IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.4528 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE Sd/-

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Approved for Reporting	Yes	No
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THE SOUTH INDIAN BANK LTD.
Versus
BANK OF INDIA

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Appearance:
MR. JAINISH P SHAH(7033) for the Petitioner(s) No. 1
MR ANAND B GOGIA(5849) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 26/10/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing and is being finally disposed of by this judgment today.

2. ***Rule***. Learned advocate Mr.Anand B. Gogia waives service of notice of Rule on behalf of the respondent-Bank.

3. The petitioner-Bank, by way of the present writ petition, has challenged the order dated 13.11.2024 passed by the Debts Recovery Appellate Tribunal, Mumbai (DRAT) dismissing Appeal No.119 of 2009 preferred by the petitioner-Bank against the judgment dated 29.01.2009 passed by the Debt Recovery Tribunal-I, Ahmedabad (DRT-I) which, *inter alia*, confirmed the

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order dated 28.03.2008 passed by the Recovery Officer, DRT-I, Ahmedabad, in Recovery Proceedings No.1828 arising out of Original Application No.420 of 2002 filed by the Bank of India against M/s.Shree Plastics and others.

4. Vide order dated 28.03.2008, the Recovery Officer, DRT-I, Ahmedabad, rejected the application at Exhibit T/39 filed by the petitioner-Bank, whereby specific objections were raised against the attachment and auction of the property bearing Flat No.B-504, Pushparaj Towers, Jodhpur Tekra, Thaltej, Ahmedabad, by the respondent-Bank of India. The Recovery Officer dismissed the said application. It was the case of the petitioner-Bank that the property in question had been mortgaged in its favour by way of an equitable mortgage through the deposit of title deeds as well as Memorandum of Deposit of Title Deeds dated 15.02.1999.

5. One Mr. Laljibhai M. Patel and Mrs.Parvatiben L. Patel had availed of a housing loan of Rs.6.35 lakh from the petitioner-Bank for the purchase of a new flat. The said loan was sanctioned vide a sanction letter dated 13.02.1999.

6. The property bearing Flat No.B-504, Pushparaj Towers, Jodhpur Tekra, Thaltej, Ahmedabad, was mortgaged in favour of the petitioner-Bank by way of an equitable mortgage created through a Memorandum of Deposit of Title Deeds dated 15.02.1999, along with the deposit of the original title documents pertaining to the said property.

7. As the housing loan availed of by the aforesaid borrowers became overdue and remained unpaid, the petitioner-Bank

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instituted Civil Suit No.3003 of 2002 before the City Civil Court, Ahmedabad, seeking recovery of Rs.9,00,088/- along with further interest.

8. The petitioner-Bank also sought a decree for the sale of the mortgaged property and appropriate directions for the appropriation of the sale proceeds towards satisfaction of its claim in the suit.

9. Simultaneously, the petitioner-Bank had also instituted Original Application No.470 of 2001 before the Debt Recovery Tribunal, Ahmedabad (DRT), against the borrower - Mr. Laljibhai M. Patel, who was also a guarantor in respect of another account maintained with the petitioner-Bank. The said Original Application came to be decreed on 31.03.2008 and a recovery certificate for a sum of Rs.2,43,66,312/-, together with simple interest at the rate of 9% per annum with effect from 23.11.2001, came to be issued in favour of the petitioner-Bank.

10. It appears that the respondent-Bank had also initiated recovery proceedings before the Debt Recovery Tribunal, Ahmedabad, in respect of the dues of M/s.Shree Plastics and others, a proprietary concern of Mrs.Parvatiben L. Patel. Pursuant thereto, a recovery certificate came to be issued in favour of the respondent-Bank, and Recovery Proceedings No.1828 of 2008 were initiated before the Recovery Officer, DRT-I, Ahmedabad. In the said proceedings, the Recovery Officer, vide order dated 08.11.2005, attached various immovable properties, including the property in question.

11. On 15.09.2006, the petitioner-Bank filed its objections at Exhibit T-39 before the Recovery Officer, objecting to the

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attachment of the property in question on the ground that the same had already been mortgaged in its favour. The respondent-Bank filed its reply to the said objections on 05.01.2007.

12. Thereafter, on 15.03.2007, the petitioner-Bank filed a pursis at Exhibit T-40 in the recovery proceedings, expressing its no objection to the sale of the property in question, subject to the condition that the amount claimed by the petitioner-Bank in Civil Suit No.3003 of 2002, pending before the Civil Court, Ahmedabad, be released to it on a priority basis out of the sale proceeds. The petitioner-Bank further stipulated that the balance sale proceeds be distributed between the petitioner-Bank and the respondent-Bank in the ratio of 50:50, having regard to the dues recoverable by the petitioner-Bank pursuant to the decree in Original Application No.470 of 2001. Thereafter, a public auction of the property in question was conducted on 28.09.2007.

13. The respondent-Bank filed an application at Exhibit H-51 before the Recovery Officer, claiming entitlement to the entire sale proceeds realized from the auction of the property in question.

14. M/s.Paramjit Sales and Services Private Limited emerged as the highest bidder by offering a sum of Rs.28.50 lakh. The sale in favour of the said purchaser was confirmed by the Recovery Officer on 31.10.2007. The entire sale consideration was deposited, and possession of the property in question was handed over to the purchaser.

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15. Subsequently, on 13.03.2008, the petitioner-Bank filed its claim at Exhibit T-54 before the Recovery Officer, seeking disbursement of the amount claimed in Civil Suit No.3003 of 2002.

16. The Recovery Officer, vide order dated 28.03.2008, rejected the application at Exhibit T-39 filed by the petitioner-Bank, principally on the ground that the dues claimed by the petitioner-Bank had not yet been adjudicated and, therefore, the petitioner-Bank, being a third party to the recovery proceedings, had no right to claim any portion of the sale proceeds realised from the auction of the property in question. Being aggrieved by the said order, the petitioner-Bank preferred Appeal No.29 of 2008 before the learned Presiding Officer, Debt Recovery Tribunal-I, Ahmedabad, under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

17. The DRT-I, Ahmedabad, vide judgment dated 29.01.2009, dismissed the appeal preferred by the petitioner-Bank, primarily relying upon the decision of the Supreme Court in the case of Allahabad Bank vs. Canara Bank, (2000) 4 S.C.C. 406.

18. Aggrieved by the said judgment, the petitioner-Bank preferred Appeal No.119 of 2009 before the Debts Recovery Appellate Tribunal, Mumbai (DRAT).

19. It appears that during the pendency of the appeal before the DRAT, Mumbai, the civil suit instituted by the petitioner-Bank, being Civil Suit No.3003 of 2002, subsequently numbered as Summary Suit No.307 of 2022, came to be

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decreed in favour of the petitioner-Bank. The Small Causes Court No.2, Ahmedabad, vide judgment and order dated 07.11.2023, directed the defendants to pay jointly and severally to the petitioner-Bank a sum of Rs.6,35,000/-, together with interest @ 9% per annum from the date of institution of the suit i.e. 23.08.2002, until realisation.

20. The aforesaid subsequent development was brought to the notice of the DRAT, Mumbai, during the pendency of Appeal No.119 of 2009. However, the DRAT, Mumbai, vide order dated 13.11.2024, dismissed the appeal preferred by the petitioner-Bank.

21. Being aggrieved by the aforesaid order passed by the DRAT, Mumbai, the petitioner-Bank has approached this Court by way of the present writ petition.

22. Learned advocate Mr.Jainish P. Shah, appearing for the petitioner-Bank, at the outset, has submitted that the DRAT, Mumbai, has erred in dismissing the appeal. It is submitted that the appeal has been rejected primarily on the ground that the petitioner-Bank had not obtained a decree relating to mortgage in Civil Suit No.3003 of 2002, which came to be decreed on 07.11.2023, and that the decree merely directed the defendants to pay a sum of Rs.6,35,000/- along with interest. The Tribunal, accordingly, proceeded on the premise that no charge had been created over the flat in question and rejected the appeal on that basis.

23. Referring to the provisions of Section 73(b) and (c) of the Code of Civil Procedure, 1908 (the CPC), learned advocate

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Mr.Shah has submitted that the petitioner-Bank, being a decree-holder, was entitled to a share in the sale proceeds in accordance with law. It is submitted that the DRAT, Mumbai, while relying upon the decision of the Supreme Court in the case of ***Canara Bank (supra)***, failed to examine the applicability of Section 73 of the CPC in the light of the judgment and decree dated 07.11.2023 passed by the Small Causes Court No.2, Ahmedabad.

24. It is further submitted that the decision of the Supreme Court in the case of ***Canara Bank (supra)*** would not apply to the facts of the present case, as the petitioner-Bank holds a money decree in its favour. Learned advocate Mr.Shah further contended that the judgment of Small Causes Court No.2, Ahmedabad, establishes that the petitioner-Bank had a valid mortgage over the property in question since 1999. It is urged that, in view of the No Objection Pursis dated 15.03.2007 filed at Exhibit T-40, the petitioner-Bank is entitled to a share in the sale proceeds realised from the auction of the property. Accordingly, it is prayed that the impugned order be quashed and set aside and, if deemed necessary, the matter be remanded to the DRAT, Mumbai, for fresh consideration.

25. Opposing the aforesaid submissions, learned advocate Mr.Anand B. Gogia, appearing for the respondent-Bank, has submitted that the impugned judgment and order passed by the Tribunal does not warrant any interference by this Court, as the same has been passed in accordance with law.

26. It is submitted that prayer clause 'B' of the plaint in Civil Suit No.3003 of 2002, seeking relief in respect of the

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mortgaged property, was specifically rejected by the Civil Court. It is submitted that the petitioner-Bank has failed to establish its entitlement to enforce the alleged mortgage against the property in question.

27. Learned advocate Mr.Gogia, has further submitted that at the highest, the petitioner-Bank can claim to be a decree-holder holding a money decree in its favour. According to him, the provisions of Section 73 of the CPC would not come to the aid of the petitioner-Bank in the facts of the present case, particularly in view of the principles laid down by the Supreme Court in the case of ***Canara Bank (supra)***.

28. It is further submitted that the auction of the property in question had already been conducted on 28.09.2007, much prior to the judgment and decree dated 07.11.2023 passed by the Small Causes Court, Ahmedabad. It is contended that the respondent-Bank had a charge over the property in question, as it had advanced a loan of Rs.25,00,000/- to M/s.Shree Plastics, a proprietary concern of Mrs.Parvatiben L. Patel, whereas the petitioner-Bank had advanced a housing loan of Rs.6,35,000/- to the said borrowers.

29. Both the DRT-I, Ahmedabad, and the DRAT, Mumbai, have placed reliance upon the decision of the Supreme Court in the case of ***Canara Bank (supra)***, more particularly Paragraph No.55 thereof, and concluded that, as the petitioner-Bank had neither established its entitlement as a decree-holder at the relevant stage nor proved its claim to a charge over the property in question, its claim to the sale proceeds was liable to be rejected.

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30. In our considered opinion, the decision of the Supreme Court in the case of ***Canara Bank (supra)*** does not come to the rescue of the respondent-Bank. The Supreme Court, in paragraph No.55 of the said decision, has held as under :

> *"55. But under Section 73 CPC, sharing in the sale proceeds (here, sale proceeds realised under the RDB Act) is permissible only if a person seeking such share has obtained a decree or an order of adjudication from the Tribunal and has also complied with other conditions laid down under Section 73. In the present case, Canara Bank is not in a position to invoke the principles underlying Section 73 CPC because it has not yet obtained any decree or adjudication of its debt from the Tribunal. Nor has it complied with other provisions underlying Section 73 CPC. Hence no relief can be granted on the basis of the said principles."*

31. The entire case of the petitioner before the DRT-1 and DRAT, Mumbai, and before us, is premised on the provisions of Section 73(1)(b), which is as under:

> *"**73. Proceeds of execution-sale to be rateably distributed among decree-holders. -***
>
> *(1)Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:Provided as follows:-*
>
> *(a)where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;*
>
> *(b)where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;"*

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32. Section 73(1)(b) deals with the sale of property subject to a mortgage or charge during the execution of a decree, and if a property liable to be sold in execution of a decree is under a mortgage or charge, the Court may order it to be sold free from the mortgage or charge, after the express consent of the mortgagee or encumbrancer. Thus, when such a sale takes place with the mortgagee's consent, the mortgagee's security interest shifts from the physical property to the sale proceeds. Accordingly, on 15.03.2007, the petitioner-Bank filed a *pursis* at Exhibit D-40 in the recovery proceedings, expressing its no objection to the sale of the property in question, subject to the condition that the entire amount claimed by the petitioner-Bank in the civil suit be paid to it out of the sale proceeds realised from the said property.

33. The petitioner-Bank consistently maintained before the Recovery Officer as well as the Presiding Officer of the DRT that it had advanced the Housing Loan in respect of the property in question against the mortgage created in its favour vide Memorandum of Deposit of Title Deeds dated 15.02.1999.

34. At this stage, it would be apposite to refer to the prayers sought by the petitioner-Bank in Civil Suit No.3003 of 2002, as reproduced by the Civil Court in its judgment and order dated 07.11.2023. The same are reproduced hereinbelow:

> *"Therefore, the plaintiff has filed this suit and prayed for (A) decree of Rs.9,00,088/- with further interest at 17.50% p.a. and additional @ 2% penal interest on Rs.8,77,734/- from the date of the suit till payment/realization, (B) The Hon'ble Court be pleased to order and decree the sale of the aforesaid mortgaged property towards the satisfaction of the above amount; and (C) Costs of this suit be awarded."*

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35. While answering to the issues Nos.1 to 5 and to the mortgage deed, the Civil Court has held thus:

> *"14 Further, the defendant has taken the defence that there is no signature of the defendant in exh.46 Memorandum of Title Deed, but on perusal of the document exh.42, it appears that the defendants have admitted all the terms and condition and the defendants have voluntarily signed it. On perusing the Interest Agreement at exh.44, the defendant no.1 has voluntarily given consent to execute the not documents in favour of the plaintiff Bank and the defendant no.1 has voluntarily signed the said document. Therefore, the arguments and the defence of the defendants that the defendants have executed Mortgage Deed in favour of the plaintiff Bank and they have not signed the document exh.42 can not be considered because in the documents at Exh.42 to 45 and exh.47, the defendants have voluntarily signed the documents and given written consent and the defendants have not proved that the signature is not of the defendants. Therefore, the plaintiff has successfully proved the documentary evidence produced by the plaintiff Bank.*
>
> *15. So far as issue no.4 for limitation is concerned, the plaintiff has filed the present suit on 20/8/2002. Looking to the document which has been produce vide ex.54, the defendants have voluntary agreed and signed in ex.54 and the defendants have further admitted that the amount of Rs.7,98,736/-plus interest of the plaintiff bank is due from date 1/1/2002 and defendants have further admitted that the aforesaid amount is due as on date 17/01/2002. The defendants has signed the above acknowledgment of debt is on date 18/01/2002 and the plaintiff has filed this suit on date 20/8/2002. Therefore, the suit of the plaintiff is within time and the suit of the plaintiff is not barred by the limitation. Hence, the defendants have failed to proved that the suit of the plaintiff is barred by the law of limitation. Therefore, Issue no.4 is negative.*
>
> *16. Therefore, in view of my above discussion, the plaintiff has proved that Housing Loan of Rs.6,35,000/- was granted to the defendants and all the necessary documents have been signed and executed by the defendants in favour of the plaintiff Bank. The defendants have not denied the signature made in these documents. Therefore, the plaintiff is entitled to get the sum of Rs.6,35,000/- from the defendants.*

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The plaintiff has produced original demand promissory note at exh.43 in which the interest at 17.34% p.a is mentioned, but as per the Section-34 of C.P.C., it is just and proper to grant the interest at 9% p.a. on the said amount from the date of the suit till recovery of the said amount from the defendants. The plaintiff is not entitled to get the relief as prayed in para.17(b) of the plaint. The plaintiff is entitled the suit from the defendants. Hence, I answer issue no.1 and 2 in the affirmative, issue no.3 in partly affirmative, issue no.4 in the negative and I pass the following final order for issue no.5 in the interest of justice:-to the costs of

-ORDER:-

1. The plaintiff's suit is hereby partly allowed.

2. The defendants are directed to pay jointly and severally to the plaintiff a sum of Rs.6,35,000/-Rupees Six Lakh Thirty Five Thousand Only) with interest at the rate of 9% p.a. thereon from the date of the suit i.e. 23.08.2002 till recovery of the said amount from the defendants.

3. The defendants shall pay the costs of the suit to the plaintiff as well as bear their own.

4. Decree to be drawn accordingly."

36. Thus, the Civil Court declined to grant the relief sought by the petitioner under paragraph No.17(b) of the plaint, which reads as reproduced hereinabove, and precisely so since the property in question was already sold.

37. The respondent-Bank as well as the DRAT have erred in construing prayer clause 'B' of the plaint so as to disentitle the petitioner-Bank from claiming a share in the sale proceeds of the property in question. The Tribunals proceeded on the premise that, although the petitioner-Bank had sought relief in respect of the mortgage created over the property in question, it had failed to secure such relief before the Civil Court, as prayer clause 'B' had been rejected.

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38. In our opinion, the DRAT failed to appreciate that prayer clause 'B' in the civil suit specifically pertained to the sale of the mortgaged property towards satisfaction of the amount claimed by the petitioner-Bank. Since the property in question had already been sold in the course of the recovery proceedings, there remained no occasion for the Civil Court to direct the sale of the mortgaged property. It is in this context that the Civil Court declined to grant the relief sought under prayer clause 'B'.

39. The DRAT has erred in appreciating the nature and scope of the relief sought in the civil suit, the effect of the judgment and decree passed by the Civil Court, and the applicability of Section 73 of the CPC.

40. The petitioner-Bank is claiming a share in the sale proceeds on the basis of the mortgage created in its favour and had consistently raised such a claim before the Recovery Officer as well as the Presiding Officer of the DRT. The authorities failed to appreciate that the petitioner-Bank had a valid mortgage over the property in question. The existence of the mortgage is supported by the judgment and decree passed by the Civil Court, wherein the borrowers specifically admitted having executed the mortgage documents in favour of the petitioner-Bank. The said admission formed part of the factual basis on which the Civil Court adjudicated the claim of the petitioner-Bank.

41. In view of the foregoing discussion, the present writ petition succeeds and is ***allowed***. The impugned order dated

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13.11.2024 passed by the DRAT, Mumbai, is hereby quashed and set aside. The matter is remanded to the DRAT, Mumbai, for fresh consideration of Appeal No.119 of 2009. The DRAT shall examine the validity of the order dated 29.01.2009 passed by the Presiding Officer, DRT-I, Ahmedabad, as well as the order dated 28.03.2008 passed by the Recovery Officer, DRT-I in the light of the observations made hereinabove and in accordance with law.

42. Considering that the matter has remained pending for more than 18 (eighteen) years, we expect the DRAT, Mumbai, to decide and dispose of the appeal preferred by the petitioner-Bank, preferably within a period of 06 (six) months from the date of receipt of a copy of this judgment. **RULE** is made absolute accordingly.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(NISHA M. THAKORE,J)

MAHESH/40

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