Neither did the DRT record the ground warranting production of the respondent No.1/Bank's witness for further cross-examination.

21. Therefore, the DRAT rightly recorded in paragraph 16 of the impugned order that the DRT failed to assign any reasons for allowing the petitioner's application.

22. In any event, there is little doubt that there is substantial difference between the provisions of the RDB Act and the SARFAESI. Besides the other dissimilarities, the RDB Act only

envisages an application made by a Bank or a financial institution under section 19 of the said Act for recovery of debt from any person. Section 17 (1) of the SARFAESI Act, on the other hand, authorises 'any person (including borrower)' to approach the DRT against any of the measures taken by a secured creditor under section 13(4) of the said Act. Moreover, the question of under-valuation of the secured assets is comprehensively dealt with under The Security Interest (Enforcement) Rules, 2002 specifically under Rules 8(5) and 9 thereof.

23. Hence, intermingling of the two Acts, particularly in the case of under-valuation, is untenable. The writ petitioner's recourse with regard to the alleged under-valuation of the secured asset lies under the SARFAESI Act. The writ petitioner has already initiated proceedings under the same and is pending adjudication. Therefore, it is inconceivable that the writ petitioner would seek to re-open and urge the said issue in the respondent No.1/Bank's O.A. before the DRT under the RDB Act and seek cross-examination of the Bank's witness only on that ground.

24. At the cost of repetition, the sole ground stated in the writ petitioner's affidavit for cross-examining the respondent No.1/Bank's witness is that the property was under-valued for sale and that the respondent No.1/Bank has violated the provisions of the SARFAESI Act. These are purely grounds which are amenable to adjudication under the SARFAESI Act, as opposed to the RDB Act.

25. We also deem it fit to reiterate that while the proviso to Rule 12(9) of the 1993 DRT Rules under the RDB Act, permits production and cross-examination of a witness, granting of such permission is conditional upon the DRT recording its reasons and being satisfied that allowing such a plea is necessary in the facts of the case. The order passed by the DRT on 12.11.2018 failed to discharge this obligation. The Granting of a plea under the proviso to Rule 12(9) is not automatic and cannot be used as a ploy to prolong the case[1].

26. Thus, we do not find any infirmity in the impugned order passed by the DRAT on 28.04.2026 in setting aside the DRT's order dated 12.11.2018. We however deem it fit to grant the request made by learned counsel appearing for the petitioner to permit the petitioner to file an appropriate application before the

[1] Union of India & Anr. v. Delhi High Court Bar Association & Ors. [2002 (4) SCC 275)]

DRT for fresh consideration of the case on its merits. The DRT shall consider such application if filed, in accordance with law.

27. W.P.No.22762 of 2026, along with connected applications, is accordingly dismissed. Interim orders, if any, shall stand vacated. There shall be no order as to costs.

JUSTICE MOUSHUMI BHATTACHARYA

JUSTICE RENUKA YARA

DATE: 06.08.2026
NDS