

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5290/2025  
(@SPECIAL LEAVE PETITION (CIVIL) NO.10875/2025)  
(@Diary No.13444/2025)

M/S SUNSHINE BUILDERS AND DEVELOPERS

Appellant(s)

VERSUS

HDFC BANK LIMITED THROUGH THE BRANCH MANAGER & ORS. Respondent(s)

O R D E R

1. Delay condoned.
2. Leave granted.
3. This appeal arises from the judgment and order passed by the High Court of Judicature at Bombay dated 19-3-2024 in Writ Petition No.3929/2024 by which the High Court rejected the Writ Petition filed by the appellant - herein and thereby affirmed the order passed by the Debts Recovery Appellate Tribunal dated 29-2-2024 in Interim Application No.614/2022 in Appeal (Diary) No.1208/2022.
4. The impugned order passed by the DRAT which was made subject matter of challenge before the High Court was one directing the appellant - herein to deposit a sum of Rs.125 Crore as a pre-deposit under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the "SARFAESI" Act).
5. Heard Mr. C.U. Singh, the learned Senior counsel appearing for the appellant.
6. We are inclined to dispose of this appeal by a short order as we have looked into something which goes to the root of the matter.

7. Para 5 of the impugned order reads thus:-

"We have heard the learned Counsel appearing for the parties at quite some length. We have also carefully perused the order passed by the DRAT. We find that the exact same argument canvassed before us by the Petitioner was also canvassed before the DRAT. The DRAT, in paragraph 13 of the impugned order, has prima facie come to the conclusion that the Petitioners had consented to the creation of the mortgage. We, after perusing the record, do not find that the said finding of the DRAT, is in any way, perverse which would require our interference under Article 226 of the Constitution of India. In any case, the said finding is prima facie finding and was given to determine whether any pre-deposit ought to be ordered before the Appeal filed by the Petitioner is entertained. Section 2(1)(f) of the SARFAESI Act, 2002 defines the word "borrower" inter-alia to mean any person who has been granted financial assistance by any Bank or Financial Institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by the said Bank or Financial Institution. From this definition, it is absolutely clear that a mortgagor, even though not being a guarantor or a principle borrower, would still be included in the definition of the word "borrower" as defined in Section 2(1)(f) of the SARFAESI Act, 2002. It is keeping this definition in mind that the DRAT came to the conclusion that the Petitioner ought to be directed to deposit the sum of Rs. 125 crores as a pre-deposit for the Appeal to be entertained. This figure was arrived at because the sale notice indicates that the debt due is approximately Rs. 259 crores."

8. *Prima facie*, it appears that the High Court got enamoured by the finding recorded by the DRAT that the appellant - herein had consented to the creation of the mortgage.

9. Having looked into such finding, the High Court thereafter proceeded to consider the definition of the expression "borrower" as defined under Section 2(1)(f) of the SARFAESI Act.

10. In the last, the High Court took the view that although the mortgager may not be a guarantor or a principal borrower, yet he would fall within the definition of the expression "borrower" as

defined under Section 2(1)(f) of the SARFAESI Act and, therefore, it is not open for him to argue that he is not liable to make a pre-deposit as envisaged under Section 18 of the SARFAESI Act.

11. We take notice of the fact that the Securitisation application filed under Section 17 of the SARFAESI Act is pending with the DRT. In the said SA which is pending before the DRT, two interim applications were filed being IA No.183/2021 and IA No. 1652/2022 respectively for impleading the auction purchasers in the securitisation application and for condonation of delay in preferring such applications.

12. If such an application as referred to above stands rejected and an appeal is preferred before the DRAT against such order which is more a procedural part, should Section 18 so far as the aspect of pre-deposit is concerned, apply? This is the moot question that the High Court should have considered at the time of deciding the writ petition.

13. At this stage, we should look into Section 18 of the SARFAESI Act. Section 18 so far as relevant for our purpose is concerned reads thus:

*"18. Appeal to Appellate Tribunal.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal<sup>1</sup> [under section 17, may prefer an appeal along with 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."*

14. The plain reading of Section 18 of the SARFAESI Act, referred to above, would indicate that if any person which should also include a borrower is aggrieved by any order made by the DRT under Section 17 of the SARFAESI, he may prefer an appeal subject to the pre-deposit.

15. We are of the view, of course *prima facie* that the expression "any order" should be given some meaningful interpretation. Should any and every order that may be passed by DRT, if sought to be challenged, be made subject to pre-deposit?

16. One can understand that if any final order is passed by the DRT, determining the liability of the borrower or any other liability of any person, and an appeal is preferred under Section 18 of the SARFAESI Act to the appellate tribunal, the provision of pre-deposit would come into play. However, what would be the position if an order like the one passed in the present litigation, i.e., declining to implead the auction purchaser in the pending proceedings before DRT is concerned?

17. We are of the view that we should remand the matter to the High Court for the purpose of reconsidering the aforesaid aspects of the matter.

18. The impugned order passed by the High Court is set aside. The matter is remitted to the High Court. The High Court shall rehear the Writ Petition No.3929/2024 and decide it afresh in accordance

with law.

19. In the event if any adverse order is passed by the High Court, it shall be open for the appellant to come back to this Court again.

20. The Appeal is disposed of.

21. Pending applications, if any, shall also stand disposed of.

.....J  
(J.B. PARDIWALA)

.....J  
(K.V. VISWANATHAN)

NEW DELHI;  
17TH APRIL, 2025.

ITEM NO.13

COURT NO.13

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No. 13444/2025

[Arising out of impugned final judgment and order dated 19-03-2024 in WP No. 3929/2024 passed by the High Court of Judicature at Bombay]

M/S SUNSHINE BUILDERS AND DEVELOPERS

Petitioner(s)

VERSUS

HDFC BANK LIMITED THROUGH THE BRANCH MANAGER &amp; ORS. Respondent(s)

(IA No. 90341/2025 - CONDONATION OF DELAY IN FILING SLP, IA No. 90342/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT & IA No. 90343/2025 - EXEMPTION FROM FILING LIST OF DATES/SYNOPSIS)

Date : 17-04-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA  
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) :

Mr. C U Singh, Sr. Adv.  
Ms. Radhika Gautam, AOR  
Mr. Anirudh Joshi, Sr. Adv.  
Ms. Radhika Gautam, Adv.

For Respondent(s) :

UPON hearing the counsel the Court made the following  
O R D E R

1. Delay condoned.
2. Leave granted.
3. The Appeal is disposed of, in terms of the signed order.
4. Pending applications, if any, shall also stand disposed of.

(VISHAL ANAND)  
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)  
COURT MASTER (NSH)

(Signed Order is placed on the file)