



IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
THE HON'BLE CHIEF JUSTICE MR. MANOJ KUMAR GUPTA
AND

THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY

Special Appeal No.113 of 2026

14th May, 2026

Abhishek Arora

-----Appellant

Versus

Authorised Officer and Others

----Respondents

Presence:-

Mr. Sagar Kothari, learned counsel for the appellant.

Mr. Ashish Joshi and Mr. Shobhit Joshi, learned counsel for respondent no.1

Dr. Ajar Rab, learned counsel for respondent no.5 through V.C.

JUDGMENT : (per Mr. Manoj Kumar Gupta C. J.)

1. The present intra-court appeal is directed against the order of learned Single Judge dated 25.03.2026 by which WPMS No.3508 of 2025 filed by the petitioner (appellant herein) has been dismissed. In the writ petition, the petitioner had prayed for the following relief:

“(i) issue a writ, order or direction in the nature of mandamus, commanding/directing the respondent no. 1 to execute sale deed and give the possession of land & building, bearing Municipal No. 2/5, admeasuring 32.89 sq.mt., situated at Ka Juj, Darona Sagar Road, Kashipur, District Udham Singh Nagar, to the petitioner.”

2. The petitioner is the auction purchaser of the mortgaged property sold by respondent-bank (a secured creditor) under the provisions of the Securitisation and



Construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). The sale certificate was issued in favour of the petitioner on 16.02.2023.

3. The petitioner, thereafter, prayed for delivery of actual physical possession of the mortgaged property and for execution of the sale deed in his favour. As the respondent-bank failed to hand over possession and execute sale deed of the property in favour of the petitioner, he filed WPMS No.2184 of 2024 complaining about the said default on the part of respondent-bank. The said writ petition was disposed of by this Court vide order dated 08.09.2025 permitting the petitioner to make representation to the authorized officer of the respondent-bank for execution of sale deed and delivery of possession to him, with further direction to the authorized officer, to decide the representation by a speaking order.

4. Pursuant to the liberty so granted, the petitioner made a representation dated 12.09.2025 to the respondent-bank. The same was decided by the authorized officer of the respondent-bank by order dated 10.10.2025. It has been noted in the said order that the mortgaged property sold in favour of the petitioner is adjacent to another property which is separately mortgaged in favour of the bank. Both the properties are constructed on the same common land and there is also no partition on the spot. The access to the first and second floor of the adjoining building is through the



mortgaged property. In view of the said factual position the bank gave the following options to the petitioner:

"As per your earlier submission through mail dated 20.09.2024, you have stated that the value of properties in the vicinity is decreased by 20 to 30%. Thus, it is judicious to refund your full e-auction amount along with simple interest @ 6% per annum.

However, if our above decision is not acceptable then you may take possession of property at your risk and responsibility by making a wall between your property and adjacent property. As the beam is constructed on both the properties together and can damage each another unit, hence destruction or any major changes on it are not allowed and same will also be incorporated in your registry. If accepted, please let us know within 5 days from the receipt of this letter so that necessary arrangement can be done in reasonable time of 30 to 40 days for execution of sale deed, separation of both the properties by erection of wall and transfer of possession. Thereafter you are also suggested to withdraw all the cases pertaining to this case against the Bank"

5. The petitioner accepted the second option i.e. for erection of a wall and thereafter obtain sale deed and possession of the mortgaged property, by his letter dated 15.10.2025. He also agreed that the conditions subject to which, the above offer has been made may be incorporated in the sale deed and he would have no objection to the same. The acceptance of the second option by the petitioner by his letter dated 15.10.2025 is in following terms:

"We are hereby giving our acceptance to you for possession and sale deed of said property (Land and building no.2/5 part ka juj, Drona sagar road village ujjain kashipur Area 32.89 sq mtr). Therefore, you are requested to complete the work mentioned by you within the time period of 30 to 40 days mentioned by you i.e. execution of sale deed, separation of both the properties by erection of wall and transfer of possession. You



have also said that destruction or any other major changes on it are not permitted and the same will also be incorporated in our registry. We have accepted this also.

You are just requested to ensure that the same instructions are mentioned in the publication also while auctioning the adjacent property.”

6. Even after the acceptance of the second option by the petitioner, the respondent-bank did not execute the sale deed in favour of the petitioner and this compelled the petitioner to once again approach this Court by means of WPMS No.3508 of 2025. In the interregnum, the borrower i.e. respondent no.5 herein, challenged the auction proceedings before the Debt Recovery Tribunal (for short ‘DRT’), and it came to be registered as Securitisation Application No.316 of 2025. Therein, an order of *status quo* was passed by the DRT on 29.01.2026. The said order is still in operation as admitted by counsel for the parties during course of hearing of the instant appeal.

7. The learned Single Judge, having regard to the fact that an order of *status quo* has been passed by DRT and the respondent bank had already offered to return the auction money along with interest to the petitioner dismissed the writ petition.

8. Learned counsel for the appellant submits that the observations made by learned Single Judge in paragraph no.8 of the order that the bank was justified in coming out with the proposal to return the auction money and such action cannot be faulted in view of order of *status quo*, are likely to cause serious prejudice to the appellant even in



case the Securitisation Application is dismissed by the DRT. He submits that the observations made by learned Single Judge virtually have the effect of closing the second option given by the bank itself to the petitioner and which was also duly accepted by him. He submits that observations made in this behalf by learned Single Judge are, therefore, liable to be set aside.

9. In paragraph no.8 of the order learned Single Judge has observed as follows:

“Heard learned counsel for the parties and having perused the material available on record, this Court is of the view that since the respondent-Bank is not in a position to hand over the possession to the petitioner-auction purchaser for the reason that the property which is purchased by the petitioner in the auction cannot be handed over to the petitioner in view of the peculiar structure of the building, as the stairs of the 1st and 2nd floors go through the secured asset, therefore, the respondent-Bank has prudently decided to return the money to the petitioner-auction purchaser along with 6% interest. Further, the lis between the parties is pending before the DRT, Dehradun; thus, no interference is warranted at this stage.”

10. Learned counsel for the respondent-bank does not dispute the fact that the petitioner had deposited the entire auction money and a sale certificate was also duly issued in his favour. He also does not dispute that the bank itself gave option to the petitioner to erect partition wall and accept possession of the property subject to the condition that he would not carry out any major alterations/modifications in the building and that the petitioner had accepted the same.



11. The actual implementation of the said option may not be possible at the present moment in view of the order of *status quo* passed by DRT in the Securitisation Application filed by the borrower but it would not mean that the option given by the bank to the petitioner to take actual physical possession of the mortgaged property subject to certain conditions would stand nullified altogether. The said offer and its implementation would definitely be subject to the final outcome of the Securitisation Application pending before the DRT. Learned counsel for the borrower is also not in a position to dispute the above stated legal position.

12. In view of it, we set aside the observations made by learned Single Judge in paragraph no.8 of the order, and dispose of the appeal and the writ petition, by providing that the actual implementation of the offer of the bank regarding delivery of physical possession of the mortgaged property to the petitioner would be subject to the final outcome of the Securitisation Application.

13. Pending application, if any, also stands disposed of.

(MANOJ KUMAR GUPTA, C. J.)

(SUBHASH UPADHYAY, J.)

Dated: 14.05.2026

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