IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3929 OF 2024

M/s. Sunshine Builders and Developers
partnership firm registered under the Indian
Partnership Act and having its principal office
at 1307, Lotus Trade Centre, Next to Audi
Showroom, New Link Road, Andheri (West),
Mumbai – 400 053 through its partner
Mr. Shailesh Mehta … Petitioner

V/s.

1. HDFC Bank Limited
having its registered office at HDFC
Bank House, Senapati Bapat Marg,
Lower Parel (W), Mumbai – 400 013

2. The Authorised Officer, attached to
HDFC Bank Ltd., having its registered
office at HDFC Bank House, Senapati
Bapat Marg, Lower Parel (W), Mumbai – 400 013

3. Official Liquidator, High Court, Bombay,
(Gigaplex Developers Pvt. Ltd. in Liquidation),
having office at 5th Floor, Bank of India Bldg.,
M.G. Road, Mumbai – 400 023

4. Kaveri Estate Pvt. Ltd., a Pvt. Ltd. Company
incorporated under the Indian Companies
Act, 1956 and having its registered office
at Raheja Chambers, Linking Road,
Santacruz (W), Mumbai – 400 054

5. Havemore Realty Pvt. Ltd.,
having its registered office at 412, Floor-4,
17G Vardhaman Chamber, Cawasji Patel
Road, Horniman Circle, Fort, Mumbai – 400 001 … Respondents

Mr. Simil Purohit, Senior Advocate with Vikramjit Singh Garewal with Rutwij Bapat, Shashank Fadia i/b. Priyanka Fadia for the Petitioner

Mr. Prateek Seksaria, Senior Advocate with Mr. Nishant Chothani, Rohit Agarwal, Ishwar Nankani, Huzefa Khokhawala with Karan Parmar and Kartik Gupta i/b. M/s. Nankani & Associates for Respondent Nos. 1 and 2

Mr. Nitin Thakker, Senior Advocate with Nimay Dave, Saloni Sulakhe, Declan Fernandes, Krushika Udeshi i/b. M/s. Dhaval Vussonji & Associates for Respondent No.5

Mr. Venkatesh Dhond, Senior Advocate with Karishma, Umang Mehta, Aamir Attari i/b. M/s. Avyaan Legal for Respondent No.6
Ms. Bhavi Vora and Ms. Yashvi Dave, representatives of Lodha Developers Ltd., Respondent No.6 present

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CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.

RESERVED ON : 16TH DECEMBER 2025
PRONOUNCED ON : 4TH FEBRUARY 2026

JUDGMENT (Per Farhan P. Dubash, J.) :

1. The present Writ Petition assails an order dated 29th February 2024 **(impugned order)** passed by the Debts Recovery Appellate Tribunal, at Mumbai in an application preferred by the Petitioner under Section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 directing the Petitioner to make the pre-deposit as a condition precedent for its appeal to be entertained. Before the DRAT, the Petitioner had challenged a common order dated 7th October 2022 passed by the Debts Recovery Tribunal, at Mumbai in two applications which sought

amendment of the pending Securitisation Application filed by it; the first of which, sought impleadment of the auction purchaser, whilst the other, sought to bring subsequent facts, including sale of the said property on the record, whilst also seeking condonation of delay in making such application. By the present Writ Petition, this Court is called upon to decide the Petitioners' challenge to the impugned order, which is primarily based on the ground that the said common order is merely a '*procedural'* order which sought impleadment of a party, amendment and condonation of delay in doing so and not a '*final*' order determining the liability of the borrower or any other person and hence, the provision of pre-deposit would not be attracted.

2. A brief narration of the facts, insofar as they are necessary for the adjudication of the disputes raised in the present Writ Petition, is set out hereunder :

A] The property which is subject matter of dispute in the present Writ Petition is a parcel of land bearing CTS Nos. 78 and 79 corresponding to Survey Nos. 91/2 and 4/3 admeasuring 18,156.40 square metres and 12,345.20 square metres respectively, situated at Village Gundavali, Taluka Andheri, Western Express Highway, Andheri (East), Mumbai **(said property)**.

B] The said property is stated to have been declared as a slum under the Maharashtra Slum Area (I, C and R) Act, 1971 and the occupants of various structures thereon are said to have formed themselves into a co-operative society and are said to have appointed the Petitioner as the developer, to implement the slum rehabilitation scheme. The Petitioner is a builder who is said to carry on business of construction and development of properties. In this manner, the Petitioner is said to have become entitled to the said property.

C] On 21st March 2011, a Co-Development Agreement **(1st Co-Development Agreement)** came to be entered into between the Petitioner and Respondent No. 3 under which, the latter came to be appointed as the Co-Developer to develop the said property against payment of a sum of ₹ 97.50 crores to the Petitioner, who in turn, became entitled to 50% of the total constructed area in the free sale component to be constructed thereupon.

D] Within 10 days thereof, a Supplemental Co-Development Agreement **(2nd Co-Development Agreement)** dated 31st March 2011 came to be entered into between the Petitioner and Respondent No. 3 under

which, the Petitioner agreed to forego its said entitlement to 50% of the total constructed area in the free sale component, in exchange for 50% net revenue from the sale of the free sale component.

E] Simultaneously, on 31st March 2011, a Power of Attorney (duly registered) also came to be entered into by the Petitioner in favour of the nominees of Respondent No. 3, in furtherance of the 1st and 2nd Co-Development Agreements, *inter alia* granting power and permitting Respondent No. 3 to create a mortgage, charge, lien or other encumbrance on the said property and on the free sale component to be constructed thereupon, excluding however, the 50% share of the Petitioner in the net revenue in the sale of the free sale component, as per the 2nd Co-Development Agreement.

F] On 30th December 2011 and 12th March 2013, two Deeds of Simple Mortgage (duly registered) came to be entered into between Respondent No. 3, Petitioner and Respondent No. 4, *inter alia* mortgaging the said property (excluding however, the 50% share of the Petitioner in the net revenue from the sale of the free sale component to be constructed thereupon) and another property at Bandra of Respondent No. 4, in favour of Respondent No. 1 Bank,

pursuant to certain loan / financial facility being extended by it, to Respondent No. 3. *[The Petitioner however contends that at the relevant time, it was neither informed nor was it aware of these two Deeds of Simple Mortgage being executed and/or of the said property or any part thereof being mortgaged with Respondent No. 1 Bank and this fact became known to it, only at a much later point in time. The Petitioner also asserts that Respondent No. 3 has illegally and without any authority and/or power, executed these two Deeds of Simple Mortgage by joining the Petitioner as a party Mortgagor thereto.]*

G] On 12th December 2013, a Further Supplemental Co-Development Agreement **(3rd Co-Development Agreement)** came to be entered into between the Petitioner and Respondent No. 3 under which, the consideration payable to the Petitioner stood increased to ₹ 281.50 crores and the Petitioner also became entitled to retain constructed area of 1,25,000 square feet in the free sale component to be constructed thereupon.

H] Pursuant thereto, (and as was also previously done in the case of the 2nd Co-Development Agreement) a Power of Attorney (duly registered) came to be executed by the Petitioner in favour of the nominees of Respondent No. 3.

I] On 13th June 2015, a letter came to be addressed by the Petitioner to Respondent No. 3 in which, the Petitioner asserts that the latter had not been authorized to mortgage the said property or any part thereof and the two Deeds of Mortgage were executed (by Respondent No.3 in favour of Respondent No.1 Bank) without the consent and/or authority of the Petitioner and accordingly, Respondent No. 3 was called upon to forthwith obtain a release of any charge / mortgage created by it, on the area falling to the share of the Petitioner in the free sale component to be constructed in the said property.

J] On 13th February 2017, on account of default of Respondent No.3 in repayment of the outstanding dues to Respondent No.1 Bank, a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 **(SARFAESI Act)** came to be issued by Respondent No. 1 Bank to various parties, including the Petitioner and Respondent No. 3.

K] On 2nd March 2017, the Petitioner responded to the said Section 13(2) notice issued by Respondent No. 1 Bank and disputed its contents.

L] On 10th August 2017, symbolic possession of the said property is stated to have been taken by Respondent No. 1 Bank and its authorized officer, Respondent No. 2.

M] On 20th September 2017, Securitisation Application No. 82 of 2019 **(SA)** was filed by the Petitioner under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, at Mumbai **(DRT)** *inter alia* challenging the steps taken by Respondent No. 1 Bank and Respondent No. 2, under Section 13 of the SARFAESI Act and to restrain Respondent No.1 Bank and Respondent No.2 from taking any further steps in respect of the said property.

N] By an order dated 2nd February 2018, passed by this Court in Company Petition No. 1049 of 2015, the Official Liquidator came to be appointed as the Liquidator of Respondent No. 3.

O] On 28th January 2019, an order came to be passed under Section 14 of the SARFAESI Act directing the Court Commissioner to take physical possession of the said property.

P] On 2nd January 2019, Respondent No. 1 Bank issued the Notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002

(SARFAESI Rules) for sale of the said property, which was replied to by the Petitioner, vide its letter dated 19th January 2019. In turn, Respondent No. 1 Bank and Respondent No. 2 responded to this reply vide their letter dated 29th January 2019.

Q] Commercial Suit No. 1003 of 2019 **(Commercial Suit)** came to be filed by the Petitioner in this Court against Respondent No. 1 Bank, Respondent No. 2, Respondent No. 3 and Respondent No. 5 *inter alia* seeking declaration of fraud and cancellation of the two Deeds of Mortgage executed in respect of the said property and for injunction and damages. *[However, till date, no interim / ad-interim reliefs have been granted to the Petitioner in this Suit.]*

R] In exercise of powers under Section 13 of the SARFAESI Act and Rules 8 and 9 of the SARFAESI Rules, Respondent No. 1 Bank sold the said property and the requisite Sale Certificate dated 24th December 2019 came to be issued by Respondent No. 1 Bank and Respondent No. 2 in favour of Respondent No. 5, the Auction Purchaser.

S] Pursuant thereto, on the same date, viz. 24th December 2024, Respondent No. 5 is stated to have mortgaged the said property in favour of Respondent No. 1 Bank.

T] On 18th February 2020, the Petitioner preferred Interim Application No. 1431 of 2020 in the Commercial Suit seeking leave to amend the plaint to *inter alia* seek cancellation of the Sale Certificate dated 24th December 2019 issued in favour of Respondent No. 5 and the Deed of Mortgage dated 24th December 2019 executed by Respondent No. 5 in favour of Respondent No. 1 Bank.

U] On 28th January 2021, the Petitioner filed Miscellaneous Application No. 183 of 2021 in the SA *inter alia* seeking to implead Respondent No. 5 in the SA. *[A perusal of the affidavit in support of this Miscellaneous Application would reveal that the Petitioner had learnt of the sale of the said property to Respondent No. 5 on 12th February 2020.]*

V] Simultaneously, on 28th January 2021, the Petitioner also filed Miscellaneous Application No. 95 of 2021 *(since, renumbered as Interlocutory Application No. 1652 of 2022)* in the SA, to add further facts and subsequent events on record regarding the sale of the said property to Respondent No. 5 and also to seek additional reliefs in that regard. Considering that each measure taken by Respondent No.1 Bank under Section 13 of the SARFAESI Act can be independently

challenged under Section 17(1) thereof within 45 days of the date on which such measure had been taken, the Petitioner also sought condonation of delay in filing such application.

W] A Sale Agreement is stated to have been executed between Respondent No. 5 and Respondent No. 1 Bank under which area admeasuring 2,96,960 sq. feet in the free sale component of the said property was sold by Respondent No.1 – Bank to Respondent No.5 for an aggregate consideration of ₹ 770.035 crores.

X] By a common order dated 7th October 2022, **(common order)** the DRT dismissed both the said Applications (being MA No. 183 of 2021 And IA No. 1652 of 2022) preferred by the Petitioner.

Y] Pursuant thereto, in November 2022, the Petitioner filed Miscellaneous Appeal (L) No. 128 of 2022 **(Appeal)** before the DRAT against the common order dated 7th October 2022 along with Interlocutory Application No. 614 of 2022 **(waiver application)** seeking waiver of the mandatory pre-deposit under Section 18(1) of the SARFAESI Act, primarily on the ground that it was neither the Borrower / Mortgagor / Guarantor.

Z] On 2nd May 2023, Respondent No. 5 is stated to have entered into a Development Agreement (duly registered) with Respondent No. 6 for development of the said property.

AA] By an order dated 21st July 2023, the Petitioner was permitted to implead Respondent No. 6 in the Appeal.

BB] The impugned order dated 29th February 2024 came to be passed by the DRAT in the waiver application rejecting the contention of the Petitioner and directing it to make a pre-deposit of Rs. 125 crores in three instalments, under Section 18(1) of the SARFAESI Act, as a condition precedent for entertaining its Appeal.

CC] The Petitioner filed the present Writ Petition which came to be dismissed by an detailed order dated 19th March 2024.

DD] This order of dismissal came to be set aside by the Supreme Court vide order dated 17th April 2025 and the present Writ Petition was remanded to this Court for a fresh hearing.

EE] In a subsequent order dated 18th November 2025 passed in a Review Petition preferred by Respondent No. 5, the Supreme Court has expressly clarified that this Court should not be influenced by the observations made in its earlier order dated 17th March 2024 including those made in paragraphs 12, 15 and 16 thereof.

SUBMISSIONS OF THE PETITIONER

3. Mr. Simil Purohit, learned counsel who appears on behalf of the Petitioner has taken us through the three Co-Development Agreements and the two Powers-of-Attorney executed by and between the parties. He submits that Respondent No. 3 was not entitled to mortgage the entitlement and share of the Petitioner in the free sale portion to be constructed on the said property and also in the sale proceeds thereof. He then invites our attention to the two Deeds of Mortgage and submits that the same have not been executed by his clients but instead, have been fraudulently and illegally executed by Respondent No. 3 purportedly as the Power of Attorney holder of his clients, without their prior notice and/or knowledge and also without their authority. As a result, he submits that the two Deeds of Mortgage are not valid and/or binding on his clients. In that regard, Mr. Purohit invites our attention to the Commercial Suit seeking such declaration and reliefs that has already been filed in this Court and informs us that the same is pending adjudication.

4. Mr. Purohit relies on the decision of the Supreme Court in ***Assistant Commissioner of Income Tax (Exemptions) Vs. Ahmedabad Urban Development Authority*** reported in **(2023) 4 SCC 561** which discusses and reiterates the law defining the term, "*unless the context otherwise requires*" to mean that generally, the word or term so defined should be applied, subject to the context, collocation and the object of such words. The Apex Court discusses the importance of terms expressly defined in a statute since they are internal and binding aids to its interpretation and reiterates that the prefacing to any definition the phrase "*unless the context otherwise requires*" merely signifies that, in case there is anything expressly to the contrary, in any specific provision(s) in the body of the Act, a different meaning could be attributed. However, to discern the purport of a provision, the term, as defined, has to prevail whenever expression is used in the statute. It is further reiterated that this rule is subject to the exception that when a contrary intention is plain in particular instances, that meaning is to be given. Relying on the aforesaid decision, Mr. Purohit points out that the Definitions clause - Section 2(1) of the SARFAESI Act also begins with the identical phrase, "*unless the context otherwise requires*" and hence, the definition of the term, "*borrower*" contained in Section 2(1)(f) thereunder, is to be interpreted in such a manner, so as to exclude his clients, who did not execute the two Deed of Mortgage in favour of Respondent No. 1 Bank.

5. Mr. Purohit then relies on the decision of the Delhi High Court in ***Indiabulls Housing Finance Ltd. Vs. Vaibhav Jhawar and Others*** reported in **2018 SCC Online Del 12853** to urge that the term, "*borrower*" as contained in the second proviso to Section 18(1) of the SARFAESI Act does not include any other person i.e. other than a borrower or a guarantor and since, his clients are neither the borrower nor the guarantor in respect of the financial facility availed from Respondent No. 1 Bank, the stipulation of pre-deposit could not have been insisted upon by the DRAT on them, in the impugned order.

6. Mr. Purohit also relies on the decision of the Single Judge of this Court in ***Nagpur Integrated Township Pvt. Ltd. Vs. Maharashtra Real Estate Regulatory Authority, Mumbai and Others*** reported in **2020 SCC Online Bom 929** which holds that in cases where it is disputed that the Appellant does not come under the expression, "*promoter*" and therefore, not liable to make the pre-deposit under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, **(RERA)** the Appellate Tribunal must take at least a prima facie view of the matter and only then, pass the order of pre-deposit. He submits that a similar interpretation ought to be applied to Section 18(1) of the SARFAESI Act and the DRAT ought to have recorded, at least a prima facie finding as to whether the Petition is a "*borrower*" before making the order of pre-deposit, especially when his clients contend otherwise and since this has not been done, the impugned order is required to be interfered

with by this Court.

7. Mr. Purohit then invites our attention to the SA filed by his clients in the DRT to challenge the steps taken under Section 13 of the SARFAESI Act and submits that upon becoming aware of the subsequent measures taken by Respondent No. 1 Bank, which ultimately resulted in the sale of the said property to Respondent No. 5, his clients were advised to amend the SA that was already filed by it and pending before the DRT to challenge such measures, instead of preferring a fresh application for such purpose and it was under such circumstances that, his clients had taken out the said Miscellaneous Application to implead the Auction Purchaser – Respondent No. 5 in the SA and also taken out the said Interim Application to add these facts and subsequent events on record, regarding the sale of the said property in favour of Respondent No. 5 and also to seek additional reliefs challenging such measures whilst also seeking condonation of delay in preferring such application.

8. Mr. Purohit submits that the common order dated 7th October 2022 erroneously dismisses both the Applications preferred by his client by holding that they had failed to satisfactorily explain the delay in preferring them and the proposed amendment, if granted, would change the nature of the *lis*. He submits that the common order does not delve into and/or decide

the merits of the contentions sought to be taken in the proposed amendment and merely dismisses the application at the first instance and without any proper adjudication thereupon. Accordingly, he contends that the DRAT ought to have appreciated that the common order was merely a procedural order and not a final order which adjudicates the substantial rights of the parties and/or determines the liability of borrower or any other party and therefore, Mr. Purohit submits that the impugned order erroneously directs his client to make the mandatory pre-deposit under Section 18(1) of the SARFAESI Act. Moreover, he submits that the DRAT ought to have appreciated that his client was neither the borrower nor the guarantor nor the mortgagor and as a result, the mandatory pre-deposit was not required to be paid by them.

9. Mr. Purohit relies on the decision of the Telangana High Court in ***Gade Sreenivas Reddy Vs. State Bank of India and Others*** reported in **2025 SCC Online TS 687** which held that a conjoint reading of Sections 19 and 21 of the Recovery of Debts and Bankruptcy Act, 1993 **(RDB Act)** indicates that the nature of the appeal contemplated under Section 21 is a substantive appeal arising from a determination of debt due to the Bank, Financial Institution or Consortium thereof and if the order under challenge was a mere procedural one, the same could not be brought within the stranglehold of the deposit requirement under Section 21. Mr. Purohit submits that a similar

interpretation ought to be made applicable to Section 18(1) of the SARFAESI Act in the present case, since the common order was a mere procedural order, declining condonation of delay, proposed amendment of the SA and impleadment of the Auction Purchaser of the said property as sought by his clients, the DRAT ought not to have imposed the pre-deposit on his clients in the impugned order, by relying upon and applying the second proviso to Section 18(1) of the SARFAESI Act.

10. Mr. Purohit also relies on the decision of this Court in ***M/s. Gadekar Ginning and Pressing Pvt. Ltd. and Anr. Vs. Canara Bank and Anr.*** reported in **2024 SCC OnLine Bom 2924** and submits that even in the present case, since the common order was an order which refused condonation of delay in permitting his clients to amend the SA, the impugned order which directs making of the deposit as a pre-condition for entertaining its Appeal, is required to be set aside.

11. Mr. Purohit also relies on the decision of the Supreme Court in ***Mardia Chemicals and Others Vs. Union of India and Others*** reported in **(2004) 4 SCC 311** to contend that an onerous condition of making a pre-deposit cannot be imposed as a condition precedent for entertaining the matter on merits.

12. Mr. Purohit therefore submits that the impugned order is required to be set aside and this Court ought to direct the DRAT to hear and decide the Appeal preferred by the Petitioner on merits, without insisting on any pre-deposit under Section 18(1) of the SARFAESI Act.

SUBMISSIONS OF RESPONDENT NOS. 1 & 2

13. At the outset, Mr. Prateek Seksaria, learned Senior Counsel who appears on behalf of Respondent No. 1 Bank and its authorised officer, Respondent No. 2, submits that under Section 18 of the SARFAESI Act, the DRAT has no power to waive the mandatory pre-deposit, irrespective of the nature of the order appealed against. He submits that Section 18 does not make any distinction between an interim order or a final order that is appealed against, or a sub-classification of the nature of interlocutory / interim or final orders appealed against, whilst laying down the mandatory pre-condition for entertaining an appeal.

14. In support of this submission, he relies on the decision of the Supreme Court in ***Raj Kumar Shivhare Vs. Assistant Director Directorate of Enforcement*** reported in **(2010) 4 SCC 772**. In this judgment, whilst interpreting the provisions of the Foreign Exchange Management Act, 1999 **(FEMA),** and in particular, Section 35 thereof, which confers jurisdiction on the High Court

to entertain an appeal within 60 days from '*any decision of order of the appellate authority*', the Apex Court held that the word *'any'* would mean *'all'* by holding that when a right is conferred on a person aggrieved, to file an appeal from *'any'* order or decision, there is no reason, in the absence of a contrary statutory intent, to give it a restricted meaning to only include a final order and not an interlocutory one and further that, where the right of appeal is limited only from a final order or judgment and not from an interlocutory one, the statute creating such right, would make it clear. In this context, the Apex Court had held that the right of appeal, being always a creature of statute, its nature, ambit and width has to be determined from the statute itself and when the language of the statute regarding the nature of the order from which right of appeal has been conferred is clear, no statutory interpretation is warranted, either to widen or restrict the same. By relying on this decision, Mr. Seksaria submits that the provisions of Section 18 of the SARFAESI Act are also clear and unambiguous and the mandatory pre-deposit is required to made in all matters, irrespective of the fact that the order under appeal was a mere procedural one, and not a final order which adjudicates the substantial rights of the parties and/or determines the liability of borrower or any other party, as contended by the Petitioner herein.

15. In this regard, Mr. Seksaria invites our attention to Section 18 of the SARFAESI Act and submits that its wordings are clear inasmuch as, the

DRAT cannot entertain the appeal unless the pre-condition is satisfied since the right of appeal is created by statute itself and such right is conditional upon making the pre-deposit. He relies on the decision of the Supreme Court in ***B. Premanand and Ors Vs. Mohan Koikal and Ors.*** reported in **(2011) 4 SCC 266** and contends that as per well-settled principles of statutory interpretation, when the meaning is plain, clear and unambiguous from which the legislative intent is clear, the literal rule of interpretation will apply to it and this Court need not call in to aid, other rules of construction of statutes, which should only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally, would nullify the very object of the statute. By relying on this judgment, Mr. Seksaria submits that this Court ought not to add words to the plain and clear language of Section 18 of the SARFAESI Act, by interpreting the said section in the manner, as suggested by the Petitioner herein.

16. Mr. Seksaria relies on the scheme of the SARFAESI Act and submits that the power of the DRT to pass an interim / interlocutory order of any nature is traceable only to Section 17 thereof, being ancillary to its jurisdiction and in such circumstances, Section 18 cannot be so interpreted to mean that an interim / interlocutory order is not referable to Section 17 since it is only in the context of proceedings under Section 17 of the SARFAESI Act that the DRT assumes jurisdiction and it is in aid of such jurisdiction that, the DRT

passes any interim / interlocutory order. He relies on the decision of this Court in ***Vinay Container Services Vs. Axis Bank*** reported in **2011 (1) Mh.LJ 882** and the decision of the Delhi High Court in ***Satnam Agri Products Ltd. Vs. Union of India*** reported in **2014 SCC Online Del 6965** to contend that the nature of proceedings from which an appeal is filed under Section 18 of the SARFAESI Act is wholly irrelevant, and the requirement of pre-deposit applies not only to final orders but also to appeals against interlocutory orders.

17. Mr. Seksaria also relies on the decision of the Supreme Court in ***Union Bank of India Vs. Rajat Infrastructure Pvt. Ltd.*** reported in **(2020) 3 SCC 770** and submits that Section 18 of the SARFAESI Act provides for an absolute bar from entertaining an appeal unless the condition precedent of a pre-deposit is fulfilled and therefore, he submits that the DRAT is not empowered to grant or allow a full waiver of the mandatory pre-deposit despite the nature of proceedings from which the appeal arise.

18. Mr. Seksaria then invites our attention to the two Deeds of Simple Mortgage dated 30th December 2011 and 12th February 2013 executed in favour of Respondent No. 1 Bank and submits that a bare perusal of these instruments would reveal that the Petitioner is a party thereto, in its capacity as the Mortgagor of the said property. He has painstakingly taken us through the

relevant clauses of the 1st and 2nd Co-Development Agreements and also the Power of Attorney dated 31st March 2011 executed by the Petitioner in favour of the nominees of Respondent No. 3 and asserts that, Respondent No. 3 was fully authorised and entitled to execute the said two Deeds of Simple Mortgage in favour of his clients. He points out that both these instruments have since been registered in accordance with law and accordingly, the Petitioner cannot be permitted to urge something that is ex-facie contrary to the written terms and conditions contained therein. He further submits that despite the Petitioner challenging these two Deeds of Mortgage as far back as in April 2019 by filing Commercial Suit No. 1003 of 2019, till date, no interim or ad-interim reliefs have been granted in their favour therein.

19. Mr. Seksaria relies on the definition of the term, "*borrower*" in the Section 2(1)(f) of the SARFAESI Act, which expressly includes a person that has created a mortgage and accordingly, submits that since the Petitioner is admittedly shown as a Co-Mortgagor in the said two Deeds of Simple Mortgage, the mandatory pre-condition of deposit contained in the second proviso to Section 18(1) of the SARFAESI Act clearly applies to the Petitioner in the facts of the present case. In support, he relies on the decision of the Supreme Court in ***Rajat Infrastructure (supra)*** and a decision of this Court in ***Keystone Constructions Vs. SBI*** reported in **2013 SCC Online Bom 2098** which hold that a "*mortgager*" who has mortgaged its property to

secure the repayment of the loan, stands on the same footing as and falls within the definition of a "*borrower*" and the amount due from him under the mortgage falls within the ambit of the expression, "*amount due from him*" in the second proviso to Section 18(1) of the SARFAESI Act.

20. Mr. Seksaria further submits that since the Petitioner has already availed its statutory remedy and filed the SA, that is pending before the DRT, this Court ought not to exercise its extra-ordinary writ jurisdiction, on grounds which are subject matter of the pending SA. He further submits that by the said amendment (sought in the two Applications), the Petitioner seeks to assail actions that had been taken by Respondent no. 1 Bank under Section 13 of the SARFAESI Act, each of which, constitutes a fresh cause of action under Section 17 thereof, and independently capable of being challenged by the Petitioner within the stipulated time of 45 days prescribed under Section 17(1) of the SARFAESI Act. Accordingly, he submits that it is entirely incorrect on the part of the Petitioner to contend that the amendments sought by it, in the two Applications filed before the DRT, only seek to place subsequent events on record and as such, are merely formal in nature. On the contrary, he contends that by such amendments, the Petitioner asserts a substantive right that is available to it and granted under Section 17 of the SARFAESI Act. On this ground also, Mr. Seksaria submits that the Petitioner's contention that the common order is a mere procedural one and

not one that deals with the substantive rights of the Petitioner, is incorrect and ought not to be accepted by this Court.

21. Without prejudice to the aforesaid submissions, Mr. Seksaria submits that if it is contented by the Petitioner that the common order rejecting its two Applications is merely a procedural order, then no appeal thereto, would be maintainable under Section 18 of the SARFAESI Act. He contends that since procedural orders do not affect the rights or liabilities of a party, it is settled law that they do not fall within the ambit of 'any order' / '*every order*' such as orders regarding summoning of witnesses, discovery, production, inspection of documents, fixing of date of hearing etc. which orders are merely steps towards the final adjudication and regulate the procedure alone, without affecting any rights or liabilities of a party. He therefore submits that no reliefs ought to be granted in the present Writ Petition and instead, the same should to be dismissed.

SUBMISSIONS OF RESPONDENT NO. 5

22. Mr. Nitin Thakker, learned Senior Counsel appears on behalf of Respondent No. 5 who is the Auction Purchaser of the said property. He submits that his client has purchased the said property for a sum of ₹ 232 crores and relies on the registered Sale Certificate dated 24th December 2019 issued by

Respondent no. 1 Bank in his client's favour. He further states that since then, his client, in turn, has entered into a Development Agreement dated 2nd February 2023 with Respondent No. 6 for further development of the said property. He supports the submissions already advanced by Mr. Seksaria on the interpretation of Section 18 of the SARFAESI Act and adds that even as per the Black's Law dictionary and the Meriam Webster's dictionary, the word, "*any*" is interpreted to mean "*all*" and "*every*". He also relies on the decision of the Supreme Court in ***Lucknow Development Authority Vs. M. K. Gupta*** reported in **(1994) 1 SCC 243** and of this Court in ***Man Global Ltd., Mumbai Vs. Ram Prakash Jookani*** reported in **2023 SCC Online Bom 600** and submits that it has been held that the word, "*any*" has a diversity of meanings and may be employed to indicate "*all*" or "*every*" as well as "*some*" or "*one*" and its meaning in a given statute depends upon the context and the subject matter of the statute.

23. Mr. Thakker further submits that on a plain reading of the language of Section 18 of the SARFAESI Act, "*any order*" that is challenged, attracts the mandatory pre-deposit and when the statute is clear and unambiguous, its provisions cannot be read to be given a different meaning, so as to change the very intention of legislature. In that connection, he relies on the decisions of the Supreme Court in ***Ansal Properties and Industries Ltd. Vs. State of Haryana & Anr.*** reported in **(2009) 3 SCC 553**, ***Satheedevi Vs. Prasanna &***

Anr. reported in **(2010) 5 SCC 622** and ***United India Insurance Co. Ltd. v. M/s. Orient Treasures Pvt. Ltd.*** reported in **(2016) 3 SCC 49**.

24. Mr. Thakker also submits that the language of Section 18(1) of the SARFAESI Act makes it abundantly clear that the expression "*any order*" therein encompasses both, final and interlocutory orders and the same cannot be distinguished on the basis of whether the order appealed against is a procedural one or a final one, as there is no distinguishment thereof under the SARFAESI Act. He submits that in light of the statutory scheme and intent of legislation while incorporating the Act, as well as the consistent Judicial interpretation by various courts, the phrase "*any order*" used in Section 18(1) is broad, unqualified and purposive and encompasses all orders i.e. final, interlocutory, procedural, or ancillary that may be passed by the DRT under Section 17 thereof. He submits that the intention of the pre-deposit under Section 18 is to deter frivolous appeals whilst ensuring seriousness from borrowers who seek to challenge orders passed by the DRT and thereby, balance the rights by streamlining debt recovery for the secured creditors by requiring deposit of 50% of the debt due (including interest) before appealing to the DRAT. He submits that this provision acts as a filter, preventing baseless challenges to legitimate recovery actions. He argues that the legislature, in employing the phrase "*any order*" has deliberately chosen to confer a wide appellate jurisdiction upon the DRAT so that no aggrieved

person is left without recourse against orders passed by the DRT. He submits that a plain literal interpretation of the provision leaves no scope for judicial limitation or reading down the said provision and submits that no interference is warranted to the impugned order, and the present Writ Petition is therefore required be dismissed.

SUBMISSIONS OF RESPONDENT NO. 6

25. Mr. Venkatesh Dhond, learned Senior Counsel appears on behalf of Respondent No. 6, a developer with whom the Auction Purchaser, Defendant No.5 has entered into a subsequent Development Agreement for development of the said property. At the outset, he submits that since the Petitioner has itself chosen to file the Appeal under Section 18 of the SARFAESI Act, it is deemed to have accepted that the common order was one, passed under Section 17 thereof. He argues that having invoked the appellate jurisdiction of the DRAT under Section 18, the Petitioner cannot be permitted to now contend that the common order passed by the DRT is actually one falling outside the scope of "*any order*" contemplated therein and therefore, he contends that the Petitioner is not entitled to urge any of the contentions that have been argued by it, moreso when, the Petitioner did not invoke the writ jurisdiction of this Court in the first instance and consciously chose to instead file the Appeal before the DRAT. As a result, he argues that

in this second round of proceedings, the Petitioner cannot be heard to recharacterize the common order, solely to evade the statutory pre-deposit.

26. Mr. Dhond submits that Section 18(1) of the SARFAESI Act confers a right of appeal on any person, including persons other than a borrower. However, he submits that whilst any person may have the locus to appeal, despite not being borrowers, the rigors of pre-deposit are not diluted inasmuch as, the second proviso to Section 18(1) uses the expression '*borrower'* only to identify the person whose debt is required to be secured and therefore, whilst a third party may have locus to appeal, even in such an appeal, the *'borrower'* must make the mandatory pre-deposit. He submits that such deposit can be by the *'borrower'* itself or by someone, on behalf of the borrower, since the appeal is against an order passed under Section 17, which is a repository of provisions which enable '*any person*' (including a borrower) to challenge measures taken under Section 13(4). Thus, Mr. Dhond submits that Section 17 remedy is anti-section 13 measure or an anti-recovery measure and therefore. a Section 17 relief stalls / defeats / delays an enforcement measure under Section 13 and consequently, any person seeking to stall or defeat such a measure is put on the same plane as a *'borrower'* for the purposes of pre-deposit.

27. Mr. Dhond further submits that the pre-deposit mandated under Section 18 of the SARFAESI Act is debt-centric and is intrinsically linked to the outstanding debt due to the secured creditor, inasmuch as, it operates as a statutory safeguard to secure the debt pending the pendency of appellate proceedings. He submits that the legislature in its wisdom has consciously imposed this condition to ensure that a secured creditor, whose recovery process has already matured into enforceable measures, is not subjected to repeated and protracted litigation, without any security for the debt. He submits that the statutory insistence on a deposit of a percentage of the debt due, rather than the nature of the order appealed against, clearly demonstrates that the pre-deposit is intended to secure the creditor against delay and attrition and not merely to regulate procedure. He therefore submits that the common order is not a mere procedural order, as erroneously contented by the Petitioner.

28. Further, Mr. Dhond submits that as a direct consequence of the common order, the Petitioner's right to challenge the auction sale now stands extinguished and the auction purchaser's title stands crystallized and the challenge to the concluded statutory sale cannot survive in law. He therefore submits that such a determination, as done in the common order, is not a procedural one but is an adjudication on the very right of the Petitioner to litigate against the proposed party. To further substantiate, Mr. Dhond has

painstakingly taken us through the common order and in particular, the several findings recorded and rendered therein, in an effort to persuade us that the same is a substantive ruling and not a mere procedural one.

29. Lastly, Mr. Dhond submits that even otherwise, if an amendment is substantially valid, courts may refuse to allow it, if it would cause injustice to the other side and it is not necessary for the purpose of determining the real controversy. In the present case, he submits that valid third party rights were created in favour of his client, as far back as in May 2023 and that too, under a Development Agreement (duly registered) pursuant to which, his client has paid the entire consideration of ₹ 150 crores to Respondent No. 5. He points out that the Petitioner has not been able to obtain any stay or injunction preventing the creation of such rights and as a result, his client has obtained these rights in a bona fide manner and in good faith. He further submits that, pursuant to the said Development Agreement, substantial third party rights have been crystallized and large financial commitments have since also been made and multiple home buyers have acquired enforceable contractual interests and any attempt to reopen the concluded sale at this stage, would gravely prejudice all these vested rights.

30. Mr. Dhond adds that the two Applications preferred by the Petitioner are nothing but a disguised attempt to blatantly open a concluded statutory sale,

after recovery has been completed and sale proceeds have been received by the secured creditor. He submits that during this period, independent vested rights have been lawfully created in favour of his client, substantial redevelopment of the said property has been undertaken, significant financial investments have been made and agreements for sale have been executed with third party home buyers and as a result, he submits that grave injustice will be caused not only to his client but also to all the other third party buyers by allowing such an amendment.

31. In support of this submissions, Mr. Dhond tenders a statement providing details of the expenses incurred by this client for construction and development, the status of the construction and details of the sold / unsold units in the said property. For convenience, the said details are reproduced hereunder:

(i) Expenses incurred for construction and development of the project -

Sr.	**Tower**	**Total ₹ incl. tax**	**₹ In crores**
1	Tower A	19,35,93,996	19.36
2	Tower B	5,26,76,630	5.27
3	Tower C	18,26,75,608	18.27
4	Tower D	5,63,84,481	5.64
5	Infra	31,75,37,295	31.75
		80,28,68,010	**80.29**

(ii) Status of Construction -

Wing	Status	Total Floors
Tower A	RCC Complete – Finishing works in progress	G + 15 floors
Tower B	2nd Floor RCC works in progress	G + 15 floors
Tower C	RCC Complete – Finishing works in progress	G + 15 floors
Tower D	Plinth Completed	G + 15 floors

(iii) Sold / Unsold Units

Wing	Sold	Unsold	Grand Total	Sold	Unsold
A	36	21	57	63%	37%
B	35	29	64	55%	45%
C	28	39	67	42%	58%
Grand Total	99	89	188	53%	47%

32. He further points out that his client has also constructed 10 rehab buildings on the said property, of which 8 buildings have already received their occupancy certificate as on August 2025 and the units therein have been handed over and the erstwhile occupants / dwellers have already been rehabilitated. He therefore implores this Court not to interfere with but instead confirm the impugned order.

ANALYSIS, REASONS AND FINDINGS

33. Despite the lengthy arguments made by the parties and the voluminous record, this Court is of the view that the issue that is required to be adjudicated in the present Writ Petition is a limited one – *Whether the common order passed by the DRT is of such a nature that it does not attract the requirement of the mandatory pre-deposit in appeal?* In support of its contention which seeks to answer the above issue in the affirmative, the Petitioner has effectively sought to urge two main propositions – *Firstly*, that it is not a borrower and therefore, the second proviso to Section 18(1) of the SARFAESI Act is not attracted, and *Secondly*, the common order passed by the DRT, is a mere procedural order and not a final order determining the liability of the borrower or any other person and hence, the provisions of pre-deposit are not attracted.

34. Accordingly, let us first ascertain whether the second proviso to Section 18(1) of the SARFAESI Act would be applicable in the present case insofar as, the Petitioner is concerned. In order to do that, it would be advantageous to reproduce the contents of the said section, which is reproduced hereunder:

> *"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 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." ***(emphasis provided)***

35. A perusal of the two Deeds of Simple Mortgage reveal that the same have been executed by the Petitioner who is shown therein, as the *mortgagor*. Both Deeds have also been registered with the Sub-Registrar of Assurances and hence, they are valid and binding on all the parties thereto. The first of the two Deeds was executed on 30th December 2011, whilst the other came to be executed on 12th March 2013. Even if the case espoused by the Petitioner is accepted that at the time of execution of these two Deeds, it was unaware, the Petitioner filed the Commercial Suit challenging the said two Deeds as far back as in 2019 and despite this, since then, it has been unsuccessful in obtaining any interim or ad-interim orders in its favour. Hence, the Tribunals and this Court cannot ignore the said two Deeds and/or go behind them, as urged by Mr. Purohit who vehemently contends that fraud was played on his clients, in executing them. Accordingly, the contention of the Petitioner that in the facts and circumstances of the present case, it is not a *mortgagor*, does

not appear to be well founded.

36. Section 2(1)(f) of the SARFAESI Act defines the term, '*borrower*' to mean:

> "(f) "borrower" means any person who, or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) which, 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 any bank or financial institution and includes a person who, or a pooled investment vehicle which, becomes borrower of a asset reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance or who has raised funds through issue of debt securities"

In ***Keystone Constructions (supra)***, the Division Bench of this Court has categorically held that the term '*borrower'* in Section 2(1)(f) of the SARFAESI Act includes a '*mortgagor*'. Thereafter, in ***Union Bank of India (supra)***, the Supreme Court has also held that under Section 18 of the SARFAESI Act, a '*mortgagor*' stands on the same footing as a '*borrower*'. In the premises and considering the judicial pronouncements noted above, this Court is not inclined to accept the contention of Mr. Purohit that his client cannot be held to be a *borrower*, and a result thereof, the second proviso to Section 18(1) of the SARFAESI Act would not be applicable to them.

37. The decision of the Delhi High Court in ***Indiabulls Housing Finance Ltd. (supra)*** would not be of any assistance to the Petitioner since the said court was not dealing with a case involving a '*mortgagor'* therein, but instead, was

merely considering whether persons (Respondent Nos. 1 to 5 therein) who had invested monies with the borrower (Respondent No. 6 therein) could be directed to make the pre-deposit under Section 18(1) of the SARFAESI Act and it is under those peculiar circumstances that the court held whilst considering the second proviso, the term '*borrower'* would also include a '*guarantor'* and no other person.

38. Insofar as, the phrase "*unless the context otherwise requires*" appearing at the beginning of Section 2 of the SARFAESI Act which contains the Definitions clause that prescribes the meanings to be attributed to words/phrases included in the SARFAESI Act is concerned, the wordings of Section 2(1)(f) and Section 18 of the SARFAESI Act are plain and clear and leave no room for any doubt. Mr. Purohit has not been able to convincingly demonstrate any other provision/s therein which is/are expressly contrary to the said wordings. Accordingly, the reliance of Mr. Purohit on the decision of the Supreme Court in ***Ahmedabad Urban Development Authority (supra)*** is wholly misplaced and the said decision is of no assistance to him. On the contrary, as more particularly held in ***B. Premanand (supra)***, the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation and other rules, such as the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally,

would nullify the very object of the statute. In ***Satheedevi (supra)***, the Supreme Court has once again reiterated the two rules of interpretation of statutes, the primary rule of construction being that the intention of the legislature must be found in the words used by the legislature itself and if the words are capable on one construction, then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the object and policy of the Act.

39. The other important rule of interpretation has also been reiterated and courts have been cautioned against adding words to a statute or read words which are not there in it, even if there is a defect or omission therein. A similar view was subsequently also taken by the Supreme Court in ***United India Insurance (supra)***. In ***Ansal Properties (supra).*** The Supreme Court has enunciated the well-settled legal principle that courts ought not to read anything into a statutory provision which is plain and unambiguous. Upon careful perusal of the caselaw discussed above and considering our above-recorded findings on the meaning and inclusion of the term '*borrower'* and the wordings contained in Section 18 of the SARFAESI Act, we are of the view that there is no need and/or requirement to import any other meaning thereto, by employing other rules of statutory interpretation, as suggested by Mr. Purohit. Resultantly, we are of the considered opinion that the Petitioner

would squarely fall within the meaning of the term, '*borrower'* as contained in Section 18(1) of the SARFAESI Act.

40. Next, let us ascertain whether the common order passed by the DRT in the present case, is a mere procedural order and not a final order and whether, as a result thereof, the provisions of pre-deposit are not attracted. In order to properly appreciate the submissions of the parties, it would be apposite to appreciate the scheme of the SARFAESI Act and in particular, Chapter III therein, which is titled, '*Enforcement of Security Interest*'. Section 13 which also bears the same title, contains various provisions whereunder, a secured creditor is empowered to enforce its security interest without the intervention of a court or tribunal. One of the measures available under sub-section (4) thereof to such secured creditor is to take possession of the secured assets, including the right to transfer by way of lease, assignment or sale for realising the secured asset. Section 14 then prescribes various provisions to the Chief Metropolitan Magistrate or the District Magistrate to assist such secured creditor in taking possession of the secured asset, whilst Section 17 provides for the recourse that can be taken by any person who may be aggrieved by any of the measures referred to in sub-section (4) of Section 13 being taken by the secured creditor by making an application to the DRT within 45 days from the date on which such measure had been taken. Thereafter, Section 18 contains the provisions of Appeal which can be made

to the Appellate Tribunal (DRAT) by any person who is aggrieved by any order made by the DRT within 30 days from the date of receipt of such order.

41. For convenience, the afore-mentioned provisions of the SARFAESI Act are extracted and reproduced hereunder:

> "***13. Enforcement of security interest –*** *…*
>
> *…*
>
> *…*
>
> *(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—*
>
> *(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;*
>
> *(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:*
>
> *Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:*
>
> *Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]*
>
> *(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;*
>
> *(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay*

the secured debt."

*"**17. Application against measures to recover secured debts —***

(1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(1-A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order, —

(a) declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of Section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt.

(4-A) Where —

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to Section 65-A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

(5) Any application made under sub-section (1) shall be dealt

with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

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

*"**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.

(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"

42. From the above provisions, it is quite clear that every action of Respondent No. 1 Bank under Section 13 of the SARFAESI Act constitutes a fresh cause of action and was capable of being independently challenged by the Petitioner under Section 17 thereof. This is also reiterated in ***Authorised Officer, Indian Overseas Bank and Anr. Vs. Ashok Saw Mill*** reported in ***(2009) 8 SCC 366*** which clarifies that the Amending Act of 2004, gave an opportunity to the borrower to approach the DRT at any stage and against any measure taken by the secured creditor under sub-section (4) of Section 13 of the SARFAESI Act which was not in conformity therewith. Admittedly, on 20th September 2017, the Petitioner had initially filed Securitisation Application No. 82 of 2019 before the DRT challenging some steps taken by Respondent No. 1 Bank under Section 13(4) of the SARFAESI Act. However, no reliefs came to be granted in its favour and since then, Respondent No. 1 Bank pursued the other measures available to it thereunder and obtained an order dated 26th January 2019 under Section 14 for taking physical possession of the said property. Respondent No. 1 Bank then proceeded under the SARFAESI Rules for sale of the said property and ultimately, on 24th December 2019, the Sale Certificate came to be issued in favour of the Auction Purchaser, Respondent No. 5. All these steps were

within the knowledge of the Petitioner who in fact had even exchanged communication with Respondent No. 1 Bank during this period and also filed the Commercial Suit in this Court but for reasons best known to it, preferred Miscellaneous Application No. 183 of 2021 and Miscellaneous Application No. 95 of 2021 (since, renumbered as Interlocutory Application No. 1652 of 2022) in the pending Securitisation Application No. 82 of 2019 only much later, on 28th January 2021 (and much after the expiry of the period of 45 days prescribed under sub-section (1) of Section 17 of the SARFAESI Act) to challenge these subsequent measures taken by Respondent No. 1 Bank. In fact, the record reveals that the Petitioner was aware of the sale of the said property since as far back as on 12th February 2020 but decided to challenge the same in the DRT only about one year later.

43. Moreover, as provided in the said sub-section (1) of Section 17 of the SARFAESI Act, each measure adopted by Respondent No. 1 Bank under sub-section (4) of Section 13, afforded a separate cause of action to the Petitioner and was capable of being independently challenged by it before the DRT within 45 days of such measure being taken. If this were done by the Petitioner, either by filing subsequent Securitisation Applications or by amending the Securitisation Application No. 82 of 2019 already filed by it before the DRT within the prescribed time, then there would be no question of the DRT considering any application for condonation of delay and such

application would have been dealt with on its merits. However, the Petitioner has instead chosen not to follow the prescribed procedure and has instead belatedly chosen to amend the Securitisation Application No. 82 of 2019 and challenge these subsequent measures whilst seeking condonation of delay in doing so, in the bargain.

44. It was under these circumstances that the common order dated 7th October 2022 came to be passed by the DRT. Whilst appreciating the peculiar facts of the case, the DRT has categorically held that the Petitioner has failed to explain the delay in challenging the measures by independently assessing the cause of action and the period of limitation for each measure (under Section 13(4) of the SARFAESI Act) that the Petitioner had sought to challenge by the said amendments. Whilst doing so, the DRT has also taken cognizance of the fact that the Petitioner had approached the civil court and filed the Commercial Suit, which was sought to be amended by challenging the subsequent measures taken by Respondent No. 1 Bank much before moving the DRT for the same reason. Hence, the common order records that despite knowledge of the sale of the said property, the Petitioner slept over its rights and approached the DRT after inordinate and unexplained delay and in the bargain, has waived, abandoned and relinquished its rights. Under such peculiar circumstances, the common order declines to unsettle the rights acquired by the Auction Purchaser, Respondent No. 5 in the said property.

Thus, in light of the discussion recorded above, we are inclined to accept the submissions of the Respondents that the said common order was not a mere procedural order but rather, one passed upon proper consideration and adjudication of the events that have transpired in the matter.

45. In any event, as more particularly held by the Division Bench of this Court in ***Vinay Container Services (supra)***, the requirement of pre-deposit under sub-section (1) of Section 18 of the SARFAESI Act would also apply where an appeal is filed before the DRAT against an interlocutory order passed by the DRT under Section 17 of the Act since the power of the DRT to pass an interlocutory order in ancillary to its jurisdiction under Section 17 and the provisions of Section 18(2) cannot be so interpreted to mean that an interlocutory order passed by the DRT is not referrable to the provisions of Section 17. A similar view has also been taken by the Division Bench of the Delhi High Court in ***Satnam Agri Products (supra)***, which goes on to hold that there is no reason to exempt the appeals arising out of the orders passed by the DRT on interlocutory applications merely on the ground that the said orders do not have the effect of staying the action or measures taken by the secured creditor under sub-section (4) of Section 13 of the SARFAESI Act for enforcement of security interest. In ***Rajat Infrastructure (supra)***, the Supreme Court after relying on past judicial pronouncements has held that the right of appeal under Section 18(1) is only subject to the condition of

deposit laid down in the second proviso therein.

46. Moreover, the provisions of sub-section (1) of Section 18 are very clear inasmuch as, they clearly include the words, "*Any person aggrieved, by **any order** made by the Debts Recovery Tribunal under Section 17, may prefer an appeal…*". There is no qualification provided by the legislature restricting the applicability of this sub-section to only some class or category of orders, whether a procedural one or otherwise, a final order which determines the liability of the borrower or any other person. Instead, the only prescribed requirement is that the order must be one that is passed by the DRT under Section 17 of the SARFAESI Act and as discussed above, if any person is aggrieved with the measures undertaken by a secured creditor under Sections 13 and 14 of the SARFAESI Act, an application can be made to the DRT challenging the same and the various provisions relating thereto, are contained in Section 17 of the Act. Here again, there is no qualification provided by the legislature restricting the applicability of invoking this Section only against some class or category of measures that may be undertaken under Sections 13, 14 and instead, Section 17 can be availed by any person, not merely a borrower, to challenge any and all measures undertaken by the secured creditor.

47. In this background, when we consider the words, "***any** order*" found in sub-

section (1) of Section 17, it is difficult to restrict its applicability to only a final order which determines the liability of the borrower or other person, as urged by Mr. Purohit. There are several judicial pronouncements which have been relied upon by the Respondents, including *inter alia* ***Lucknow Development Authority (supra), Man Global (supra) and Raj Kumar Shivhare (supra)*** which interpret the word, '*any*' as contained in several statutes to mean the word, *'all'*. Similarly, even the Black's Law Dictionary does not restrict the meaning of the word '*any*' and describes it thus - "*Any does not necessarily mean only one person, but may have reference to more than one or to many*". Merrium Webster's Dictionary explains the pronoun '*any*' to be either, singular or plural in construction.

48. Upon consideration of the discussion above, we are unable to accept the submission of Mr. Purohit that the provision of pre-deposit cannot be attracted to the common order passed by the DRT and his reliance on the decision of the Supreme Court in ***Gade Sreenivas Reddy (supra)*** which came to be passed whilst interpreting certain provisions of the RDB Act, is wholly misconceived and cannot be applied to the facts of the present case. So also, his reliance on the decision of the Division Bench of this Court in ***Gadekar Ginning and Pressing (supra)*** does not take his case further, inasmuch as, the said decision holds that the DRAT could not have passed the order of pre-deposit when the appeal before it merely challenged an order which rejected

an Interlocutory Application which sought condonation of delay. Further, the contents of the said Interlocutory Application and the exact nature of the reliefs sought therein are not clearly spelt out in the said judgment.

49. Similarly, Mr. Purohit's reliance on the decision of the Supreme Court in ***Mardia Chemicals (supra)*** to contend that an onerous condition of pre-deposit cannot be imposed as a condition precedent to hear and decide the Appeal is wholly misconceived inasmuch as, in the present case, the condition of pre-deposit under the second proviso to sub-section (1) of Section 18 of the SARFAESI Act is prescribed in the statute itself. So also, his reliance on ***Nagpur Integrated Township (supra)*** to contend that before passing any order of pre-deposit, the DRAT was required to record at least a *prima facie* finding on whether the Petitioner was a borrower or not, is misconceived and contrary to the provisions of the statute itself which does not prescribe any such requirement as a condition precedent or otherwise.

50. The upshot of the discussion above leads to the conclusion that the common order passed by the DRT in the present case, cannot be said to be a mere procedural order, as sought to be contended by the Petitioner and as a result thereof, the provisions of pre-deposit, prescribed in the second proviso to sub-section (1) of Section 18 are attracted.

51. Moreover, a bare perusal of the pleadings reveal that the Appeal has been preferred before the DRAT under Section 18 of the SARFAESI Act. In other words, even the Petitioner admits or at least is deemed to admit that the common order was passed by the DRT under sub-section (1) of Section 17 of the SARFAESI Act on its application which *inter alia* sought to challenge the measures undertaken by Respondent No. 1 Bank under Sections 13 and 14 of the Act. In the premises, we are not inclined to accept Mr. Purohit's submission that the two Applications preferred by his clients and the common order passed thereon, by the DRT was instead, in accordance with the provisions of the RDB Act and Rules made thereunder, by relying on the provisions of sub-section (7) of Section 17 of the SARFAESI Act.

52. Even otherwise, there is a catena of decisions including *inter alia* one of the Division Bench of this Court in ***Vijaysing (supra),*** which relies on an older decision of this Court in *State of Bombay Vs. Morarji Cooverji* reported in *1958 (LXI) BLR 318* and reiterates that in order to get relief from this Court exercising equitable jurisdiction under Article 226 of the Constitution of India, not only must the party come with clean hands and not suppress any material facts and show utmost good faith, but he must also satisfy the Court that passing an order in his favour would do justice and that justice lies on his side.

53. In the present case, besides the merits not being in favour of the Petitioner, even equities are not on its side. As noted above, the Petitioner is guilty of inordinate delay and has slept on its rights and selectively chosen to enforce them, at its own whim and fancy. Initially, it related to the two Deeds of Simple Mortgage dated 30th December 2011 and 12th March 2013, then to the notice and the initial steps undertaken by Respondent No. 1 Bank under Sections 13(2) and 13(4) and then under Section 14 and ultimately to the sale of the said property to Respondent No. 5 and the subsequent Development Agreement that has been entered into between Defendant Nos. 5 and 6. On all these occasions, besides approaching the Court or Tribunal belatedly to challenge the measures, agreements, etc. the Petitioner has consistently failed to obtain a single interim or ad-interim order in its favour preventing subsequent events. As a result, an irreversible situation has presented itself inasmuch as, pursuant to the sale of the said property in favour of Respondent No. 5 by a registered sale certificate dated 24th December 2019, a fresh mortgage of the said property has been created in favour of Respondent No. 1 Bank and thereafter, on 2nd May 2023, a registered Development Agreement has been executed between Respondent Nos. 5 and 6 under which the latter has since not only undertaken construction on the said property but also created multiple third party rights in the constructed units. As more particularly set out hereinabove, the construction undertaken on the said

property involves 4 Towers of ground + 15 floors where about 53% of the units have already been sold to third party purchasers whilst Respondent No. 6 is stated to have expended more than ₹ 80 crores in the bargain. Moreover, Respondent No. 6 has also constructed 10 rehab buildings on the said property, of which 8 buildings have already received their occupancy certificate as on August 2025 and the units therein have been handed over and the erstwhile occupants / dwellers have already been rehabilitated. Thus, the equities do not favour the Petitioner in the present case.

54. For all the above reasons, we decline to exercise our extraordinary equitable jurisdiction under Article 226 of the Constitution of India in favour of the Petitioner and as a result, the present Writ Petition fails. Accordingly, the following order is passed:

:: **ORDER** ::

(a) The present Writ Petition is hereby dismissed.

(b) There shall be no order as to costs.

(FARHAN P. DUBASH, J.) **(R.I. CHAGLA J.)**