IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2025

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THE HON'BLE MR.MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

WP No.2269 of 2019

Priyal Saraf : Petitioner

versus

1.Edelweiss Asset Reconstruction company Ltd.,
Regd. Office at Edelweiss House,
Off CST Road, kalina, Mumbai 400 098

2.Sheethal Ranjit Chhalani

3.Pramod Kumar Saraf

4.Sangeeta Saraf : Respondents

(Respondents 3 and 4 impleaded vide order dated 02.07.2025, in WMP No.16508 of 2019)

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records in RA (SA) No.120 of 2013 on the file of Debt Recovery Appellate Tribunal, Chennai, order dated 27.04.2018 and to quash the same.

For Petitioner : Mr.K.Chandrasekaran

For Respondents	:	Mr.S.Ravi, Senior Counsel, for Ms.S.Indumathi Ravi, for the first respondent Mr.S.Ravee Kumar, for the second respondent Mr.T.Thiyagarajan, for respondents 3 and 4

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This petition is directed against the order dated 27.04.2018 passed by Debt Recovery Appellate Tribunal, Chennai, (for short, 'the Appellate Tribunal') whereby the Appellate Tribunal has interfered with the order passed by the Debts Recovery Tribunal (for short, 'the Tribunal') and upheld the action of the bank in proceeding to sell the mortgaged property (the subject-matter of dispute in the present case), by way of auction.

2. After hearing learned counsel for the parties, in our view, the issue which arises for consideration is as to whether the Tribunal had

jurisdiction to enter into the question of validity of the mortgage created by the borrower. Therefore, we will be referring to the relevant facts necessary for adjudication of this limited controversy.

3. The borrower company M/s.Jai Bhavani Steel Enterprises Pvt. Ltd. availed financial assistance from the lending bank, Oriental Bank of Commerce. Admittedly, father, mother and son were the directors of the said company. The directors of the company deposited the title deeds of the immovable property purchased by them in their names, including the name of the petitioner herein, who happened to be the minor daughter. The borrower company having failed to discharge the loan amount and the account having been classified as non-performing asset, the bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, towards taking appropriate measures under Section 13(4) thereof, which eventually led to the issuance of demand notice, possession notice and sale notice one after the other. The auction proceedings culminated in issuance of sale certificate in favour of the second respondent also.

4. At this stage, daughter of Mr.Pramod Kumar Saraf, one of the Directors of the company, filed an application seeking a direction for cancellation of sale proceedings, by challenging the mortgage created by her father while availing credit facility from the bank. The application was allowed by the Tribunal. Aggrieved by the same, an appeal was filed by the finance company which came to be allowed and the order of the Tribunal was set aside.

5. Learned counsel for the petitioner raised manifold contentions. He would contend that on the face of the admitted factual position that the property, which was mortgaged, was purchased jointly in the name of the petitioner's mother and her own name, it was not an exclusive property of her mother but jointly held by the petitioner as well as her mother. That property could not have been mortgaged, without complying with the provisions contained in Section 8(3) of the Hindu Minority and Guardianship Act, 1956. He would further submit that present is a case, where, not even permission of the Court was taken and therefore, once the minor elected to challenge, the inevitable conclusion would be that the creation of

mortgage itself was bad in law and therefore, it cannot be said that the mortgage was validly created under the law for the purpose of securing repayment of debt due to the bank from the borrower company.

6. His next submission is that the Debts Recovery Tribunal otherwise is conferred with exclusive jurisdiction to deal with all matters in relation to measures taken under Section 13(4) of the SARFAESI Act. Therefore, it would include within its power and jurisdiction, an authority to decide whether or not the mortgage was validly created. The Tribunal rightly allowed the application and Appellate Tribunal committed illegality in setting aside the order and confirming the action of the bank/ financial institution.

7. In support of his submission, the learned counsel placed reliance upon the following two decisions:

(1) Amirtham Kudumbah vs. Sarnam Kudumban (CDJ 1991 SC 336)

(2) G.Annamalai Pillai vs. District Revenue Officer & Others, (CDJ 1993 SC 836)

8. On the other hand, learned counsel appearing for the financial

institution would submit that the order passed by the Appellate Tribunal does not suffer from any illegality inasmuch as the bank had proceeded to sell the mortgaged property in accordance with the provisions of law and insofar as compliance with various provisions contained in Section 13 of the SARFAESI Act is concerned, no illegality was committed.

9. Learned counsel appearing for the auction purchaser would submit that all the orders and proceedings drawn against her are illegal and liable to be set aside only on the ground that even though she was declared as successful purchaser and sale certificate was issued in her favour, she was not impleaded as a party in the proceedings before the Tribunal. He would submit that whether or not the mortgage deed was legal, could not have been decided, even assuming that the Tribunal had jurisdiction, without she being impleaded as a party and afforded an opportunity to defend the sale of mortgaged property through auction.

10. Relying upon a judgment of the Hon'ble Supreme Court in ***Central Bank of India vs. Prabha Jain and others (2025 (4) SCC***

38), he would submit that the Supreme Court has authoritatively laid down in the aforesaid judgment that in such matters, the issue as to whether the mortgage was rightly created or not by the father of the present petitioner is outside the purview of jurisdiction of the Tribunal as envisaged under the SARFAESI Act. Defending the sale, learned counsel also submitted that there is material on record to show that the mortgage was created only by way of legal necessity for the benefit of the minor because the business which was being run by the borrower was a family business, of which the petitioner was a member and therefore, by no stretch of imagination could it be stated that the present was not a case of sale for the benefit of the minor.

11. But for the issue of jurisdiction, which has arisen for consideration of this Court, we might have gone into other aspects of the matter.

12. As to whether the Tribunal would have jurisdiction to go into the issue of legality and validity of a mortgage is no longer *res integra.* In an identical factual situation like the present one, while dealing with an issue relating to jurisdiction of the Tribunal to examine the

correctness and validity of mortgage, their Lordships in the Supreme Court decided the issue.

The issue which fell for consideration was as follows:

> *"15. The plaintiff in her suit has prayed for 3 reliefs:*
>
> *a) The first relief is in relation to a sale deed executed by Sumer Chand Jain in favour of Parmeshwar Das Prajapati.*
>
> *b) The second relief is in relation to a mortgage deed executed by Pramod Jain in favour of the bank.*
>
> *c) The third relief is for being handed over the possession of the suit property."*

13. Having examined the scheme and provisions contained in Section 13 of the SARFAESI Act, it was categorically held that as far as the relief sought in relation to a mortgage deed executed by the borrower in favour of the bank was concerned, it was not in relation to any measures taken by the secured creditor under Section 13(4) of the SARFAESI Act.

The findings recorded in this regard are as follows :

> *"16. So far as the first and second reliefs are concerned, they are not in relation to any measures*

taken by the secured creditor under Section 13(4) of the SARFAESI Act. Rather, they are reliefs in relation to the actions taken prior to the secured creditor stepping into the picture and well prior to the secured creditor invoking the provisions of the SARFAESI Act.

17. Therefore, the Tribunal would have no jurisdiction under Section 17 of the SARFAESI Act to grant the declarations sought in the first and the second reliefs."

14. The Supreme Court proceeded further to examine the scheme of the SARFAESI Act to hold that it was enacted essentially to provide a speedy mechanism for recovery of debts by banks and financial institutions and it has not been enacted for providing a mechanism for adjudicating upon the validity of documents or to determine questions of title finally. It was observed thus:

"18. Further, the SARFAESI Act is enacted essentially to provide a speedy mechanism for recovery of debts by banks and financial institutions. The SARFAESI Act has not been enacted for providing a mechanism for adjudicating upon the validity of documents or to determine questions of title finally. The DRT does not have the jurisdiction to grant a declaration with respect to the mortgage deed or the

sale deed as sought by the Plaintiff. The jurisdiction to declare a sale deed or a mortgage deed being illegal is vested with the civil court under Section 9 of the Code of Civil Procedure. Therefore, the civil Court has the jurisdiction to finally adjudicate upon the first two reliefs.

19. In the aforesaid context, we may give few illustrations of the kind of disputes that can crop up. These illustrations would indicate that DRT can never have the jurisdiction to decide such civil disputes of title between a third person and a borrower."

15. The aforesaid decision therefore clearly holds and leaves no doubt, that such issues relating to the validity of documents could not be gone into by the Tribunal, as that would amount to assuming jurisdiction of a civil court to decide civil disputes of title between a third person and a borrower.

16. Though learned counsel for the petitioner heavily relied upon the observations made by the Supreme Court in paragraph 33 of the above judgment, in our considered view, the facts of that case are distinguishable, which led the Supreme Court to come to a conclusion

that the issue raised therein could have been decided by the Tribunal. That was not a matter relating to any issue arising or relief sought in relation to a mortgage deed. Therefore, the reliance placed is misconceived in law and facts both.

17. As an upshot of the above discussion, we are of the view that the proceeding before the Tribunal were not maintainable. Therefore, all the findings which have been recorded by the Tribunal as well as Appellate Tribunal on the issue of validity of the mortgage are void and *non est,* being without jurisdiction.

18. The issue is left open for being considered in an appropriate forum, in case any eventuality so arises. Since we are setting aside the orders and proceeding before the Debts Recovery Tribunal, subject to order, if any, that may be passed by a court of competent jurisdiction, the proceedings drawn by the secured creditor shall remain operative in law.

19. Learned counsel for the petitioner prayed this Court to pass necessary orders towards exclusion of the period during which this

petition remained pending.

20. In this regard, we can only say that if any such issue with regard to limitation arises, the same will have to be decided only in accordance with law.

21. The writ petition is dismissed. There will be no order as to costs.

(MANINDRA MOHAN SHRIVASTAVA, CJ.) (SUNDER MOHAN, J.)
25.08.2025

Index : Yes
Neutral Citation : Yes
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To

1.The Debt Recovery Appellate Tribunal,
Chennai

2.The Debts Recovery Tribunal-III,
Chennai

THE HON'BLE CHIEF JUSTICE
AND
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