IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11748 OF 2025

Sharad Ashok Agrawal	..	Petitioner
V/s.		
Chief Manager And Authorised officer Canara Bank And Ors	..	Respondents

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Mr. Abhinav A. Bhatkar, for the Petitioner.

Ms. Hema Desai i/by Sudha Kolati, for Respondent No.1.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

DATE : 5th MARCH 2026.

PC:

1. By an order dated 9th February 2026, we observed that the Petitioner had indeed made out a *prima facie* case in his favour for allowing the Petition. But since the original borrowers i.e. Respondent Nos. 2 and 3 were not before this Court, we deemed it appropriate to direct notices to be issued for final disposal.

2. Accordingly, this Petition is listed today for our consideration.

3. At the outset, we make it clear that this Court has not considered prayer clauses (d) and (e) made on behalf of the Petitioner, which are really concerned with consequential steps to be taken after the process of sale culminates into the rights of the Petitioner crystallizing, to be entitled to pursue the concerned authorities for reliefs as sought in

prayer clauses (d) and (e). Hence, as regards the prayer clauses (d) and (e), the Petitioner would be at liberty to proceed in accordance with law.

4. The present Petition challenges orders dated 03/07/2025 and 04/08/2025 passed by the Debt Recovery Appellate Tribunal (DRAT), Mumbai.

5. By order dated 03/07/2025, the DRAT directed Respondent Nos. 2 and 3 to deposit 40% of the auction price of Rs. 1.81 Crores as a pre-deposit for registration of the appeal.

6. The impugned order dated 04/08/2025 took into account the deposit made by Respondent Nos. 2 and 3 in terms of the order dated 03/07/2025 and directed the stay, earlier granted by the Debt Recovery Tribunal, Pune (DRT), to continue. The order dated 04/08/2025 is a consequential order.

7. The learned counsel for the Petitioner submits that the DRAT committed an error in the order dated 03/07/2025, inasmuch as the pre-deposit ought to have been a specific percentage of the debt due in terms of the second Proviso to Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 (hereinafter referred to as the 'Securitisation Act').

8. It was submitted that the DRAT proceeded to direct pre-deposit of 40% of the auction price and not the debt due. This was a jurisdictional error, and hence, the impugned order deserves to be interfered with.

9. In this context, reliance was placed on the judgment of the Supreme Court in the case of "**M/s Sindha Neelkanth Paper Industries Private Limited and Anr. Vs. Prudent ARC Limited and Ors.** [1]"

10. It was further submitted that the consequential order dated 04/08/2025 also deserves to be set aside, as the impugned order dated 03/07/2025 is wholly unsustainable.

11. Learned counsel appearing for Respondent No. 1-Bank supported the contention of the Petitioner. The learned counsel appearing for the contesting Respondent Nos. 2 and 3 submitted that the said Respondents have filed a Writ Petition arising out of another order passed by the DRAT and therefore, this Court may consider hearing this Writ Petition along with other Writ Petitions or at least in the alternative, not to interfere with the impugned order dated 04/08/2025 as Respondent Nos. 2 and 3 have indeed deposited the amount specified in the impugned order dated 03/07/2025. It was submitted that since the appeal before the DRAT in the present case was concerned with the auction price and the issuance of the sale certificate, the reference made to the auction price by the DRAT cannot be said to be erroneous.

12. Having heard the learned counsel for the parties, we find that a bare reading of Section 18 of the Securitisation Act would show that the DRAT in the present case clearly erred in issuing directions of pre-deposit in the impugned order dated 03/07/2025.

13. Section 18 of the Securitisation Act reads as follows :-

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1 Order dated 05/01/2023 passed in Civil Appeal No. 8969 of 2022 and connected appeals.

18. Appeal to Appellate Tribunal

"(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

PROVIDED that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

PROVIDED FURTHER that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

PROVIDED ALSO that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder".

14. The second Proviso to Section 18 (1) of the Securitisation Act clearly provides that no appeal can be entertained by the DRAT unless the borrower has deposited with the DRAT 50% amount of the debt due as claimed by the secured creditor or determined by the DRAT, whichever is less.

15. The third Proviso leaves discretion with the DRAT, for reasons to be recorded, to reduce the amount to not less than 25% of the debt

referred to in the second Proviso.

16. The language of the Provision is absolutely clear. The aforesaid Judgment of the Supreme Court in the case of "**M/s Sindha Neelkanth Paper Industries Private Limited and Anr. Vs. Prudent ARC Limited and Ors"** (supra) has considered the said provision in the light of the observations made by the Judgments of the various Courts including of this Court in the case of "**Eskays Construction Pvt. Ltd. Vs Soma Papers and Industries Limited and Ors.[2]"**

17. After taking into consideration the interpretation of Section 18 of the Securitisation Act by this Court, the Supreme Court in the said judgment approved the same and categorically laid down that the percentage of amount as pre-deposit has to be calculated on a debt due i.e. the amount mentioned in the notice under Section 13 (2) of the Securitisation Act or the amount due as determined by the DRT, whichever is less.

18. In the present case, it is an admitted position that the debt due as per notice under Section 13(2) of the Securitisation Act was Rs. 9,27,78,305.61/-. In the present case there is no determination of the debt due by the DRAT as the Securitisation application of the Respondent Nos. 2 and 3 is still pending before the DRAT.

19. Hence, the DRAT in the present case under second Proviso to Section 18(1) of the Securitisation Act ought to have taken into consideration the said amount towards the debt due as mentioned in the notice issued under Section 13 (2) of the Securitisation Act and the

2 2016 SCC Online Bom. 9827

reference made to the auction price of Rs.1.81 Crores was absolutely without any basis.

20. We find that DRAT in the present case, committed a serious error in directing pre-deposit on the basis of the auction price instead of the debt due. On this short ground the impugned order dated 03/07/2025 deserves to be set aside.

21. We also find that the discretion as to what percentage of the debt due is to be pre-deposited ranging from 25% to 50% of the debt due, is vested in the DRAT and while disposing of the Writ Petition it would not be appropriate for this Court exercising writ jurisdiction to enter into the said domain. Therefore, we are inclined to set aside the impugned order and to remit the matter back to the DRAT for considering afresh Interim Application No. 370 of 2025 filed by the Respondent Nos. 2 and 3 seeking waiver of the pre-deposit.

22. Since the impugned order dated 04/08/2025 is essentially a consequential order to the impugned order dated 03/07/2025, the same will also have to be set aside.

23. In view of the above, the Writ Petition is partly allowed.

24. Impugned orders dated 03/07/2025 and 04/08/2025 are quashed and set aside.

25. The matter is remanded to the DRAT for considering Interim Application No. 370 of 2025 in Miscellaneous Appeal Diary No. 987 of 2025, afresh by taking into consideration the observations made in the instant order.

26. The DRAT shall apply the mandate of Section 18 of the Securitisation Act and thereupon, exercise discretion in accordance with law while disposing of the Miscellaneous Application filed by the Respondent Nos. 2 and 3.

27. Writ Petition is disposed of in the above terms.

28. Pending applications, if any, also stand disposed of.

29. It is further directed that the DRAT shall consider and dispose of the said Interim Application as expeditiously as possible and preferably within a period of four weeks from today.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**