

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.
: Mr. S.K. Gupta, Advocate.

For the Respondent(s) : Mr. K.K. Nandi, Advocate.
: Ms. S. Dey, Advocate.
: Ms. S. Das, Advocate.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

24.03.2026

(Ashutosh Kumar, CJ)

We have heard Mr. O.P. Bhati, learned Advocate for the petitioner and Mr. K.K. Nandi, learned Advocate for the respondents/State Bank of India.

The petitioner 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/-.

The contention of the petitioner is that though the loan was availed by him but no equitable mortgage of any particular immovable property was created.

This contention was repelled by the Bank, claiming that the original title-deed of the immovable property lies with the Bank.

While pursuing his case before the Debts Recovery Tribunal (DRT), the petitioner sought an order from the Tribunal for forensic examination of the title-deed which the Bank claims to be in possession of and because the original title-deed of the property in question is actually with him.

This was denied by the Tribunal, considering it to be unnecessary.

Such denial was challenged by the petitioner before the Appellate Tribunal, which mandated that a reduced amount of 35% amount of debt due must be paid by way of pre-deposit for the appeal

to be entertained.

The petitioner has questioned the pre-deposit requirement of 35% amount of debt due, claimed by the Bank, for the reason that the order challenged before the Appellate Tribunal does not determine any financial liability but an order denying the request made by the petitioner to have the title-deed of the property said to have been mortgaged be subjected to forensic examination for the reason of petitioner being in possession of the original title-deed.

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

The proviso to Section 18 gives a latitude to the Appellate Tribunal to reduce the amount to 25% but only for the reasons, to be recorded in writing.

Mr. O.P. Bhati, learned Advocate for the petitioner contends that the order challenged before the Appellate Tribunal does not come within the purview of “any order” as it is not against any quantification of the debt amount or creating any financial liability with respect to the loan taken by the petitioner.

Relying on a judgment of Supreme Court rendered in **M/s**

Sunshine Builders & Developers –Vs- HDFC Bank Limited through the Branch Manager & Ors. :: 2025 LiveLaw (SC) 459, Mr. Bhati contends that without a meaningful interpretation of the word “any order”, the right to appeal against an order which aggrieves the petitioner would stand negated.

Any or every order that may be passed by the DRT, if sought to be challenged, Mr. Bhati contends, ought not to be made subject to any pre-deposit.

A bare perusal of Section 18 of the SARFAESI Act, 2002 and its proviso would indicate that such condition is mandatory and it could be reduced from 50% of the amount due to 25% by the Appellate Tribunal by recording its reasons.

We do not find anything in the order passed by the DRT or the DRAT to reflect any hardship faced by the petitioner/borrower.

The law with regard to pre-deposit under Section 18 of the SARFAESI Act, 2002 is very clear. Since pre-deposit is mandatory, it cannot be made nil by the Appellate Authority.

The High Court ought not to normally interfere with such decision of the Appellate Tribunal unless it is shown that such order passed by the Appellate Tribunal, has been passed mechanically or without considering the hardships faced by a borrower/applicant.

There is yet another aspect of the matter, which must be gone into.

The effort of the petitioner appears to be to dispute the creation

of an equitable mortgage with the ultimate aim of not paying back the loan, which admittedly has been availed of by him.

This could very well be considered to be, as contended by the Bank/Secured Creditor/Creditor, a clever stratagem to delay the clawing back of the money belonging to the creditor.

Under such circumstances, Mr. K.K. Nandi, learned Advocate for the respondents/Bank submits that equitable relief of any direction for lessening the pre-deposit amount or making it nil ought not to be given to the petitioner.

We fully endorse such submission, especially in view of the fact that there is no dispute with regard to the loan amount having been availed of by the petitioner and the loan having become bad and declared Non-Performing Asset (NPA).

Under such circumstances, especially of the petitioner not showing any reason or hardship in paying the pre-deposit of 35% [amount reduced from 50% by the Appellate Tribunal itself] and not finding that such order was passed by the Appellate Tribunal mechanically, we would not interfere with such decision making of the Appellate Tribunal.

For the afore-noted reasons, we dismiss this writ petition.

JUDGE

CHIEF JUSTICE

Comparing Assistant