IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 866 of 2026
Poorvi Bagaria
Vs.
State Bank of India & Ors.

For the Petitioner : Mr. Arijit Bardhan,
Mr. Soumyajit Mishra,
Mr. Gourab Mondal ..... advocates

For the SBI : Mr. Joy Saha, Sr. Adv.
Mr. Sukanta Ghosh,
Mr. Arghya Chatterjee,
Mr. Rohan Chamria ...advocates

Heard on : 11.09.2026

Judgment on : 14.09.2026

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of one of the securitization applicants/appellant before the Debts Recovery Appellate Tribunal and is directed against the Order being no. 5 dated 24.02.2026 passed by the Debts Recovery Appellate Tribunal at Kolkata in Appeal Diary No. 1021 of 2025.

2. By the order impugned, the application being IA No. 637 of 2025 filed by the petitioner seeking waiver of the pre-deposit required under Section 18 of the SARFAESI Act, 2002, was disposed of by directing the petitioner to deposit 50% of Rs. 1,12,12,58,945/- within a stipulated time.

3. Petitioner along with her mother, grand-mother and sister jointly filed an application under Section 17(1) of the SARFAESI Act, 2002 against SBI and

its Authorised Officer challenging the Demand Notice dated 19.12.2022 and the Possession Notice dated 13.03.2023.

4. The case made out by the securitisation applicants in the application under Section 17 may be summarised as follows:

(a) In the year 2007, Merril Impex Private Limited, a company availed credit facilities within the overall limit of Rs. 29,00,000/- from the opposite party no. 1.

(b) On 31.01.2011, Merril Impex Private Limited was renamed as Global Metcoke Private Limited which was subsequently renamed as Janmani International Private Limited on 9th September 2011.

(c) On or about 03.12.2011 Opposite Party no. 1 accepted Janmani International Private Limited as borrower in place of Merril Impex Private Limited and agreed to grant credit facilities within the overall limits of Rs. 39,85,00,000/- to Janmani International Private Limited.

(d) Uttam Kumar Bagaria, since deceased was one of the directors of Merril Impex Private Limited who resigned from the Board of Directors of Global Metcoke Private Limited on 18.06.2011. Uttam Kumar Bagaria died on 20.02.2012 leaving behind him surviving the securitisation applicants as his heirs and legal representatives.

(e) The limits under the credit facilities was reviewed from time to time and the same was made upto Rs. 59,99,00,000/- vide sanction letter dated 29.01.2013.

(f) Opposite party-Bank issued Demand Notice to Borrower Janmani International Private Limited dated 02.12.2022 as well as upon the securitisation applicants.

(g) Opposite party-Bank issued Possession Notice dated 13.03.2023 and took possession of the property.

5. Opposite party Bank contested the SARFAESI Application by filing an Affidavit-in-Opposition denying the material allegations contained therein. The contention of the Bank is summarised as follows:

   (a) The loan facility was secured by creating equitable mortgage by depositing the Original Title Deeds of a property being a residential duplex flats on the 1st and 2nd Floor of B+G+5 building namely "Jaisalmer" being premises no. 6 Asoka Road, Alipore, Kolkata.

   (b) Since the applicants acted contrary to the terms of the Loan Agreement and defaulted in payment of EMI, loan account was classified as Non-performing Asset (NPA) on 22.01.2013.

   (c) After classification of loan account as NPA, Demand Notice and Possession Notice was issued.

6. The Presiding Officer, Debts Recovery Tribunal-I, Kolkata, by a Judgment and Order dated 11th July, 2025 dismissed TSA 03 of 2023 and the Demand Notice and Possession Notice issued by the opposite party Bank was held to be valid.

7. Being aggrieved by the aforesaid judgment and order dated 11.07.2025, one of the heirs of Uttam Kumar Bagaria, since deceased i.e., the petitioner preferred an Appeal being Appeal Diary No. 1021 of 2025.

8. Petitioner filed an application being IA 637 of 2025 for waiver of pre-deposit. Such application was disposed of by the impugned order. Being aggrieved, petitioner has approached this Court.

9. Mr. Bardhan, learned Advocate for the petitioner submits that the petitioner was neither the borrower nor the guarantor to the credit facilities extended by the Bank to Janmani International Private Limited. Petitioner has not executed any document guaranteeing/ securing the credit facilities extended to Janmani International Private Limited.

10. Mr. Bardhan contended that Uttam Kumar Bagaria, since deceased was the recorded owner of only one flat out of 4 flats comprising the duplex flats on

the 1st and 2nd Floor of the building and the petitioner has become a co-sharer only in respect of one flat along with her mother, grand-mother and sister. Mr. Bardhan placed reliance upon several letters issued by the Bank in support of his contention that the Bank advised for necessary arrangements to be made for execution of guarantee documents and unless the same is executed, Bank will not release the credit facilities against the said security. Mr. Bardhan contended that though Uttam Kumar Bagaria was not a guarantor, the learned DRAT proceeded on the premise that he was one of the guarantors.

11. Mr. Saha, learned Senior Counsel representing the Bank seriously disputed the submission of Mr. Bardhan. He contended that Uttam Kumar Bagaria was a guarantor. Uttam Kumar Bagaria created equitable mortgage over the duplex flats on 19.03.2007. He further submitted that all the SARFAESI applicants are the heirs and legal representatives of Uttam Kumar Bagaria. The heirs and legal representatives have inherited the property of Uttam Kumar Bagaria and are also liable to repay the debts due to him. He submitted that though all the heirs and legal representatives have filed the SARFAESI application under Section 17 before the DRT but only the petitioner being one of the daughters of the deceased have preferred the instant appeal. Mr. Saha placed reliance upon the decision of the Hon'ble Supreme Court in **Narayan Chandra Ghosh vs. UCO Bank and others** reported at **(2011) 4 SCC 548** in support of his contention that an appeal cannot be entertained unless 50% of the amount of debt due is deposited.

12. In reply, Mr. Bardhan submitted that the liability of the heirs of Uttam Kumar Bagaria who have executed personal guarantees is restricted to the value of the property offered as collateral and, therefore, petitioner is not liable to deposit 50% of the debt due but the same should not exceed the value of the duplex flat realised by the Bank upon auction sale.

13. Heard the learned advocates for the parties and perused the materials placed.

14. Record reveals that the freehold duplex flat on the 1st and 2nd floor of B+G+5 storeyed building known as "Jaisalmer" is jointly owned by Uttam Kumar Bagaria (Flat No. 104A), Smt. Mamta Bagaria (Flat No. 204A & 104B), and Mrs. Gita Bagaria (Flat No. 204B) having a built up area of 3380 sq. feet with 4 covered car parking spaces.

15. An equitable mortgage was created in respect of the aforesaid duplex flats by Uttam Kumar Bagaria by depositing 4 Title Deeds all dated 19.01.2001. Two deeds stand in favour of Mamta Bagaria and one each in favour of Uttam Kumar Bagaria and Gita Bagaria.

16. Upon the death of Uttam Kumar Bagaria, his right, title and interest in respect of the flat devolved upon his heirs and legal representatives i.e., the SARFAESI applicants.

17. Uttam Kumar Bagaria died on 20.02.2012. Mr. Bardhan would strenuously contended that Uttam Kumar Bagaria had not executed any guarantee agreement and in support of such contention he placed strong reliance upon the letters issued by the Bank dated 29.11.2013, 09.01.2014, 16.12.2013 and 09.11.2013 which were also relied upon before the DRAT.

18. Such letters were all issued after the death of Uttam Kumar Bagaria and, therefore, cannot be said to support the case of the petitioner that Uttam Kumar Bagaria was not a guarantor at any point of time.

19. At this stage it would be relevant to point out that the notice under Section 13(2) of 2002 Act refers to the Sanction Letter dated 19.03.2007 for extending the credit facilities in favour of M/s Merril Impex Private Limited and pursuant to which several documents were executed.

20. Deeds of Personal Gurantees executed after issuance of the sanction letter dated 19.03.2007 and prior to the date of death of Uttam Kumar Bagaria have not been relied upon by the learned advocate for the petitioner before this Court to substantiate his case that Uttam Kumar Bagaria did not execute any personal guarantee agreement at any point of time in respect of the credit facility extended by opposite party bank from time to time.

21. In view of the aforesaid discussion, this Court is not inclined to accept the contention of Mr. Bardhan that the finding of the DRAT that Uttam Kumar Bagaria was a guarantor suffers from perversity.

22. "Borrower" has been defined in Section 2(1)(f) of the 2002 Act. Section 2(1)(f) is extracted hereinafter.

> *"2. Definitions. - (1) In this Act, unless the context otherwise requires, -*
>
> *………*
>
> *(f) "borrower" means 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 any bank or financial institution and includes a person who 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];*

23. The duplex flats owned by Uttam Kumar Bagaria, Smt. Mamta Bagaria and Smt. Gita Bagaria have been mortgaged by deposit of Four Title deeds standing in their names. It is not the case of the petitioner that Mamta Bagaria and Gita Bagaria have not executed any personal guarantee agreement. For non-production of any materials with regard to execution of personal guarantees by Bagarias in respect of the credit facilities extended in favour of previous entities as well as Janmani International Private Limited till the period prior to the date of death of Uttam Kumar Bagaria before the DRAT or before this Court, an adverse inference should be drawn with regard to the claim of the petitioner that Uttam Kumar Bagaria was not a guarantor.

24. That apart, petitioner and the proforma opposite party nos. 3, 4 and 5 are the heiresses and legal representatives of Utam Kumar Bagaria and have jointly inherited the property of Uttam Kumar Bagaria which was mortgaged with the Bank.

25. At this stage it would be relevant to recapitulate the provisions of Section 18 of the 2002 Act as the dispute in this application relates to waiver of pre-deposit. Section 18 of 2002 Act is extracted hereinafter.

> *“18. Appeal to Appellate Tribunal.-(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal alongwith such fee, as may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.*
>
> *[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]*
>
> *[Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:*
>
> *Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.]*
>
> *(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”*

26. Section 18(1) provides for an appellate remedy to “any person aggrieved” by any order made by the Debts Recovery Tribunal. The expression “any persons aggrieved” would thus include even persons other than the borrower. This finding gets support from the first proviso to Section 18(1) which provides that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower.

27. Second proviso to Section 18(1) speaks of entertainment of appeal only after the borrower has deposited with the Appellate Tribunal a certain percentage of the debt due.

28. Third proviso enables the Appellate Tribunal to reduce the amount of pre-deposit to a certain percentage only by recording reasons in writing.

29. It is now judicially settled that the condition of pre-deposit being mandatory, a complete waiver of deposit with the Appellate Tribunal is beyond the provisions of the Act. At best the Appellate Tribunal can, after recording the

reasons, reduce the amount of deposit of 50% to an amount not less than 25% of the debt referred to in second proviso.

30. The Hon'ble Supreme Court in **Narayan Chandra Ghosh** (supra) held thus-

> *"8. It is well-settled that when a statute confers a right of appeal, while granting the right, the legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. <u>Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act.</u> In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.*
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> *9. The argument of the learned counsel for the appellant that as the amount of debt due had not been determined by the Debts Recovery Tribunal, the appeal could be entertained by the Appellate Tribunal without insisting on pre-deposit, is equally fallacious. Under the second proviso to sub-section (1) of Section 18 of the Act the amount of fifty per cent, which is required to be deposited by the borrower, is computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt is yet to be determined by the Debts Recovery Tribunal, the borrower, while preferring an appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. <u>Therefore, the condition of pre-deposit being mandatory, a complete waiver of deposit by the appellant with the Appellate Tribunal, was beyond the provisions of the Act, as is evident from the second and third provisos to the said section.</u> At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an amount not less than twenty-five per cent of the debt referred to in the second proviso. We are convinced that the order of the Appellate Tribunal, entertaining the appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed."* *(emphasis supplied)*

31. The Hon'ble Supreme Court in **Union of India vs. Rajat Infrastructure Private Limited and others** reported at **(2020) 3 SCC 770** held that a guarantor or a mortgagor, who has mortgaged its property to secure the

repayment of loan, stands on the same footing as a borrower and if he wants to file an appeal, he must comply with the terms of Section 18 of 2002 Act. (See paragraph 13)

32. Keeping in mind the definition of "borrower" under Section 2(1)(f) of the 2002 Act which takes within its fold any guarantor or mortgagor and in the light of the discussions made hereinbefore, this Court holds that the learned DRAT was right in holding that the appellant before the DRAT i.e., the petitioner being a legal representative of her late father has to make pre-deposit as required under Section 18 of the 2002 Act to maintain an appeal.

33. Upon the death of Uttam Kumar Bagaria, petitioner inherited his property and thus, stepped into the shoes of her deceased father with all liabilities of her father. The petitioner cannot wriggle out of the mandate of the second proviso to Section 18(1) as the petitioner cannot claim herself to fall in the category of "person other than the borrower".

34. For all the reasons as aforesaid, this Court is not inclined to interfere with the order impugned in exercise of powers under Article 227 of the Constitution of India.

35. C.O. No. 866 of 2026 stands dismissed. There shall be, however, no order as to costs.

36. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)