A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P No.217 of 2026

CNR No.- ODHC010065012026

(In the matter of an application under Article 227 of the Constitution of India, 1950).

ICICI Bank Ltd., Gujarat **....** ***Petitioner (s)***

-versus-

Gitanjali Maharana **....** ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner (s) : *Mr. Ramachandra Panigrahy, Adv.*

For Opposite Party (s) : *Mr. Debasis Mishra, Adv.*

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-27.08.2026
DATE OF JUDGMENT:- 30.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioner, ICICI Bank Ltd., represented through its Senior Manager, has instituted the present Civil Miscellaneous Petition under Article 227 of the Constitution of India, assailing the legality, propriety and correctness of the order dated 10.12.2025 passed by the learned 1st Addl. District Judge, Puri, in F.A.O. No.64 of 2023. Apart from the above, the Petitioner has also challenged the order dated 19.10.2023 passed by the learned Senior Civil Judge, Puri, in I.A. No. 105 of 2022, arising out of Civil Suit No. 341 of 2022, pending before

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the learned Senior Civil Judge, Puri. The impugned orders, being devoid of reasons and reflecting complete non-application of judicial mind, has caused serious prejudice and grave hardship to the Petitioner. It is, therefore, liable to be set aside in exercise of the supervisory jurisdiction of this Court.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The Opposite Party/Plaintiff has instituted the above Civil Suit against the Petitioner/Defendant-Bank, *inter alia*, praying for a decree declaring the recovery proceedings of the Defendant/Bank under different provisions of the SARFAESI Act, 2002, over the schedule property against the Plaintiff and her family members as null and void, a decree of permanent injunction, besides other consequential reliefs of damages.

(ii) (ii) The borrowers, i.e., Shri Gajendra Kumar Maharana, Shri Bhanu Pratap Maharana, and Shri Shakti Prasad Maharana, approached the Petitioner-Bank to avail a Home Loan. The Bank, on 20.12.2014, sanctioned the Home Loan of Rs.22,00,000/- . The borrowers again approached the Bank for a Top-Up Loan of Rs.14,00,000/-, which was sanctioned on 22.12.2014, and another Top-Up Loan of Rs.7,20,000/- was sanctioned on 26.11.2015. Hence, a total amount of Rs.43,20,000/- was sanctioned and disbursed to the borrowers. Details of all the loans availed by the borrowers against the mortgage of the suit property are as follows:-

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Borrowers	Loan Type	Loan A/C No.	Sanction Date	Sanction Amount
Gajendra Kumar Maharana, Bhanu Pratap Maharana & Sakti Prasad Maharana	Home Loan	LBPUR00002295783	20.12. 2014	Rs.22.00,000/-
Gajendra Kumar Maharana, Bhanu Pratap Maharana & Sakti Prasad Maharana	Top Up Loan	LBPUR00002295835	22.12. 2014	Rs.14,00,000/-
Gajendra Kumar Maharana, Bhanu Pratap Maharana & Sakti Prasad Maharana	Top Up Loan	LBPUR00002517486	26.11. 2015	Rs.7,20,000/-

(iii) The above loan amounts were sanctioned during the period from December 2014 to November 2015. There was family discord between the sons and daughter-in-law of the Plaintiff/Opposite Party. Consequent thereto, presumably, one of the sons, i.e., Shakti Prasad Maharana, committed suicide on 22.08.2021. Though a UD Case was registered, it was closed

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after due investigation, and later on, the daughter-in-law lodged an FIR against the other son and daughter of the Plaintiff. The other son was arrested and later released on bail.

(iv) Much after the alleged incident, the loan accounts of the borrowers were declared NPA on 01.12.2021. Owing to the default in payment of the instalments, the Bank, on 03.01.2022, issued a notice under Section 13(2) of the SARFAESI Act, 2002, calling upon them to pay the dues within 60 days. When the notice under Section 13(2) was issued and delivered to the borrowers, it was informed to the Bank that the borrower, Gajendra Maharana, had died prior to the issuance of the notice under the SARFAESI Act. Hence, the Bank had no option but to withdraw the earlier notice and issue a fresh notice under Section 13(2) of the SARFAESI Act, as a notice to a deceased person is a nullity. On the date of the alleged suicide by one of the sons of the Plaintiff, no action had been initiated by the Bank. Despite receipt of the notice, the borrower did not pay the dues and outstanding amount, and consequently, the Bank, on 09.05.2022, issued a possession notice under Section 13(4) of the SARFAESI Act, 2002.

(v) The Plaintiff/Opposite Party, being the wife of late Shri Gajendra Maharana, one of the borrowers, filed the present suit for declaration, permanent injunction, and damages against the Defendant-Bank, challenging the legal action initiated by the

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Bank under the SARFAESI Act. The allegations of the Plaintiff were that, since her late husband and son had taken the loan, she was not aware of the same and the Bank should not recover any dues from her. She also alleged that, due to the harassment of the Bank, her son committed suicide on 22.08.2021. However, the fact remains that the account was declared NPA on 01.12.2021, which was three months after the alleged suicide. There was a matrimonial dispute between the deceased son and his wife, and an FIR was also lodged by the wife. The deceased son was arrested and released on bail, and thereafter he committed suicide.

(vi) The Plaintiff/Opposite Party filed the above Civil Suit along with an I.A., vide I.A. No. 105 of 2022, under Order 39 Rules 1 & 2 CPC read with Section 151 CPC, with a prayer to restrain the Defendant/Petitioner from dispossessing the Plaintiff and her family members from the suit house, from changing the nature and character of the same, and from entering into the suit property till disposal of the suit.

(vii) In the said I.A., the learned Senior Civil Judge, Puri, allowed the said I.A. vide order dated 19.10.2023, and the Petitioner/Defendant was directed to refrain from dispossessing the Opposite Party/Plaintiff along with her family members from the suit house, from changing the nature and character of

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the suit property by any means, and from entering into the suit property till disposal of the suit.

(viii) Challenging the said order dated 19.10.2023, the Petitioner/Defendant approached the learned 1st Addl. District Judge, Puri, in F.A.O. No. 64 of 2023 and the learned 1st Addl. District Judge, Puri, after hearing the matter, dismissed the above F.A.O., affirming the order dated 19.10.2023 passed by the learned Senior Civil Judge, Puri, in I.A. No. 105 of 2022.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. The learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

(i) As the borrowers failed to adhere to the terms and conditions of the said loans/credit facilities, resulting in the said loan/credit facility accounts being classified as Non-Performing Assets, the Bank subsequently recalled all three loans/credit facilities vide loan recall notice issued on 02.12.2021.

(ii) As the borrowers did not repay the loan dues as demanded in the loan recall notice, the Bank issued a statutory demand notice under Section 13(2) of the SARFAESI Act, 2002, on 03.01.2022, demanding payment of Rs.36,88,813.00 due as on 03.01.2022 against all three loan accounts. The demand notice was issued through speed post to all the borrowers, and the notice was also made sufficient by way of publication in newspapers.

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(iii) The borrowers did not repay the loan dues as demanded in the statutory demand notice. As such, the Bank issued a possession notice under Section 13(4) of the SARFAESI Act, 2002, on 09.05.2022, and published the possession notice in the newspaper on 13.05.2022. It is further submitted that the present suit was filed with a malicious motive of suppressing as well as concealing the true facts of the matter, wherein the subject property is mortgaged with the Bank and, as such, constitutes a security interest as defined under Section 2(zf) of the SARFAESI Act.

(iv) The cause of action for filing the instant suit arises out of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and hence, the suit filed before the learned Senior Civil Judge, Puri, is not fit to be heard by the learned Civil Court and is thus liable to be dismissed at the very outset without any consideration of the merits of the case. Entertaining the suit filed by the Respondent/Plaintiff will create a wrong precedent and defeat the very purpose of the SARFAESI Act. It is submitted that the SARFAESI Act was one of the most radical legislative measures to ensure that dues of banks are recovered without any obstruction.

(v) It is further contended that the very object of the SARFAESI Act enacted by Parliament would be defeated if the present Civil Suit is entertained by the Civil Court. It is submitted that the

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main object of the legislature was to ensure that there are no unwarranted impediments in the recovery of debts due to banks and other financial institutions and secured creditors from Non-Performing Assets. If the present Civil Suit is entertained, it would have a serious adverse impact on the rights of the Defendant-Bank and its financial health.

(vi) It is further contended that, in view of Section 34 of the SARFAESI Act, the present suit is not maintainable and the learned Trial Court cannot assume jurisdiction to try and adjudicate the present suit, where the DRT or DRAT has exclusive jurisdiction to entertain any and all issues pertaining to the SARFAESI Act, 2002.

(vii) It is the further contention of the Petitioner/Defendant-Bank that the present suit and the I.A. are barred by the jurisdiction of the learned Trial Court. Under Section 17 of the SARFAESI Act, any aggrieved person can approach the Debt Recovery Tribunal against the measures taken by the Secured Creditor.

(viii) It is the further contention of the Petitioner/Defendant-Bank that, in view of Section 19 of the SARFAESI Act, 2002, the DRT has the power not only to restore possession to the borrower or any other person, but also to compensate in accordance with law.

(ix) It is the further contention of the Petitioner/Defendant-Bank that the wife of the deceased son had lodged a criminal case against the family members, and consequent thereto, her elder

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son was arrested. It is further stated by the Petitioner/Defendant-Bank herein that the enmity between the Respondent/Plaintiff and her son and daughter-in-law may have caused the unfortunate incident of the death of the younger son, and for that, the Petitioner/Defendant-Bank was in no way responsible.

(x) It is further contended that the Debt Recovery Tribunal has wider powers than the Civil Court and all the disputes raised in the present case can be adjudicated by the learned DRT. In case the learned Tribunal finds that the procedure adopted by the Petitioner/Defendant-Bank was not in consonance with law, the learned Tribunal can not only restore possession of the secured assets but also grant compensation and damages to the aggrieved party in view of Section 19 of the SARFAESI Act, 2002.

(xi) It is further contended that the present suit was filed on 20.07.2022 along with I.A. No.105 of 2022, but since then, no injunction order was passed by the learned Trial Court. However, the impugned order was passed on the plea that, since there was no SARFAESI proceeding by the Bank, the Plaintiff was entitled to an injunction. It is further submitted that the entire suit was filed to declare the SARFAESI proceedings as null and void, which squarely falls within the ambit of Section 34 of the SARFAESI Act, 2002. Moreover, admittedly, where there was no SARFAESI proceeding, the

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cause of action for the suit fails. It is further stated that the Appellant/Defendant has also filed the written statement to the amended plaint, wherein it has brought to the notice of the learned Trial Court the reason for withdrawal of the earlier SARFAESI notice and issuance of a fresh demand notice under Section 13 of the SARFAESI Act, which was not challenged by the Plaintiff.

(xii) The Opposite Party/Plaintiff has no cause of action to file the present suit, nor could any interim order have been passed by the learned Trial Court. However, the plaint was presented in order to delay/defer the recovery proceedings in respect of the loans availed by the deceased spouse and sons of the Plaintiff. It is further submitted that the Plaintiff is neither the owner of the property nor the mortgagor and, hence, does not have any locus standi to file the present suit. It is further submitted that the learned Trial Court as well as the learned Appellate Court failed to appreciate the settled law that where the issue involved can be adjudicated by the Debt Recovery Tribunal (DRT) or Debt Recovery Appellate Tribunal (DRAT), the Civil Court cannot assume jurisdiction and pass an interim injunction restraining the Secured Creditor from initiating legal proceedings under the SARFAESI Act, 2002. It is further submitted that the learned Trial Court completely misunderstood the settled law and passed the impugned order dated 19.10.2023 on the premise that, since the notice under Section 13(2) was withdrawn by the

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Petitioner/Defendant-Bank, possession of the mortgaged property could not be taken, and passed an order restraining the Bank from dispossessing the Plaintiff and her family members from the suit house, from changing the nature and character of the suit property by any means, and from entering into the suit property till disposal of the suit.

(xiii) It is further contended that the Petitioner/Defendant-Bank filed a First Appeal being F.A.O. No. 64 of 2023, challenging the order dated 19.10.2023 passed by the learned Trial Court, which came to be dismissed by the learned Appellate Court vide impugned judgment dated 10.12.2025 on the premise that, since the notice dated 03.01.2022 under Section 13(2) of the SARFAESI Act was withdrawn and, in the absence of such notice, the Bank did not have any right to take possession of the property, the action of the Bank was not in conformity with the provisions of law. The Appellate Court has also held that the Bank, at the same time, is not debarred from exercising its right to take appropriate action as per law. It is further submitted that both the learned Courts have recognised the rights of the Bank under the SARFAESI Act, 2002, but interfered with the issue and passed an interim injunction restraining the Bank from taking legal action as per law.

(xiv) It is the further contention that the Petitioner/Defendant-Bank has already filed Original Application No. 394 of 2023 on 16.05.2023 before the Debt Recovery Tribunal, Cuttack, which is

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pending for adjudication. The Opposite Party/Plaintiff has filed their written statement, admitting the fact that the deceased husband of the Plaintiff had taken a home loan from the Defendant-Bank, but they are not aware of such loan. It is further submitted that the Plaintiffs cannot enjoy the property without paying the due instalments.

(xv) Learned counsel has placed reliance in the case of ***Jagdish Singh v. Heeralal & Ors.***[1], wherein the relevant paragraphs are reproduced below:

> *"**19.** The expression "any person" used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitisation Act. Reference may be made to the judgment of this Court in Satyawati Tondon case [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] .*
>
> ***20.** Therefore, the expression "any person" referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the civil suit is maintainable or not, under the Securitisation Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitisation Act, in case the Bank (secured creditor) adopt any measure including the sale of the secured assets, on which the plaintiffs claim interest.*
>
> ***21.** Section 34 of the Securitisation Act ousts the civil court jurisdiction. For easy reference, we may extract Section 34 of the Securitisation Act, which is as follows:*
>
> > *"**34. Civil court not to have jurisdiction**.—No civil court shall have*

[1] (2014) 1 Supreme Court Cases 479

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jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).”

22. *The scope of Section 34 came up for consideration before this Court in Mardia Chemicals Ltd. [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] and this Court held as follows: (SCC p. 349, para 50)*

“50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to

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determine in respect of any action taken 'or to be taken in pursuance of any power conferred under this Act'. That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13."

23. *Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the Securitisation Act.*

24. *Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly*

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states that no civil court shall have the jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."

(xvi) He has also placed reliance in the case of ***Sree Anandhakumar Mills Limited v. Indian Overseas Bank & Ors.***[2], wherein the relevant paragraph is reproduced below:

*"**4.** The matter need not engage the Court in any great detail as in view of the law laid down by this Court in Jagdish Singh v. Heeralal [Jagdish Singh v. Heeralal, (2014) 1 SCC 479 : (2014) 1 SCC (Civ) 444] it would be clear and evident that the suit filed by the second respondent (i.e. OS No. 106 of 2009) is not maintainable. In Jagdish Singh [Jagdish Singh v. Heeralal, (2014) 1 SCC 479 : (2014) 1 SCC (Civ) 444] this Court after an elaborate consideration of*

[2] (2019) 14 Supreme Court Cases 788

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the provisions of the SARFAESI Act, particularly, Sections 2(zf), 2(zc), 13(1), 17, 18 and 34, took the view, on almost similar facts, that a suit for partition would not be maintainable in a situation where proceedings under the SARFAESI Act had been initiated. It was also held that the remedy of any person aggrieved by the initiation of proceedings under the SARFAESI Act lies under Section 17 which provides for an efficacious and adequate remedy to a party aggrieved. Para 24 of the Report in Jagdish Singh [Jagdish Singh v. Heeralal, (2014) 1 SCC 479 : (2014) 1 SCC (Civ) 444] which makes the above position clear may be usefully extracted below: (SCC p. 489)

> *"24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided*

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under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."

(emphasis in original)

(xvii) He has also placed reliance in the case of ***Punjab & Sind Bank v. Frontline Corporation Ltd.***[3], wherein the reverent paragraphs are reproduced below:

*"**12**. The issue as to the exclusion of the jurisdiction of a civil court is no more res integra. The provisions of Section 34 of the SARFAESI Act have been considered by a Bench of three Judges of this Court in Mardia Chemicals Ltd. v. Union of India [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] . It will be relevant to refer to the following observations of this Court in the said case :*

"50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures

[3] (2023) 4 SCR 858

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as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.

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51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having been recognised in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely, V. Narasimhachariar [V. Narasimhachariar v. Egmore Benefit Society, 1954 SCC OnLine Mad 352 : AIR 1955 Mad 135] , AIR at pp. 141 & 144, a judgment of the learned Single Judge where it is observed as follows : (SCC OnLine Mad para 22 : AIR para 22)

> *"22. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee, must clearly disclose a fraud or irregularity on the basis of which*

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relief is sought : Adams v. Scott [Adams v. Scott , (1859) 7 WR 213, 249] . I need not point out that this restraint on the exercise of the power of sale will be exercised by courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Ghose, Rashbehary : Law of Mortgages, Vol. II, 4th Edn., p. 784.)""

13. *It could thus be seen that this Court has held that the jurisdiction of the civil court is barred in respect of matters which a DRT or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". The Court has held that the prohibition covers even matters which may be taken cognizance of by the DRT though no measure in that direction has so far been taken under sub-section (4) of Section 13 of the SARFAESI Act. It has been held that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. It has categorically been held that any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The Court held that the bar of civil court thus applies to all such matters which may be taken cognizance of by the DRT, apart from those matters in which measures have*

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already been taken under sub-section (4) of Section 13 of the SARFAESI Act."

(xviii) He has also placed reliance in the case of ***Electrosteel Castings Limited v. UV Asset Reconstruction Company Limited & Ors***[4]., wherein the relevant paragraphs are reproduced below:

> "**7.** *We have heard the learned Senior Counsel appearing on behalf of the respective parties at length.*
>
> **7.1.** *It is the case on behalf of the plaintiff-appellant herein that in the plaint there are allegations of "fraud" with respect to the assignment agreement dated 30-6-2018 and it is the case on behalf of the plaintiff-appellant herein that assignment agreement is "fraudulent" inasmuch as after the full payment as per the approved resolution plan under IBC and the original corporate debtor is discharged, there shall not be any debt by the plaintiff-appellant herein as a guarantor and therefore assignment deed is fraudulent. Therefore, it is the case on behalf of the plaintiff-appellant herein that the suit in which there are allegations of "fraud" with respect to the assignment deed shall be maintainable and the bar under Section 34 of the SARFAESI Act shall not be applicable.*
>
> **7.2.** *However, it is required to be noted that except the words used "fraud"/"fraudulent" there are no specific particulars pleaded with respect to the "fraud". It appears that by a clever drafting and using the words "fraud"/"fraudulent" without any specific particulars with respect to the "fraud", the plaintiff-appellant herein intends to get out of the bar under Section 34 of the SARFAESI Act and wants the suit to be maintainable. As per the settled proposition of law mere mentioning and using the word "fraud"/"fraudulent" is not sufficient to satisfy the test of "fraud". As per the settled proposition of law such a pleading/using the word*

[4] (2022) 2 Supreme Court Cases 573

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"fraud"/"fraudulent" without any material particulars would not tantamount to pleading of "fraud".

8. *In Bishundeo Narain [Bishundeo Narain v. Seogeni Rai, 1951 SCC 447 : 1951 SCR 548] in para 22, it is observed and held as under : (SCC p. 454)*

> *"22. … Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code."*

8.1. *Similar view has been expressed in Ladli Parshad Jaiswal [Ladli Parshad Jaiswal v. Karnal Distillery Co. Ltd., (1964) 1 SCR 270 : AIR 1963 SC 1279] and after considering the decision of the Privy Council in Bharat Dharma Syndicate Ltd. v. Harish Chandra [Bharat Dharma Syndicate Ltd. v. Harish Chandra, 1937 SCC OnLine PC 24 : (1936-37) 64 IA 143] , it is held that a litigant who prefers allegation of fraud or other improper conduct must place on record precise and specific details of these charges. Even as per Order VI Rule 4 in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, particulars shall be stated in the pleading. Similarly in K.C. Sharma & Co. [Union of India v. K.C. Sharma & Co., (2020) 15 SCC 209] it is held that "fraud" has to be pleaded with necessary particulars. In Ram Singh [Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364] , it is*

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observed and held by this Court that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which the suit is barred by law of limitation.

8.2. *In T. Arivandandam v. T.V. Satyapal [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] , it is observed and held in para 5 as under : (SCC p. 470)*

> *"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits."*

8.3. *A similar view has been expressed by this Court in the recent decision in P. Selathal [Canara Bank v. P. Selathal, (2020) 13 SCC 143] .*

xxx xxx xxx

11. *It is required to be noted that as such in the present case the assignee has already initiated the proceedings under Section 13 which can be challenged by the*

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plaintiff-appellant herein by way of application under Section 17 of the Sarfaesi Act before the DRT on whatever the legally available defences which may be available to it. We are of the firm opinion that the suit filed by the plaintiff-appellant herein was absolutely not maintainable in view of the bar contained under Section 34 of the SARFAESI Act. Therefore, as such the courts below have not committed any error in rejecting the plaint/dismissing the suit in view of the bar under Section 34 of the SARFAESI Act.

12. *In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. However, it will be open for the appellant herein to initiate appropriate proceedings before the DRT under Section 17 of the SARFAESI Act against the initiation of the proceedings by the assignee-Respondent 1 herein under Section 13 of the SARFAESI Act inter alia on the ground : (1) that the assignee cannot be said to be secured creditor so far as the appellant is concerned; (2) that there is no amount due and payable by the plaintiff-appellant herein on the ground that in view of the proceedings under IBC against the corporate debtor and the corporate debtor being discharged after the approved resolution plan, there shall not be any enforceable debt against the appellant. If such an application is filed within a period of two weeks from today the same be considered in accordance with law and on merits after complying with all other requirements which may be required while filing the application under Section 17 of the SARFAESI Act.*"

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(xix) He has also placed reliance in the case of ***Bajaj Finance Ltd. v. Ali Agency & Ors.***[5], wherein the relevant paragraph is reproduced below:

> *"28. Further, the enactment does not leave the aggrieved person remediless. In case if any person is aggrieved of any action taken by the creditor including of an order passed by the District Magistrate or Chief Judicial Magistrate the remedy lies with DRT in view of Section 17 (1) of the Act, 2002 [See Para 20 of Kaniyalal Lalchand Sachdev v. State of Maharashtra[8]]. Section 34 of the Act, 2002, excludes the jurisdiction of any court or other authority from granting any injunction in respect of any action taken or to be taken by the secured creditor under the provisions of the Act. Thus, the DRT shall be competent to examine the validity of not only the steps taken by the secured creditor under Section 13(4) but also all subsequent and consequential actions taken by the secured creditor under the Act.*

(xx) Finally, he submits that since the learned Debt Recovery Tribunal is empowered to restore back the possession of the secured asset with compensation and damages, if found the procedure adopted by the Petitioner/Defendant-Bank is not in consonance with the SARFAESI Act, 2002. The impugned orders are not sustainable as both the learned Courts below have failed to appreciate that there is no cause of action rests with the plaintiff to plead further for passing of the impugned order as she was not the owner of the property nor the borrower/guarantor or mortgagor. Accordingly, taking into

[5] 2022 SCC OnLine Ori 4133

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account the contentions and the ratio laid down by the Hon'ble Supreme Court, he prays for setting aside the judgment dated 10.12.2025 passed by the learned 1st Addl. District Judge, Puri in F.A.O. No.64 of 2023 and order dated 19.10.2023 passed by the learned Senior Civil Judge, Puri in I.A. No.105 of 2022 (arising out of Civil Suit No.341 of 2022).

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY:

4. *Per contra*, the learned counsel for Opposite Party earnestly made the submission that the present CMP deserves to be rejected in limine.

(i) On a bare perusal of the said notice issued under the SARFAESI Act, it appears that the notice is defective, as it does not contain the address of the concerned authority, the signature of the authority, or the loan account number. Therefore, the Plaintiff/Opposite Party instituted the suit seeking a decree declaring the recovery proceedings initiated by the Bank under the various provisions of the SARFAESI Act in respect of the scheduled property against the Plaintiff and her family members to be null and void. The Plaintiff also prayed for a permanent injunction and other consequential reliefs.

(ii) Upon being noticed, the Petitioner/Defendant-Bank entered appearance and filed its written statement, inter alia, contending that the proceedings had been initiated under the SARFAESI Act, 2002, and that the Civil Court had no jurisdiction to entertain the suit.

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(iii) The learned Trial Court, vide its order dated 19.10.2023, held that the question of maintainability of the suit had already been decided vide order dated 24.02.2023, wherein it was held that Section 34 of the SARFAESI Act does not bar the present suit. The learned Trial Court further held that, since the possession notice issued against the Opposite Party/Plaintiff had been recalled, the Petitioner/Defendant-Bank had no authority to take possession of the suit property. Accordingly, the learned Trial Court restrained the Bank from dispossessing the Opposite Party/Plaintiff and her family members from the suit house. Challenging the said order, the Petitioner/Defendant filed FAO No.64 of 2023 before the learned 1st Additional District Judge, Puri, which was also dismissed vide judgment dated 10.02.2025.

(iv) Finally, learned counsel for the Opposite Party submits that the concurrent findings of both the Courts below are to the effect that there was no valid notice issued under the SARFAESI Act authorising the dispossession of the Opposite Party/Plaintiff from the suit property. Therefore, according to learned counsel, both the Courts below have rightly passed the impugned orders, which call for no interference by this Court.

IV. FINDING OF THE LEARNED TRIAL COURT:

5. On perusal of the impugned order dated 19.10.2023 passed by the learned Senior Civil Judge, Puri in I.A. No.105 of 2022 arising out of C.S. No.341 of 2022, it appears that the learned Civil Judge, upon

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considering the materials available on record, held that, once the possession notice issued against the Opposite Party was recalled, the Petitioner/Defendant had no authority to take possession of the suit property. Accordingly, the learned Civil Judge restrained the Petitioner/Defendant from dispossessing the Opposite Party/Plaintiff and her family members from the suit house, from changing the nature and character of the suit property in any manner, and from entering into the suit property during pendency of the suit.

6. On further perusal of the impugned judgment dated 10.12.2025 passed by the learned 1st Additional District Judge, Puri in F.A.O. No.64 of 2023, it appears that the learned Appellate Court, upon consideration of the materials available on record and the findings recorded by the learned Trial Court, found no sufficient ground to interfere with the order dated 19.10.2023 passed in I.A. No.105 of 2022. Accordingly, the learned Appellate Court confirmed the said order and dismissed the appeal.

7. In view of the aforesaid orders passed by the learned Courts below, the interim protection granted in favour of the Opposite Party/Plaintiff shall operate in terms of the order dated 19.10.2023, as affirmed by the judgment dated 10.12.2025, subject to the final adjudication of the rights of the parties in the pending suit.

V. THIS COURT'S REASONING AND ANALYSIS:

8. Shorn of its factual detail the present petition raises one question. That is, Could a Civil Court restrain a secured creditor from taking

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possession of a mortgaged property in the face of Section 34 of the SARFAESI Act, 2002? If it could not, does the concurrent grant of such an injunction call for correction in the supervisory jurisdiction of this Court under Article 227 of the Constitution?

9. The supervisory jurisdiction of this Court is not an appeal in disguise. It does not exist to reweigh evidence or to substitute one plausible view for another. Yet it was conferred for a purpose. Its purpose is to keep subordinate courts within the bounds of their authority. The Supreme Court in ***Shalini Shyam Shetty v. Rajendra Shankar Patil***[6] and again in ***Garment Craft v. Prakash Chand Goel***[7]**,** has held that interference is warranted where a court has assumed a jurisdiction it does not possess, or has acted in flagrant disregard of law, causing manifest injustice. An order passed in the teeth of a statutory prohibition is the plainest case for interference. Concurrence between two courts cannot cure it. Two orders resting on the same want of jurisdiction are no stronger than one.

10. The SARFAESI Act is a self-contained code for the enforcement of security interests without the intervention of courts. Section 13(2) obliges the secured creditor to serve a demand notice on the borrower. Section 13(4) empowers it to take possession of the secured asset if the dues remain unpaid. Section 17(1) gives "any person" aggrieved by a measure under Section 13(4) a right to approach the Debts Recovery Tribunal.

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[6] (2010) 8 SCC 329

[7] (2022) 4 SCC 181

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11. Sections 17(2) and 17(3) empower the Tribunal to examine whether the measures conform to the Act and the Rules. Where they do not, the Tribunal may declare them invalid and restore possession. Section 19 empowers it to award compensation. Section 35 gives the Act overriding effect over any inconsistent law, which includes Section 9 of the Code of Civil Procedure.

12. Section 34 stands guard over this scheme and it has two distinct limbs that is the first one bars a civil court from entertaining any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine. The second is wider and admits no exception. No injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred under the Act. The second limb does not depend on the first. Even where some part of a suit may survive scrutiny, the power to injunct the secured creditor's statutory action is taken away altogether.

13. In ***Mardia Chemicals Ltd. v. Union of India***[8]***,*** a Bench of three Judges rejected the argument that a civil court remains open until a measure under Section 13(4) is actually taken. The Court held that the bar extends to any matter in respect of which action may be taken even later. ***Jagdish Singh (supra)*** held that the remedy of every aggrieved person lies before the Tribunal and not before the civil court. The said position has been affirmed in ***Sree Anandhakumar Mills (supra)*** and ***Punjab & Sind Bank v. Frontline Corporation Ltd. (supra).*** Further,

[8] (2004) 4 SCC 311

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Electro steel Castings (supra) has held that a suit framed to escape Section 34 by clever drafting deserves to be nipped at the bud. ***United Bank of India v. Satyawati Tondon***[9] cautioned all courts against obstructing recovery under the Act when an efficacious statutory remedy is at hand. The law on the point is settled. The following paragraph crystalizes the same:

> *"An analysis of the provisions of the DRT Act shows that primary object of that Act was to facilitate creation of special machinery for speedy recovery of the dues of banks and financial institutions. This is the reason why the DRT Act not only provides for establishment of the Tribunals and the Appellate Tribunals with the jurisdiction, powers and authority to make summary adjudication of applications made by banks or financial institutions and specifies the modes of recovery of the amount determined by the Tribunal or the Appellate Tribunal but also bars the jurisdiction of all courts except the Supreme Court and the High Courts in relation to the matters specified in Section 17. The Tribunals and the Appellate Tribunals have also been freed from the shackles of procedure contained in the Code of Civil Procedure. To put it differently, the DRT Act has not only brought into existence special procedural mechanism for speedy recovery of the dues of banks and financial institutions, but also made provision for ensuring that defaulting borrowers are not able to invoke the jurisdiction of Civil Courts for frustrating the proceedings initiated by the banks and other financial institutions. "*

14. Both the Courts below reasoned that the earlier notice under Section 13(2) had been withdrawn. Without that notice the Bank had no authority to take possession. The Bank must therefore be restrained.

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[9] (2010) 8 SCC 110

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This reasoning does not survive scrutiny. It places the Courts below in a dilemma from which there is no escape. The record shows that the first notice under Section 13(2) was withdrawn for a sound reason. It had been addressed to a borrower who was already dead, and a notice to a dead person is a nullity. The record also shows the following and three Important Dates which are as followsm:

1. A fresh demand notice was issued on 03.01.2022.
2. A possession notice under Section 13(4) followed on 09.05.2022.
3. The possession notice was published on 13.05.2022.

15. If these notices stand, they are measures under the Act. Every objection the Opposite Party raises against them is an objection to the legality of a Section 13 measure. These include the absence of an address, a signature or a loan account number. Determining such objections is precisely the function Section 17 entrusts to the Tribunal. The injunction would then restrain action already taken under the Act. The second limb of Section 34 forbids exactly that. Suppose instead that no valid notice survives, as the Courts below assumed. Then the Bank stands at the threshold of statutory action and has not crossed it. The injunction would then restrain action yet to be taken under the Act. ***Mardia Chemicals***(supr holds in terms that the bar covers that situation too. Nor could the Bank lawfully dispossess the Opposite Party without completing the statutory process. If it attempted to do so, the Opposite Party's remedy would again lie before the Tribunal.

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16. On either view the injunction cannot stand. The Courts below did not see that the premise they relied on to grant the injunction was itself the reason it could not be granted.

17. The Appellate Court recorded that the Bank is not debarred from taking appropriate action in accordance with law. In the same breath it affirmed an unqualified restraint operating till the disposal of the suit. That restraint forbids the Bank from dispossessing the Opposite Party, from entering the property and from changing its character. The Bank cannot act under the Act without doing at least one of these things. The two parts of the judgment cannot live together. A right recognised in the reasoning and extinguished in the operative direction is no right at all.

18. The learned Trial Court treated the question as foreclosed by its earlier order dated 24.02.2023, which held that Section 34 did not bar the suit. That order cannot carry the weight placed on it. Jurisdiction is conferred by statute alone. It cannot arise from consent, from acquiescence or from an interlocutory finding of the very court whose jurisdiction is in question.

19. More importantly, the earlier order concerned the maintainability of the suit. The injunction is struck by the second limb of Section 34, which operates independently. In ***Central Bank of India v. Prabha Jain***[10]**,** the Supreme Court held that a civil court may try reliefs lying beyond the competence of the Tribunal. Even taking the said view, a civil court cannot injunct statutory action under the Act. Whether any

[10] *(2025) 4 SCC 38*

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part of the present suit survives Section 34 is a question for the learned Trial Court. This Court expresses no opinion on it. That question has no bearing on the interim order. No court had the power to make that order.

20. ***Mardia Chemicals(supra)*** left a narrow opening where the action of the secured creditor is alleged to be fraudulent, or its claim is so absurd that it needs no probe. Neither exists here. The Opposite Party pleads no fraud, let alone fraud with the particulars that Order VI Rule 4 CPC and Electrosteel Castings demand. Alleged defects in the form of a notice are at most irregularities in procedure. They are the daily business of the Tribunal. They cannot be dressed up as fraud to reopen the doors of the civil court.

21. Even apart from the statutory bar, the order could not stand on the settled tests for an injunction. A prima facie case cannot rest on a claim that the forum itself cannot entertain. No irreparable injury arises where the statute empowers the Tribunal to restore possession wrongly taken and to award compensation. The balance of convenience does not favour a party who admits the loan, has paid nothing, and seeks to remain in possession of a mortgaged house indefinitely through a suit.This Court is conscious of the grief behind this litigation. The Opposite Party has lost her husband and a son, and her household has been torn by discord and criminal proceedings. No court can be indifferent to such suffering. But compassion cannot redraw the boundaries which the Parliament has drawn.

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22. The chronology also does not support the allegation that the Bank drove her son to his death. The son died on 22.08.2021. The accounts were classified as non-performing on 01.12.2021, more than three months later. No coercive step had been taken before his death. The Opposite Party says she was a stranger to the loans. If so, and if she has an independent interest in the property, she is "any person" within Section 17 as explained in ***Jagdish Singh*. (supra)** She is not without a remedy. She has simply approached the wrong forum.

23. The Bank has already instituted O.A. No.394 of 2023 before the Debts Recovery Tribunal, Cuttack, and the Opposite Party is contesting it. The dispute between the parties is therefore before the forum that the law designates for it. A civil court injunction operating alongside that proceeding serves only to fragment the dispute. It defeats the very object of the Act.

24. For these reasons, the order dated 19.10.2023 and the judgment dated 10.12.2025 suffer from a patent want of jurisdiction. Both Courts below ignored the express mandate of Section 34 and the binding law declared by the Supreme Court. Their orders have frozen a statutory remedy at the instance of a party who had a remedy of her own under the same statute. This is a fit case for this Court to exercise its supervisory jurisdiction.

VII. CONCLUSION:

25. In the result, the CMP is **allowed.** The following orders are made:

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The judgment dated 10.12.2025 passed by the learned 1st Addl. District Judge, Puri in F.A.O. No.64 of 2023 is set aside.

i. The order dated 19.10.2023 passed by the learned Senior Civil Judge, Puri in I.A. No.105 of 2022 arising out of C.S. No.341 of 2022 is set aside. I.A. No.105 of 2022 stands rejected.

ii. The Opposite Party is at liberty to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act against any measure taken or proposed by the Petitioner-Bank. If she does so within four weeks from today, the Tribunal shall consider the application, and any prayer for interim relief in it, on its own merits and in accordance with law. The Tribunal shall not be influenced by any observation in this judgment, which is confined to the legality of the interim order.

iii. The learned Trial Court shall decide any question of the maintainability of C.S. No.341 of 2022 in accordance with law, keeping in view the law declared by the Supreme Court. Any interim order passed by this Court in the present CMP stands vacated. There shall be no order as to costs.

26. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 30th October, 2026/

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