IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2026

CORAM :

THE HONOURABLE MR.SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P. No.21225 of 2026
and W.M.P.Nos.22986 & 22989 of 2026

1.M/s.Ampel
Rep. by its partner Mr.P.Mazhar
No.1, Periyanna Maistry Street
Periamet, Chennai - 600 003

2.P.Mazhar
S/o.R.Athaullah Sahib
No.1, Periyanna Maistry Street
Periamet, Chennai - 600 003

Petitioner(s)

Vs

1. The Authorized Officer
Bank of Baroda,
Personal Stressed Asset Recovery Branch
Chennai Metro Region,
First Floor, No.10, C.P.Ramasamy Street,
Alwarpet, Chennai - 600018.

2.M/s.Hanisha Enterprises
Rep. by its proprietor Mr.D.Karthick,
No.24, Vinayagar Koil Street
2nd Cross, Vaniyambadi – 635751
Vellore District

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records of the proceedings of the Debt Recovery Appellate Tribunal, Chennai made in I.A.No.1625 of 2025 in AIR (SA) 1356 of 2025 dated 08.05.2026 and quash the same and consequently direct the Debt Recovery Tribunal-II, Chennai to dispose the application in M.A.Dy.49 of 2025 on merits in accordance with law.

For Petitioner(s): Mr. S.Senthilnathan

ORDER

(Made by G.ARUL MURUGAN, J.)

This writ petition is filed assailing the order of the DRAT dated 08.05.2026, imposing pre-deposit in the Waiver Application in I.A.1625 of 2025 in AIR (SA)No.1356 of 2025.

2. The relevant facts are that, the petitioners had availed the financial assistance for business development from the first respondent Bank. Due to the default committed, the account was classified as NPA on 23.07.2019, pursuant to which, demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as "SARFAESI Act"], came to be issued on 02.08.2019. As the demand was not paid, possession Notice under Section 13(4) was issued on

13.11.2019. Thereafter, since an earlier sale notice issued did not materialize, further sale notice dated 16.09.2022 was issued fixing the sale on 18.10.2022. Pursuant to which, sale has been conducted and the property was sold to the second respondent.

3. Petitioners filed S.A.No.675 of 2022 challenging the auction held on 18.10.2022 pursuant to the sale notice. After contest, DRT-II, Chennai, by final order dated 22.09.2023 dismissed the Securatisation Application. Petitioners filed MA Dy.No.49 of 2025 in the disposed SA.No.675 of 2022 seeking to modify the order dated 22.09.2023. DRT-II by order dated 25.03.2025, dismissed the application. Petitioners challenged the same before the DRAT, Chennai and along with appeal, the petitioners have preferred IA.1625 of 2025, seeking waiver of the pre-deposit. DRAT considered the waiver application and by order dated 08.05.2026, directed the petitioners to make a pre-deposit of 40% into two installments. Aggrieved, the petitioners have preferred the above writ petition.

4. The learned counsel for the petitioners contended that the order of the DRAT directing to make a pre-deposit is arbitrary and erroneous inasmuch as the petitioners have filed appeal only as

against an interim application. He further submitted that when certain aspects were not considered by the DRT, the petitioners rightly filed an application seeking to modify the order by taking into account those aspects, but the DRT, without adverting to those materials, had simply rejected the petition, which is unsustainable and an appeal was preferred to DRAT only against the order rejecting the interim application seeking to modify.

5. When pre-deposit could be imposed only in appeals filed challenging any final determination of the dues by the DRT, Section 18 does not mandate any pre-deposit for filing appeals as against the orders passed in interim applications. In support of his contention, learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Sunshine Builders & Developers v. HDFC Bank Ltd.,*** *reported in* ***2025 SCC OnLine SC 1234.***

6. Heard the learned counsel and considered the materials available on record.

7. The short issue that arises for consideration is whether DRAT was right in imposing a pre-deposit for filing the appeal under Section

18(1) of the Act, challenging the order passed by the DRT in an interim application.

8. The petitioners loan accounts since having been declared as Non-Performing Asset (NPA), due to the default in repayment of the dues, the first respondent Bank/secured creditor contemplated proceedings under the SARFAESI Act. Notice under Section 13(2) dated 02.08.2019 followed by possession notice under Section 13(4) dated 13.11.2019 came to be issued, pursuant to which, the property of the petitioners was brought to sale through sale notice dated 16.09.2022. The second respondent became the successful bidder in the auction and the sale certificate has been issued in favour of the second respondent on 08.12.2022. The petitioners have challenged the auction held on 18.10.2022 pursuant to the sale notice before the DRT-II, Chennai in SA. No.675 of 2022. After contest, DRT-II, Chennai, by its final order dated 22.09.2023 dismissed the Securitisation Application on merits.

9. Admittedly, the petitioners have not chosen to file any appeal to the DRAT under Section 18(1) of the Act, challenging the final order of the DRT. Innovatively and cleverly, the petitioners, after more than

a year, having not chosen to file appeal before the DRAT, preferred the petition in MA.No.49 of 2025 in the disposed-of S.A.675/2022 before the DRT-II, Chennai, seeking the following relief:-

> *"For the reasons stated in the accompanying affidavit it is most humbly prayed that this Honourable Court may be pleased to MODIFY the order dated 22.09.2023, passed In S.A.No.675 of 2022, by allowing the same instead of dismissal as the auction conducted on 18.10.2022 on the basis of the auction notice dated 16.09.2022 is barred by limitation and thus render justice."*

10. The bare perusal of the prayer reveals that in the name of modification, the petitioners actually sought a direction to allow the SA.675/2022, despite being dismissed. Through the interim petition filed in the disposed-of case, the petitioners attempted to avail the remedy which could be sought only in an appeal before the Appellate Court.

11. The learned counsel vehemently contended that certain crucial aspects regarding limitation were not considered by the DRT, which necessitated the petitioners to file a petition in MA.49/2025 in the disposed of case seeking modification and the DRT ought to have

considered the petition on merits, instead of dismissing it at the threshold without even issuing notice to the bank. We are unable to fathom the relief sought for in the petition in MA.49 of 2025 and the submissions made, as the issues raised could only be agitated before the appellate authority in an appeal.

12. The DRT rightly, *vide* order dated 25.03.2025, dismissed the MA.Dy.No. 49 of 2025 holding that only an appeal could be filed under Section 18 to the DRAT against the final orders. Further, the grant of relief in the petition would result in effacing the final orders passed amounting to usurping the jurisdiction of the Appellate Tribunal, which is impermissible.

13. The petitioners assailed the order of DRT in rejecting the petition seeking modification of the order dated 25.03.2025 under Section 18(1) of the Act before the DRAT. At this juncture, it is relevant to advert to Section 18(1) of the Act which is extracted hereunder for easy reference:-

> *"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 along with such fee, as may be prescribed to an*

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."

14. The petitioners have preferred appeal in AIR (SA)1356 of 2025 under Section 18(1) of the Act before the DRAT, Chennai, along with the petition seeking waiver of the pre-deposit in I.A.1625 of 2025. DRAT by order dated 08.05.2026 in I.A.1625 of 2025 passed the following order:-

"Since the sale is over, third-party interest is created, SA filed was dismissed, and no appeal was filed against the dismissal of SA, this Tribunal directs the Petitioners to make a pre-deposit of 40% of Rs.2.64 crores in 2 equal installments within a period of 4 weeks from today for entertaining this appeal, as per schedule given below:

40% of Rs.2,64,00,000/- comes to Rs. 1,05,60,000/-.

1st Installment - Rs.52,80,000/- on or before 22.5.2026
2nd Installment - Rs. 52,80,000/- on or before 5.6.2026

The said pre-deposit should be paid in the form of Demand Draft in favour of Registrar, DRAT, Chennai, payable at Chennai. In case pre-deposit is made within the stipulated period, Registrar shall invest the same in a Nationalized Bank for a reasonable period and renew it periodically, till further orders are passed.

Post the matter on 9.6.2026 for compliance."

15. The DRAT, considering the fact that the petitioners are borrowers, had concluded that the pre-deposit is mandatory for entertaining the appeal. The learned counsel vehemently attacks the pre-deposit imposed by the DRAT on the ground that the pre-deposit is not required in an appeal filed challenging the order passed in interim application. Heavy reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Sunshine Builders (*supra*)**.

16. The decision of the Hon'ble Supreme Court in the case of Sunshine Builders is clearly distinguishable from the facts of the present case. In **Sunshine Builders (*supra*)**, when the Securitisation

Application was pending before the DRT, two interim applications were filed by the borrowers for impleading the auction purchaser and for condonation of delay in preferring such petitions. When those applications were rejected by the DRT, the borrowers preferred the appeal under Section 18 to the DRAT. The DRAT for entertaining the appeal, had imposed pre-deposit, which was confirmed by the High Court and assailed before the Hon'ble Supreme Court.

17. In such circumstances, the Hon'ble Supreme Court held that the expression any order in Section 18 ought to be given some meaningful interpretation and while provision of pre-deposit would come into play when an appeal is preferred under Section 18 against the final order of DRT determining the liability of borrower or any other person, the same would not be applicable (questionable) in a situation where an order is passed declining to implead the auction purchasers and thereby remanded the matter to the High Court.

18. However in the instant case, as referred above the challenge made by the borrowers to the sale conducted on 18.10.2022 pursuant the sale notice dated 16.09.2022 in Securitisation Application No. 675 of 2022, was adjudicated upon and after contest, the DRT-II, by final

order dated 22.09.2023 dismissed the SA on merits. For the reasons best known, the petitioners did not choose to file an appeal before the DRAT under Section 18, where under the petitioners ought to have made pre-deposit. Instead, after more than a year, the petitioners preferred to file a petition in MA.Dy.No.49 of 2025 seeking to modify the final order and allow the Securitisation Application, instead of dismissal. The only contention put forth is certain grounds regarding limitation has not been considered by the Tribunal.

19. Assuming for a moment that the petition for modification filed by the petitioners, which was dismissed as not maintainable by the DRT, is allowed, it would result in setting aside the final order dated 22.09.2023 and the main relief in the Securitisation Application would stand allowed, whereby the entire auction and sale certificate would stand set aside. When the liability of the borrower has been crystallized, and the challenge made to the sale conducted had ultimately been rejected by final order on merits, the petitioners seek to set aside that order by way of an interim application filed in the disposed of Securitisation Application, which would not amount to an actual interim application as considered by the Hon'ble Supreme Court in the case of ***Sunshine Builders (supra)***.

20. If such claim of the petitioners is allowed then it would result an anomalous situation where the parties would not choose to file an appeal under Section 18, instead would circumvent the pre-deposit by approaching the DRT with a modification petition to seek for setting aside that order, which on the face of it, is not maintainable and then approach the DRAT contending that it is an appeal against the interim application. The DRAT had rightly considered this issue and concluded that the pre-deposit is mandatory in entertaining the appeal and has directed the petitioners to make a pre-deposit of 40% in two installments. The petitioners have not chosen to pay the pre-deposit as directed and the time for the first installment had already expired, and even the time for the second installment expires today.

21. In view of the above deliberations, we see no error or infirmity in the order passed by the DRAT warranting interference. It is not that the petitioners are remediless. It is always open to the petitioners to prefer an appeal as against the final order of DRT under Section 18(1) before the DRAT satisfying the limitation and pre-deposit, or approach the DRAT seeking extension of time in the impugned order of pre-deposit itself, if so advised.

22. Accordingly, leaving it open to the petitioners, the WP stands dismissed. There shall be no order as to costs. Consequently, interim applications are closed.

(SUSHRUT ARVIND DHARMADHIKARI, CJ) (G.ARUL MURUGAN, J)
05.06.2026

Index : Yes
Neutral Citation : Yes
sri/gya

To:

The Authorized Officer
Bank of Baroda,
Personal Stressed Asset Recovery Branch
Chennai Metro Region,
First Floor, No.10, C.P.Ramasamy Street,
Alwarpet, Chennai - 600018.

THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

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