

GAHC010193662025



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5143/2025

UMESH CHANDRA DAS
SON OF LATE HARIN CHANDRA DAS, RESIDENT OF HOUSE NO.7,
MANIKANCHAN PATH, KAILASH NAGAR, MAIDAMGAON, BELTOLA,
GUWAHATI - 781028, DISTRICT-KAMRUP(M), ASSAM.

VERSUS

1.THE STATE BANK OF INDIA AND 2 ORS
STRESSED ASSETS RECOVERY BRANCH (SARB), 2ND FLOOR, SIGNATURE
SQUARE, M.R.D. ROAD, BAMUNIMAIDAM, GUWAHATI- 781021, ASSAM.

2:THE AUTHORIZED OFFICER
STRESSED ASSETS RECOVERY BRANCH (SARB)
2ND FLOOR SIGNATURE SQUARE M.R.D. ROAD
BAMUNIMAIDAM GUWAHATI 781021 ASSAM.

3:THE STATE BANK OF INDIA
GUWAHATI RACPC BRANCH SWAGOT SQUARE 4TH FLOOR ABC
G.S. ROAD BHANGAGARH GUWAHATI ASSAM-781005

For the Petitioner(s) : Mr. O.P. Bhati, Advocate.

For the Respondents :

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

05.09.2025

(Ashutosh Kumar, CJ)

The petitioner is aggrieved by the order dated 07.08.2025 passed by the

Debts Recovery Tribunal, Kolkata in I.A. No.430/2025, arising out of Miscellaneous Appeal No.743/2025, whereby the petitioner has been asked to make a pre-deposit of 35% of the amount in question within a period of 4(four) weeks, as a condition for entertaining the appeal.

The contention of the petitioner is that while responding to the objection filed by the petitioner, the respondent Bank claimed that there was creation of equitable mortgage by the petitioner by depositing the original sale-deed along with necessary documents, but the fact remains that the petitioner is in possession of the original sale-deed.

The petitioner contends that he was granted a loan of Rs.1,46,76,000/-, as a term loan to be repaid in equal monthly installments of Rs.1,66,807/-. There was nothing indicated in the arrangement letter regarding creation of equitable mortgage of any particular immovable property.

The objections of the petitioner were rejected by the respondent Bank and the challenge to it before the Debts Recovery Tribunal (DRT) also could not be sustained.

It was, under these circumstances, that an appeal was sought to be filed before the DRT wherein the petitioner was asked to deposit 35% of the amount due.

Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, SARFAESI Act, 2002) provides that an appeal against the order passed by the Debts Recovery Tribunal (DRT) could be filed before the Appellate Tribunal within 30 days from the date of receipt of the order of DRT but on the deposit of 50% of the amount of debt due to the borrower as claimed by secured creditors or determined by

the Debts Recovery Tribunal, whichever is less.

There is another proviso to Section 18 of the SARFAESI Act, 2002, which gives latitude to the Appellate Tribunal to reduce the amount to 25% but only for the reasons to be recorded in writing.

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

In ***M/s Sunshine Builders & Developers Vs. HDFC Bank Limited through the Branch Manager & Ors. :: 2025 LiveLaw (SC) 459***, the Supreme Court has held that the expression "any order" appearing in Section 18 ought to be given some meaningful interpretation and, any and every order that may be passed by the DRT if sought to be challenged ought not to be made subject to such pre-deposit.

The learned counsel for the petitioner has, thus, argued that during the pendency of the appeal before the DRT, an Interlocutory Application was filed by the petitioner for sending the sale-deed for scientific examination as he claimed to be in possession of the original sale-deed, whereas the respondent Nos.1 and 2 have also claimed to be in possession of the original sale- deed.

This prayer of the petitioner was refused by the DRT, against which order he had preferred an appeal under Section 18 of the Act before the Appellate Tribunal.

The question is whether this order to be challenged would require pre-deposit of 35% of the debt amount.

The requirement of making a pre-deposit of 50% which could be reduced

to a minimum of 25% by the Appellate Tribunal, has been held to be mandatory by the Courts. But the petitioner contends that in the present set of facts, fastening the petitioner with the requirement of making pre-deposit of 35% would, in a way, amount to negating the right of appeal to the petitioner as the order which has been appealed before the Appellate Tribunal is only an order with respect to refusal of the request made by the petitioner for sending the sale-deed in question for scientific examination for determining the truth as to who, the borrower or the creditor, is in possession of the registered sale-deed.

The law in this regard is very clear that since the pre- deposit amount is mandatory, it cannot be made nil by the Appellate Authority and the High Court will not normally interfere with such decision of the Tribunal unless it is shown that the requirement of pre-deposit is made mechanically by the Appellate Tribunal and without considering the hardships faced by the borrower.

Though there has been no attempt on the part of the petitioner to demonstrate any hardship in making payment of 35% of the debt amount but the issue in this case is whether the petitioner could have been asked to make a deposit of even 35% of the debt amount in the circumstances when the appeal is against an order refusing to send the sale-deed in question, which has been mortgaged, for scientific examination.

Whether such an order by the DRT would be covered under the expression "any order" in Section 18 of the Act?

Let notice be issued to the respondents by both modes, i.e. by registered post with A/D as well as by usual process, on steps being taken by the petitioner within a period of one week from today, returnable on 24.10.2025.

In the meantime, till the disposal of this writ petition, the DRT shall not

pass any order dismissing the appeal as infructuous, for the petitioner not having deposited the 35% of the recoverable debt amount, which has been directed to be paid within 4(four) weeks.

Re-notify on 24.10.2025.

JUDGE

CHIEF JUSTICE

Comparing Assistant