

Judgment reserved on: 13.03.2026

Judgment delivered on: 18.03.2026

Appeal No. 05 of 2025-DRAT-Kolkata

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 05 of 2025
(Arising out of S.A. 225 of 2018 in DRT-II, Hyderabad)

**HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

Mr. Mirza Sardar Baig, son of Late Mirza Quadeer Baig R/o. H. No. 22-3-574, Zehra Nagar Colony Mirchowk Road, Charminar Hyderabad, Telangana

... Appellant

-Versus-

1. Indian Overseas Bank, Kukatpally Branch, HIG 20/6 Phase-6, KPHB Colony, Kukatpally, Hyderabad - 500085
2. G. Santosh Bahadur, Son of G Been Bahadur, R/o. H. No. 4-1410-8 Prem Nagar Colony, New Haffezpet Miyapur, Hyderabad - 49 Telangana
3. Akula Amma Rao, Son of A Veera Rao, R/o. H.No. 16-11-21/25A Krishna Tulsingar, Moosarambagh Hyderabad, Telangana
4. Mohammad Chand, Son of Mohammad Moinuddin R/o. H.No. 2-64/111, Rahmath Gulshan Colony Gachibowli, Serilingampally R R District, Telangana

... Respondents

Counsel for Appellant ... Mr. G.K. Deshpande (Virtual)
Mr. Sreyash Basu Dasgupta

Counsel for Respondents ... Mr. Dyutimoy Paul

JUDGMENT : 18th March, 2026

THE APPELLATE TRIBUNAL:

1. Instant appeal has been preferred against the judgment and order dated 18.9.2024 passed by the Learned DRT-II, Hyderabad, dismissing the S.A. 225 of 2018 (Mr. Mirza Sardar Baig -vs- Indian Overseas Bank & Others).
2. As per pleadings of the parties Appellant here in is the Securitization Applicant who preferred an application under Section 17 of the SARFAESI Act (hereinafter referred to as

the 'Act') challenging the Possession Notice dated 9.05.2018, issued by the Respondent No. 1 bank under Section 13, Sub-Section 4 of the Act.

3. Appellant alleges himself to be a third party who is an absolute owner and in possession of the schedule property by virtue of a registered Sale Deed No. 1420 of 2018; purchased for a valid consideration of Rs. 97.92 Lakhs. One Smt. Shameem Begum, Wife of Mohammad Moinuddin acquired the Property No. 1-61/1 Plot No. 25/A in Sy.No. 8, Gachibowli, Serilingampally Mandal, Ranga Reddy District through registered Gift Settlement Deed Doc.No.1501/2007. She entered into a developmental agreement with M/s New Noble Builders. Housing complex was constructed out of which some flats fell in the share of Shameem Begum. She died on 03.11.2015 leaving behind her husband, 4 sons, & 5 daughters as legal heirs. The legal heirs executed the deed in favour of the Appellant in respect of secured assets.

4. Respondent No. 4 namely, Mohammad Chand, one of the legal heirs of Shrimati Shameem Begum was only having 1/10th share in the said flats but, fraudulently executed Sale Deed No. 13829 of 2016 in favour of the borrower of the Respondent No. 3 Akula Amma Rao who in turn created mortgage over the Flat No. 3 as security to the loan availed from the Respondent No. 1, Bank. It was a fraudulent transaction. Father of Mohammad Chand, Respondent No. 4 filed an Original Suit No. 110 of 2018 for a declaration that the secured asset could not be mortgaged in favour of the

Bank and the Bank could not be a secured creditor of the secured assets. Even Bank lodged an FIR No. 1519/2017 alleging the fraud having been committed by Mohammad Chand in collusion with Respondent No. 2 and 3 namely, G Santosh Bahadur and Akula Amma Rao. Bank could not invoke SARFAESI Act against schedule property.

5. Bank filed the reply before the Learned DRT alleging that the Respondent No. 2 namely G Santosh Bahadur, created an equitable mortgage in favour of the Bank in 2016 while the Appellant is claiming his title on the basis of a document of 2018, accordingly, he is having subsequent charge. In the sale deed deposited with the bank, it was mentioned that the Respondent No. 4 namely Chand Mohammad is the only legal heir of Shrimati Shameem Begum. Accordingly, Bank accepted the version that the original suit filed was still pending. Appellant is not in possession over the property. Once the Respondent No. 4 conveyed the title in favour of the Respondent No. 3, who cannot convey his title again in favour of Appellant.

6. Learned DRT recorded a finding that Chand Mohammad originally executed the sale deed in favour of Respondent No. 3 and again Appellant is alleging that a sale deed was executed in his favour by all the legal representatives of Shrimati Shameem Begum. Title conveyed by virtue of subsequent sale deed is not clear. Learned DRT has no jurisdiction to enquire into the issue of title where the fraud is alleged. Accordingly, Learned DRT dismissed the Securitization Application.

7. Feeling aggrieved by the impugned judgement , Appeal preferred the Appeal.

8. I have heard the Learned Counsel for the Appellant as well as the bank and perused the record.

9. Learned Counsel for the Appellant would submit that the Appellant is claiming his rights and title on the basis of the sale deed executed by all the legal heirs of Shrimati Shameem Begum wherein Respondent No. 4 namely, Chand Mohammad was also one of the executants. It is further submitted that the Original Suit No. 110/2018 of Mohammad Moinuddin and others for declaration against the purchasers i.e. G Santosh Bahadur and Akula Amma Rao and Mohammad Chand along with the bank for a relief to declare that registered sale deed bearing No. 13830 of 2016 dated 20.10.2016 as null and void. Accordingly, now, the sale deed executed in favour of the Appellants holds the field, the mortgage created in favour of the bank by Respondent No. 2 & 3 has lost its value. Learned Counsel for the Appellant would further submit that the FIR dated 16.11.2017 lodged by the bank wherein it was admitted that fraud has been committed by Mohammad Chand in connivance with G Santosh Bahadur and Akula Amma Rao. Hence, no valid mortgage was created in favour of the Bank. Learned Counsel for the Appellant would further submit that Learned DRT itself recorded a contradictory finding wherein the sale deed in favour of the Respondent No. 2 & 3 was held to be doubtful but no relief was granted in favour of the Appellants.

10. Per contra, Learned Counsel for the Bank would submit that the Appellants is not a bona fide purchaser for value. He didn't make effort to verify as to whether the property is earlier transferred or not. If it would have been done factum of execution of deed in favour of the Respondent No. 2 & 3 would have been known to the Appellants. In support of the contention, Learned Counsel has placed relevance upon the Section 3 of the Transfer of Property Act.

11. Learned Counsel for the Bank would further submit that the fraud was committed by the Father of Chand Mohammad in connivance with Chand Mohammad.

12. It is further submitted by the Learned Counsel for the Respondent that the issue of mortgage was not a primary issue before the Civil Court in suit. Learned Counsel has placed reliance upon the judgment of Hon'ble Calcutta High Court in ***Bisseswar Poddar -vs- Nabadwip Poddar and Another (AIR 1961 Cal 300)***. Reliance is also placed upon ***S.P. Chengalvaraya Naidu -vs- Jagannath (1994) 1 SCC 1 : 1933 SCC OnLine SC 318.***

13. As far as case law in ***S.P. Chengalvaraya Naidu*** is concerned, law is very well settled that a decree obtained by fraud is nothing but a nullity. But Respondents have not challenged the same on the ground of fraud before DRT or before this Tribunal. Further bank was impleaded as defendant in the original suit but didn't choose to put in appearance and an ex-parte decree was passed declaring the sale deed document No. 13830 of 2016 dated 20-10-2016 as null and void. Till date there is nothing on record to

show that any application for setting aside the same is also filed by the defendants before the Civil Court. Accordingly, decree passed in the original suit attained finality and is accordingly binding upon the parties.

14. All the effect of the decree of the Civil Court would be that, when the deed, whereby mortgage was created in favour of the bank, itself has been declared null and void then no right in favour of the bank exists. Even if we appreciate it in an other way, bank himself lodged an FIR against Mohammad Chand and Respondent No. 2 & 3 alleging that the fraud having been committed by them in obtaining the financial assistance from the bank. Even then this is an admission that the bank was defrauded by the Respondent No. 2 to 4.

15. Undoubtedly, title of Shrimati Shameem Begum is not in dispute. It is also undisputed that she died leaving behind her husband, 4 sons & 5 daughters as her legal heirs. All the legal heirs executed the Sale Deed on 29.01.2018. in favour of the appellants. Chand Mohammad, Respondent No. 4 is also one of the vendor in the deed. Earlier deed executed by Chand Mohammad in favour of Respondent No. 2 & 3 has already been declared null and void. Accordingly, now the deed executed by the legal heirs of the Shrimati Shameem Begum becomes a valid document which is legally admissible. Accordingly, bank now can't claim any right over the secured assets on the basis of a document which is not in existence now. Bank has already initiated the criminal proceedings against the accused persons by lodging an FIR

and criminal proceedings are pending. But as far as rights of the Appellants are concerned, they are matured by virtue of the sale deed dated 29.01.2018 executed by the legal heirs of the Smt. Shameem Begum in favour of the Appellant. Accordingly, no valid mortgage exists in favour of the bank regarding the schedule properties. The securitization action initiated by the bank regarding schedule property cannot continue. Accordingly, we are of the considered view that the Learned DRT erroneously recorded the findings which are liable to be set aside. Appeal is liable to be allowed.

O R D E R

Appeal is allowed. Judgment and order dated 18.09.2024 passed by Learned DRT in SA No. 225 of 2018 (Mr. Mirza Sardar Baig -vs- Indian Overseas Bank & Others) is set aside. Consequently, SA No. 225 of 2018 (Mr. Mirza Sardar Baig -vs- Indian Overseas Bank & Others) is allowed. Notice issued under Section 13(4) of the Act dated 09.05.2018 is set aside. However, Bank would be at liberty to initiate process to recover its dues in accordance with law.

File be consigned to Record room.

Copy of the Judgment/Final Order be uploaded in the Tribunal's Website.

Order signed, dated and pronounced in open Court.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 18th March, 2026
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