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2025:DHC:6023-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th JULY, 2025

IN THE MATTER OF:

\+ **W.P.(C) 5165/2025 & CM APPL. 29454/2025**

SUMAN SRIVASTAVA .....Petitioner

Through: Mr. Manish Kumar Srivastava, Ms. Kamakshi Rao, Mr. Moksh Arora and Ms. Mahima Bajaj, Advs.

versus

UNION BANK OF INDIA & ORS. .....Respondent

Through: Ms. Pooja Mehra Saigal, Sr. Adv. with Mr. Yash Varma, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The Petitioner has invoked the Writ jurisdiction of this Court under Article 226 and 227 of the Constitution of India against the observations and directions passed by the Debt Recovery Appellate Tribunal (hereinafter referred to as "DRAT") *vide* judgment dated 28.02.2025 in Misc. Appeal No. 39 of 2025 and 40 of 2025; as well as against the observations and directions passed by the Debt Recovery Tribunal (hereinafter referred to as "DRT") *vide* common judgment dated 14.02.2025 in Appeal No. 01 of 2025 and TMA 23 of 2024.

2. The DRAT vide the impugned Judgment has refused to entertain the appeal without pre-deposit as mandated under Section 21 of the Recovery of Debts And Bankruptcy Act, 1993 (*hereinafter referred to as 'the RDB Act'*).

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3. Shorn of unnecessary details, the facts as admitted by the Petitioner leading to the filing of the present Writ Petition are as follows:-

i. Mr. Prakash Srivastava, the husband of the Petitioner, along with other persons stood as mortgagor qua the loan granted by the Union Bank of India (Respondent No. 1) in favour of M/s Green World International Private Limited (Respondent No. 3) on 19.02.2013.

ii. The husband of the Petitioner hypothecated his residential property bearing address – A-3, South City – 1, Gurgaon, Haryana (hereinafter referred to as "Property in Question") in lieu of the above-mentioned mortgage.

iii. The husband of the Petitioner died on 11.06.2013.

iv. After the death of the husband of the Petitioner, the Property in Question was divested in the name of the Petitioner, and her two sons, namely Mr. Anurag Srivastava (Respondent No. 9), and Mr. Anuj Srivastava (Respondent No. 13).

v. Respondent No.1 renewed the terms of the loan as was sanctioned to the Respondent No. 3/company on 13.03.2015.

vi. The loan account of Respondent No. 3 was declared as a Non-Performing Asset on 30.01.2016. Further, a notice u/s 13(2) of the SARFAESI Act, 2002, was issued by Respondent No. 1 to the directors of Respondent No. 3 on 29.02.2016 demanding remission of dues owed by Respondent No. 3 to Respondent No. 1.

vii. The Respondent No. 1 filed an Original Application No. 30 of 2017 on 16.12.2016 against the Respondent No. 3 and its directors for recovery of the said loan to the tune of Rs. 10,42,51,321.10 along-with *pendente lite* and future interest at 15% per annum till realization. Notices were issued to the Defendants in the Original Application, but on failure to appear, they were proceeded ex-parte on 25.08.2017.

viii. DRT-3, Delhi, *vide* its final order dated 23.08.2019 directed all the Defendants in the Original Application to pay to the Applicant Bank, jointly or severally, a sum of Rs. 10,42,51,321.10/- together with cost and future interest @15% per annum, from the date of filing of the O.A. till the date of realization; failing which the said amount would be recovered from the sale of mortgaged properties.

ix. Subsequently, recovery proceedings were initiated before the Learned Recovery Officer of the DRT-1, in TRC No. 155 of 2022, wherein the Tribunal *vide* its Order dated 03.07.2024 ordered impleadment of LRs of the deceased CD – Mr. Prakash Srivastava. The LRs, namely Mrs. Suman Srivastava (Petitioner), Mr. Anurag Srivastava, and Mr. Anuj Srivastava, were given notice under Rule 85 of Second Schedule of the Income Tax Act, 1961, that steps will be taken under the provisions of RDDBFI Act 1993 and as per the provisions of the Second Schedule of the Income Tax Act 1961 read with Income Tax (Certificate Proceedings) Rules 1962 to recover the dues from the LRs of the deceased. Directions were also passed to issue sale proclamation notice *qua* the mortgaged property, i.e., the Property in Question.

x. The Petitioner after receiving the sale proclamation notice dated 31.07.2024, filed her objections to TRC No. 155 of 2022 so as to challenge the sale proclamation notice. She also preferred TMA No. 23 of 2024 in O.A. No. 30 of 2017 thereby praying to the DRT to set aside the final order dated 23.08.2019 as passed in O.A. No. 30 of 2017.

xi. The Learned Recovery Officer *vide* Order dated 10.12.2024 dismissed the objections as filed by the Petitioner in TRC No. 155 of 2022. The DRT further appointed Mr. Praveen Kashyap (Advocate) as Receiver for handing over the physical possession of the Property in Question.

xii. The Petitioner preferred Appeal No. 1 of 2025 before the DRT against the Order dated 10.12.2024 in TRC No. 155 of 2022.

xiii. The DRT *vide* its Order dated 14.02.2025 directed the Petitioner to make a pre-deposit within 7 days, failing which, both Appeal No. 1 of 2025 and TMA No. 23 of 2024 would be dismissed.

xiv. The Petitioner, on 20.02.2025, filed Misc. Appeal No. 39/2025, and 40/2025 before the DRAT, New Delhi against this Order dated 14.02.2025 passed by the DRT.

xv. Respondent No. 14, the Receiver appointed by the DRT, issued a letter dated 27.02.2025 demanding the Petitioner to vacate and hand-over the peaceful possession of the Property in Question.

xvi. The DRAT, in Misc. Appeal No. 39/2025 & 40/2025, *vide* its Order dated 28.02.2025, declined to entertain the appeals in absence of the pre-deposit as envisaged in Section 21 of the RDB Act. The DRAT pro*vide*d four weeks to deposit the said pre-deposit, on failure of which, the appeals shall automatically stand dismissed.

xvii. The Petitioner has filed the present Writ Petition against this Order of DRAT dated 28.02.2025, and the Order dated 14.02.2025, passed by the DRT in Appeal No. 1 of 2025 and TMA No. 23 of 2024.

4. The Learned Counsel for the Petitioner states that the Respondent No. 1 issued a notice dated 29.02.2016 under Section 13(2) of the SARFAESI Act, 2002 to directors of Respondent No. 3 but the said notice was neither issued to Late Mr. Prakash Srivastava, nor to his legal heirs. The Respondent No. 1 approached the DRT, Delhi – 3 by way of filing O.A. No. 30 of 2017 against a dead person.

5. The Learned Counsel further states that the DRT, Delhi – 3, passed final order dated 23.08.2019 against a dead person. Further, the Learned Recovery Officer *vide* order dated 03.07.2024, while adjudicating upon the recovery proceedings in TRC No. 155 of 2022, emanating from the order dated 23.08.2019, in an illegal manner impleaded the legal heirs of Late Mr. Prakash Srivastava, and issued a sale proclamation notice qua the sole residential house of the Petitioner.

6. The Learned Counsel for the Petitioner states that the Petitioner only gained knowledge of such proceedings on 31.07.2024 when the Petitioner received the said sale proclamation notice.

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7. He further states that the Respondent No. 1 had illegally initiated proceedings under Section 14 of the SARFAESI Act, 2002, before the District Magistrate, Gurugram, seeking directions to obtain possession of the Property in Question. The said proceedings were initiated after the death of the Petitioner's husband, and that too, without issuance of notice under Section 13(2) of the SARFAESI Act in the name of the Petitioner's late husband or the Petitioner.

8. The Petitioner preferred an application dated 03.01.2024 under Section 17 of the SARFAESI Act, 2002 before DRT-2, New Delhi, titled as Suman Srivastava vs. Union Bank of India bearing S.A. No. 4 of 2024. The Respondent Bank appearing on instructions admitted that illegality had been committed in issuance of notice u/s 13(2) of the SARFAESI Act, 2002 and had thereby withdrawn the said notice qua the Property in Question.

9. The Counsel for the Petitioner states that the Petitioner was neither the borrower of the credit facilities from Respondent No. 1 nor any debt was due to be realized from the Petitioner. Therefore, she is not liable to make any pre-deposit either before the DRT under Section 30-A of the RDB Act while preferring Appeal No. 1 of 2025 or before the DRAT under Section 21 of the RDB Act in Misc. Appeal No. 39 and 40 of 2025.

10. The Counsel for the Petitioner states that the proceedings of recovery against the legal heirs of Late Mr. Prakash Srivastava, emanating from final order in O.A. No. 30 of 2017 were not maintainable against the Petitioner as the original proceedings against the late husband of the Petitioner were not maintainable against him in the first place as he had expired prior to the institution of the O.A. and no steps were taken by Respondent No. 1 Bank to implead the legal heirs of the deceased husband of the Petitioner in the said O.A.

11. The Counsel for the Petitioner states that the Impugned Judgement is contrary to judgement passed in J. Veeraiah and Others v. Indian Overseas Bank, **2017 SCC OnLine Hyd 633** & Ashok Transport Agency vs. Awadesh Kumar and Anr., **(1998) 5 SCC 567**.

12. The Counsel for the Petitioner states that the recovery officer had no authority to implead a new party to the recovery proceedings when the said person was never a party to the O.A. proceedings before the DRT. The said impleadment was also barred by limitation.

13. The Counsel for the Petitioner states that in absence of service under Rule 3 of the Security Interest (Enforcement) Rules, 2002, any subsequent actions are a nullity. He submits Sheeba Philominal Merlin and Ors. vs. The Repatriates Co-op Finance and Development Bank Ltd. (Govt. of India Enterprise) and Ors., **2010 SCC OnLine Mad 4286**.

14. *Per contra*, the Counsel for the Respondent No. 2 states that the Petitioner was aware about the proceedings much before 31.07.2024, that is when the sale proclamation notice was served upon her. He states that the stand taken by the Petitioner is contrary to material on record. DRT in TRC/155/2022 *vide* its order dated 10.12.2024 has given a finding that the Petitioner was aware of the proceedings and she received the demand notice from the Respondent No. 1 Bank on 28.01.2020 which is reflected in the service affidavit which reads as under:-

> *"**2.2** The memo of parties as provided in the Recovery Certificate provides the name and addresses of CD 7 (Son), CD 12 (Son) and CD 11 (deceased father Sh Prakash Srivastava and the A-3, South City-I, Gurugaon, Haryana is the common address for all three of them. On record is available affidavit of service of demand notice filed by Union Bank of India vide Dy. No. 1293 dated 30.01 .2020 which provides*

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that DASTI has been attempted by CH Bank. In their affidavit of service it has been recorded at para 4, ' To serve the notice to CD?, CD 11 and CD 12, I went to the address at A-3, South City - I, Gurugaon on 28.01.2020. Upon reaching the said address I met the mother of Anuj Srivastava received the said notice. The notice was also pasted at the premises and photographs taken. Receiving as well as photographs is attached as Annex - 3 (colly).' The affidavit has been signed by Sh Purusottam kumar Sinha the then Chief Manager of Union Bank of India. Hence submission made by the counsel appearing for the Objector/their application that they came to know about recovery proceedings on service of sale proclamation notice on 31 .07.2024 for the first time and that they were not aware of the Recovery Proceedings is not backed by facts as per the affidavit/s filed by CH bank.

2.2.1 *On record is also available service report of settling sale notice on the subject property filed vide Dy No. 6271 dated 13.09.2022. Para 7 of the said service report filed under affidavit signed by Shri Anil Kumar Pal the then Chief Manager of Union Bank provides,' 7. That as per the said report, the CD No 7, 11 & 12 were duly served through on 23.06.2022, as no one opened the gate of the premises No. A-3, South City –I, Gurugram, Haryana, accordingly notice was pasted on the main door of the said premises and the photographs were taken, the same are annexed herewith and is marked as Annexure- CH-116."*

15. The Counsel further states that the Petitioner being the legal heir of the guarantor, it was her duty to inform the Respondent Bank about the death of that guarantor. Being aware of the legal proceedings and yet choosing to not inform the Bank about the death of her husband, the Petitioner cannot be allowed to take advantage of the situation which she herself orchestrated to delay the recovery of dues by the Bank.

16. The Counsel further states that the Petitioner has concealed material documents which indicates that the notice dated 29.02.2016 being ADV/GWIP/2016 and ADV/GWIPL/2016 u/s 13(2) of the SARFAESI Act, 2002 was served to the Petitioner. The possession notice was also served on 03.10.2017. Further, the demand notice dated 01.06.2022 was also served at the address of the Petitioner. Even the sons of the deceased, upon whom the said notice was served, failed to notify the Bank about the death of their father.

17. The Counsel also informed this Court about a writ petition filed by the Petitioner being CWP No. 23288 of 2023 (O&M) which was dismissed on 13.10.2023 by the Punjab and Haryana High Court with the observation that the Petitioner herein is trying to delay the recovery proceedings and thus the Court should not interfere under Article 226 of the Constitution of India. The said petition was filed by the Petitioner for quashing of sale notice dated 06.09.2023, whereby the secured asset/Property in Question was put up for sale allegedly in violation of Code 14 of the Insolvency and Bankruptcy Act, 2016. Paragraphs No.8 to 11 reads as under:-

> *"**9.** Argument raised by learned counsel for the petitioner that respondent-bank had taken a U-turn after agreeing to the course of action as recorded in order dated 05.11.2020 in CM Nos. 8834, 9165, 9819-CWP of J020 in CWP-19066-2019, is absolutely devoid of any merit in view of subsequent order dated 12.11.2021, whereby proceedings in all the miscellaneous applications filed with CWP-19066-2019 were closed. COCP-2831-2021 alleging willful disobedience and non-compliance of order dated 05.11.2020 was admittedly dismissed as withdrawn. It is to be noted that petitioner has also not revealed in the present writ petition that CWP-3537-2022 was filed by Anurag Srivastava son of late Shri Parkash Srivastava (i.e. son of petitioner) along with others*

challenging notice dated 08.02.2022, issued by Tehsildar, Gurugram, for taking over physical possession of the asset in question with a further prayer to comply with the so called arrangement/undertaking as recorded in order dated 05.11.2020 and implement the OTS as noted in order dated 03.02.2020 in CWP-35058-2019 by extending the time period for compliance thereof. Said writ petition we have now come to know, is still pending adjudication. Argument raised by learned counsel for the petitioner that present proceedings are illegal and unjustified in view of the arrangement of Resolution Professional (RP) and pendency of insolvency proceedings is again devoid of any merit, hence rejected. Petitioner admittedly has efficacious alternate remedy for redressal of the grievance(s), which have been raised in this writ petition.

***10**. Narration of the facts in the foregoing paras reveals that only effort of the petitioner is to somehow delay recovery proceedings. It is a settled position that interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India has to be restricted to extremely exceptional or extra ordinary cases. Gainful reference in this regard can be made to judgment of Hon'ble Supreme Court in Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110 and Mis South Inman Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771. Hon'ble the Supreme Court has consistently held that there should be no interference in proceedings under SARFAESI Act until and unless exceptional or extra ordinary circumstance(s) is/are pointed out. No such exceptional circumstance has been pointed out by learned counsel for the petitioner in this case which calls for intervention. To the contrary, we find that material facts have been detailed in the present writ petition and are sought to be presented in a veiled fashion.*

***11**. Keeping in view the facts and circumstances as above, we do not find any ground whatsoever to*

> *interfere in this writ petition which is accordingly dismissed. Petitioner is at liberty to avail the statutory remedy/remedies as may be available to her in accordance with law for redressal of the grievance as raised in this writ petition."*

18. The Counsel further states that the non-impleadment of the Petitioner would not lead to failure of the auction proceedings as the estate of the deceased Mr. Prakash Srivastava was well represented by his two sons, who were always party to the DRT proceedings initiated by the Respondent Bank.

19. The Counsel states that since the Property in Question is a mortgaged property, the only right of the Petitioner and the two sons of the Petitioner has, is the right of redemption. The same has not been availed by them. Therefore, the Petitioner and her sons have only orchestrated the present dispute to delay the proceedings.

20. Heard the Counsels for both sides and perused the material on record.

21. This Court is of the opinion that that issues which have been attempted to be raised by both the parties would not be germane and, therefore, does not call for much discussion. The short question which arises in this case is as to whether the impugned judgment, refusing to entertain the appeal without the pre-deposit as mandated under Section 21 of the RDB Act, requires interference by this Court while exercising its jurisdiction under Article 226 of the Constitution of India or not.

22. Section 21 of the RDB Act, though has been quoted in the impugned Judgment, is once again reproduced for ready reference and the same reads as under:

> "***21***. *Deposit of amount of debt due, on filing appeal.— Where an appeal is preferred by any person from*

whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal 3 [fifty per cent.] of the amount of debt so due from him as determined by the Tribunal under section 19: Provided that the Appellate Tribunal may, for reasons to be recorded in writing, 4 [reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due] to be deposited under this section."

23. The DRAT has placed reliance on the Judgment of the Apex Court in Kotak Mahindra Bank (P) Ltd. v. Ambuj A. Kasliwal, **(2021) 3 SCC 549,** which has held that any waiver of pre-deposit would be against the statutory provisions which cannot be sustained. In the said judgment, the Apex Court stayed the judgment of High Court which had waived the requirement of pre-deposit. In its judgment in Kotak (supra) the Apex Court has placed reliance on another judgment of the Apex Court in Narayan Chandra Ghosh v. UCO Bank, **(2011) 4 SCC 548**, which dealt with analogous provision being 18(1) of the SARFAESI Act, wherein the Apex Court had held that the requirement of pre-deposit could not be waived.

24. A Co-ordinate Bench of this Court in Invent Assets Securitization & Reconstruction Private Limited, **2023 SCC OnLine Del 7296,** while dealing with the very same issue has observed as under:

"*6. It is a trite law that the remedy of an appeal is a statutory right and therefore, is circumscribed by the relevant statute. In Vijay Prakash D. Mehta v. Collector of Customs, (1988) 4 SCC 402, the Supreme observed as under:—*

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> *"9. Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.""*

25. In view of the abovementioned judgments, this Court is of the opinion that the judgment of the Tribunal does not require any interference by this Court.

26. Further, material on record indicates that the Petitioner being the wife of the deceased Mr. Prakash Srivastava, resides in the Property in Question along with her two sons who were parties to the DRT proceedings. The notice dated 29.02.2016 was served upon the two sons of the Petitioner at the same address where their mother, who is the Petitioner herein, also resides. Thus, it is highly unlikely that the Petitioner was not aware of the recovery proceedings in DRT.

27. The Petitioner had full knowledge of the date of hearing in the proceedings before DRT. Nevertheless, the Petitioner, as well as the other legal representatives of the deceased, i.e. Respondent Nos. 9 and 13, failed to apprise the Respondent Bank regarding the death of their father. Moreover, the said parties even failed to appear in the proceedings before DRT, consequentially failing to inform the tribunal about the death of Mr. Prakash Srivastava in order to allow the tribunal to implead all the legal representatives in accordance with law.

28. Material on record shows that the two sons of the Petitioner were arrayed as parties before the DRT and they did not inform the DRT about the debt of the Petitioner. The Petitioner and her sons had been also individually approaching various forums being fully aware of the

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proceedings before the DRT. The Petitioner has, therefore, come with a dishonest plea that she was not aware of the proceedings before the DRAT. Be that as it may, that issue is not very germane to the matter. The issue before this Court is as to whether the DRAT was correct in rejecting the appeal of the Petitioner on the issue of pre-deposit or not. The property in question is mortgaged to the bank. The decree is to be satisfied by the sale of the property in question. Viewed in that perspective, Section 21 would automatically apply to the Petitioner as she seeks to save the property which stands mortgaged to the bank.

29. The submission of the Petitioner that since the notice in the O.A. was not served upon the Petitioner, the entire proceedings is to be held as a nullity does not hold merit as the estate (Property in Question) was well represented by the two sons of the Petitioner, who also inherited the Property in Question after the death of their father, Mr. Prakash Srivastava. Moreover, the Petitioner was well aware of the proceedings throughout its pendency as she resides in the very same address where the notices were served upon her two sons.

30. The argument of the Petitioner that she is neither a borrower or a guarantor and, therefore, is not liable to submit the pre-deposit does not hold merit. It is an admitted position of the Petitioner that she is a legal representative of the deceased guarantor and has inherited the Property in Question. Therefore, the liability of the deceased guarantor to repay the debt shall fall upon the Petitioner, and her two sons, i.e., Respondent No. 9 and 13, who were party to the DRT proceedings.

31. The plea of the Petitioner that the Respondent Bank revoked the notice u/s 13(2) dated 29.02.2016, and which revocation has been recorded in order dated 09.01.2024 in S.A. No. 4 of 2024 is of no consequence.

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32. Material on record indicates that the Respondent Bank has issued a fresh notice dated 18.05.2025 u/s 13(2) of the SARFAESI Act, 2002, at the address of the Petitioner, after gaining knowledge of the fact that the husband of the Petitioner has passed away. The Petitioner has 60 days from the date of issuance of the said notice to fulfil its liabilities.

33. This Court is of the firm opinion that the Petitioner has not filed the present Writ Petition with clean hands as there is clear e*vide*nce against the pleas taken by her. In light of such concealment of facts, this Court does not deem it, at all necessary, to interfere with the proceedings before DRT.

34. The present writ petition is dismissed with the said findings along with pending application(s).

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

JULY 24, 2025
RJ/MT