



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MAY, 2026

PRESENT

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

WRIT PETITION NO.14841 OF 2026 (GM-DRT)

BETWEEN:

ITTIAM SYSTEMS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956.

HAVING OFFICE AT:
4TH AND 5TH FLOOR,
'CONSULATE-1',
NO.1, RICHMOND ROAD,
BENGALURU- 560 025.

REPRESENTED BY ITS POWER
OF ATTORNEY HOLDER,
MS. KATYAYINI SURENDRAN.

...PETITIONER

(BY SRI. T. SURYANARAYANA, SENIOR COUNSEL A/W
MS. SMITHA R.B.,ADVOCATE)

AND:

BHARATH CO-OPERATIVE BANK (MUMBAI) LIMITED
MOHAN TERRACE FLOOR,
64/72, MODY STREET FORT,
MUMBAI-400 001.

REPRESENTED HEREIN BY
ITS MANAGER

...RESPONDENT

(BY SRI. PUNDIKAI ISHWARA BHAT, ADVOCATE)





THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER WRIT, ORDER OR DIRECTION SETTING ASIDE THE IMPUGNED ORDER DATED 29/04/2026 PASSED BY THE HONBLE DRAT ON IA NO.1556/2025 IN A.I.R. NO.1801/2025 (ANNEXURE-D) AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. The petitioner is before this Court seeking for the following reliefs:

(i) Issue a writ of certiorari or any writ in the nature of certiorari or any other writ, order or direction setting aside the impugned order dated 29.04.2026 passed by the Hon'ble DRAT on I.A.No.1556/2025 in AIR No.1801/2025 (Annexure-D); and

(ii) Consequently issue a writ, order or direction to allow I.A.No.1556/2025 (Annexure-D) filed in AIR No.1801/2025 before the Hon'ble DRAT; and

(iii) pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case, in the interests of justice and equity.

2. The petitioner claims to be a tenant in respect of Unit Nos. 401, 402 and 404 situated on the fourth floor of



the building known as "Consulate-1", bearing Khata Nos. 1/10, 1/11 and 1/13, having an aggregate super built-up area of 7,045 square feet together with five car parking spaces, constructed on property bearing No. 1, Richmond Road, Bengaluru – 560 025.

3. It is stated that the said property originally belonged to Ms. Consulate Constructions, which subsequently sold the leasehold rights therein to Mr. Hiro Uttamchandani under an Indenture of Sale of Leasehold Rights dated 11.01.2008. The petitioner contends that even prior thereto, it had been inducted into the premises as a lessee in the year 2001 and that the tenancy has continued ever since.
4. It is further stated that Mr. Hiro Uttamchandani had availed a loan from the respondent and, upon default in repayment, the respondent initiated proceedings under Section 13(2) of the SARFAESI Act by issuing a demand notice thereunder, followed by measures under Section 13(4) of the Act. Thereafter, proceedings under Section 14 of the SARFAESI Act were also initiated for taking physical possession of the secured asset. The petition filed under Section 14 came to be allowed in favour of the respondent.



5. The petitioner states that it had challenged the said order before this Court, which challenge came to be dismissed. Subsequently, the petitioner instituted proceedings in S.A. No. 322/2023 under Section 17 of the SARFAESI Act contending that, being a tenant in occupation of the premises, its possession ought not to be disturbed by the secured creditor, namely, the respondent. The said S.A. No. 322/2023 came to be dismissed by order dated 31.07.2025.
6. Aggrieved thereby, the petitioner preferred Appeal in AIR No. 1801/2025 before the Debt Recovery Appellate Tribunal, Chennai, along with I.A. No. 156/2025 seeking waiver of the statutory pre-deposit. The said application came to be dismissed by order dated 29.04.2026, which is impugned in the present proceedings.
7. The submission of Sri.Suryanarayana, learned senior counsel is that:
 - 7.1. It is contended that the petitioner is merely a tenant in occupation of the subject premises and has no manner of involvement in the transaction giving rise to the liability owed by the landlord to the respondent-bank. The petitioner is neither a borrower nor a guarantor



and is not liable to discharge any part of the dues claimed by the respondent. Hence, according to him, there would be no requirement for the petitioner to make any pre-deposit for maintaining an appeal under Section 18 of the SARFAESI Act.

7.2. He submits that the Appellate Tribunal has completely misconstrued the scope and ambit of Section 18 of the SARFAESI Act. Referring to Section 18(1), he contends that any person aggrieved by an order passed by the Debts Recovery Tribunal under Section 17 is entitled to prefer an appeal before the Debts Recovery Appellate Tribunal. However, insofar as the requirement of pre-deposit is concerned, the same is specifically restricted only to a "borrower".

7.3. Drawing attention to the second proviso to Section 18(1), he submits that the provision mandates 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 creditor or as determined by the Debts



Recovery Tribunal, whichever is less. Thus, according to him, the statutory requirement of pre-deposit contemplated under the second proviso applies only to a borrower and cannot be extended to a third party such as the petitioner, who, being aggrieved by the order passed by the Debts Recovery Tribunal under Section 17, has preferred an appeal under Section 18 of the SARFAESI Act.

- 7.4. His submission is that this aspect has been categorically dealt with by a co-ordinate Bench of this court, wherein it was ordered on 26th October 2018 in WP No.19445 of 2018, **M/s Hindustan Polymers -v- The Authorised Officer**, more particularly in para 14 thereof, which is reproduced hereunder:

Para 14. Therefore, wherever the word "borrower" is used in the Act, the definition would necessarily has to be read therein. The definition of the word "borrower" does not include a tenant. Therefore, a tenant cannot be deemed to be a "borrower". Thus, a tenant, certainly, cannot be brought within the definition of the word "borrower". Hence, a tenant is a non-borrower. Therefore, he would fall within the words "by the person other than the borrower". Thus, clearly, the liability to make a pre-deposit under the proviso is limited only to the "borrower", and cannot, by any stretch of imagination, be extended to a "non-borrower". The only liability imposed under Section 18 upon a non-borrower is the liability to pay the fees as



prescribed by the rules. Thus, it is only this particular liability which could have been imposed upon the petitioner who claims to be the tenant. Therefore, the DRAT is certainly unjustified in directing the petitioner to make a pre-deposit of Rs.2,10,00,000/-. Such a direction, obviously, is contrary to the requirement of second proviso to Section 18(1) of the Act.

- 7.5. By referring to **Hindustan Polymers case**, his submission is that the legal position is now well settled insofar as the interpretation of the second proviso to Section 18(1) of the SARFAESI Act is concerned. According to him, the statutory mandate requiring pre-deposit is specifically and consciously confined by the legislature only to a "borrower", and such requirement cannot be enlarged so as to include within its fold a tenant or any other third party claiming independent rights in the secured asset.
- 7.6. It is his submission that the petitioner has never availed any financial assistance from the respondent-bank, has not created any security interest in favour of the respondent, and is neither a guarantor nor a mortgagor in respect of the subject transaction. The petitioner is merely asserting its independent possessory rights as a tenant in occupation of the



premises. Therefore, the petitioner cannot be treated on par with the borrower for the purposes of Section 18 of the Act.

7.7. Learned Senior Counsel further submits that Section 18 itself makes a clear distinction between a "borrower" and "any person aggrieved". While the substantive right of appeal is conferred upon any person aggrieved by an order passed under Section 17, the condition relating to pre-deposit is consciously restricted only to the borrower. According to him, such legislative distinction is deliberate and meaningful and cannot be rendered otiose by extending the requirement of pre-deposit even to non-borrowers.

7.8. He further contends that if the interpretation adopted by the Appellate Tribunal were to be accepted, it would virtually amount to rewriting the statutory provision and imposing a condition which the legislature itself has not contemplated. Such an interpretation, according to him, would not only run contrary to the plain language employed in the second proviso to Section 18(1), but would also result



in serious prejudice to tenants and other third parties who may have bona fide and independent claims over the secured asset.

- 7.9. It is further submitted that a tenant who seeks to protect his possession cannot be compelled to deposit enormous sums allegedly due from the borrower, despite having no contractual or financial nexus with the loan transaction. Imposing such a condition would, in effect, render the statutory remedy of appeal illusory and inaccessible to non-borrowers. Learned Senior Counsel submits that this could never have been the intention of the legislature.
- 7.10. He submits that the Co-ordinate Bench has categorically held that the liability to make a pre-deposit is limited only to the borrower and cannot, "by any stretch of imagination", be extended to a non-borrower such as a tenant. He submits that the ratio laid down therein squarely applies to the facts of the present case and is binding on this Court.
- 7.11. Hence, according to him, the Appellate Tribunal has committed a patent error apparent on the face of the record in directing the petitioner to



comply with the condition of pre-deposit while considering the application for waiver. On that ground alone, he submits that the impugned order dated 29.04.2026 is liable to be quashed.

8. Mr.Pundikai Ishwara Bhat, learned counsel appearing for the respondent-Bank, would vehemently oppose the submissions advanced on behalf of the petitioner.

8.1. At the outset, he contends that the petitioner cannot seek exemption from the requirement of pre-deposit merely by styling itself as a tenant. According to him, before claiming the benefit available to a non-borrower under Section 18 of the SARFAESI Act, the petitioner must first establish that it is in lawful and subsisting possession under a legally valid tenancy. Unless the tenancy itself is legally recognised and enforceable, the petitioner cannot seek to avoid the statutory consequences flowing from the proceedings initiated under the SARFAESI Act.

8.2. Learned counsel places reliance on Section 17(4-A) of the SARFAESI Act to contend that whenever any claim of tenancy or leasehold rights is raised in respect of a secured asset, it is for the Debts Recovery Tribunal to examine



the factual matrix and the material produced on record and determine whether such tenancy or lease is valid and binding on the secured creditor. According to him, the statute itself contemplates adjudication on the validity of the tenancy and does not mandate automatic acceptance of every claim made by an alleged tenant.

- 8.3. He submits that, in the present case, the Debts Recovery Tribunal has already undertaken such an examination and has categorically held that the tenancy claimed by the petitioner is neither valid nor subsisting. Referring to the findings recorded by the Tribunal, he submits that the tenancy agreement relied upon by the petitioner came to be executed only in the year 2022, whereas the mortgage in favour of the respondent-Bank had already been created in the year 2018. Thus, according to him, the alleged tenancy has admittedly been created subsequent to the creation of the security interest in favour of the Bank.
- 8.4. Learned counsel further submits that even according to the petitioner, the earlier tenancy



arrangement had expired and a fresh tenancy was purportedly created with effect from 01.04.2022. Therefore, the petitioner itself admits that the tenancy presently relied upon is not an old continuing tenancy anterior to the mortgage, but a fresh arrangement entered into after the mortgage had already come into existence. Such a tenancy, according to him, cannot prejudice the rights of the secured creditor.

- 8.5. He further submits that even assuming, without admitting, that the tenancy agreement dated 01.04.2022 could be looked into, the said agreement was admittedly for a fixed term of three years and, therefore, expired by efflux of time in the year 2025 itself. Consequently, as on the date of consideration of the present proceedings, there is no subsisting landlord-tenant relationship between the borrower and the petitioner.
- 8.6. Apart from the aforesaid aspects, learned counsel also raises an objection regarding the legal enforceability of the tenancy agreement itself. He submits that the tenancy agreement



being for a period exceeding eleven months was compulsorily registerable under Section 17 of the Indian Registration Act, 1908. Since the document admittedly has not been registered, the same cannot be relied upon for proving or enforcing any leasehold rights in respect of the immovable property in question.

- 8.7. According to him, in the absence of registration, the alleged lease deed becomes inadmissible for the purpose of establishing any legally enforceable tenancy. Hence, he submits that there was no valid or subsisting tenancy either on the date when the proceedings before the Debts Recovery Tribunal were initiated, or on the date when the appeal was preferred before the Debts Recovery Appellate Tribunal, much less as on date.

- 8.8. In that background, learned counsel submits that the petitioner cannot claim the status of a bona fide tenant so as to seek total waiver of the statutory requirement of pre-deposit. He contends that the Appellate Tribunal, having regard to the facts and circumstances of the case, has in fact shown considerable indulgence



by directing only a conditional pre-deposit while entertaining the appeal.

- 8.9. Learned counsel lastly submits that the apprehension sought to be projected by the petitioner regarding appropriation of the deposited amount is wholly misconceived. He submits that in the event the pre-deposit is made, the respondent-Bank would not seek withdrawal or appropriation of the said amount during the pendency of the appeal. According to him, the amount could always be invested in an interest-bearing fixed deposit, subject to the final outcome of the proceedings before the Appellate Tribunal.
9. Heard Sri.T.Suryanarayana, learned senior counsel along with Ms.Smitha, learned counsel for the petition and Sri.Pundikai Ishwara Bhat, learned counsel for the respondent.
10. The points that would arise for determination are:
- i. **Whether the requirement of pre-deposit under Section 18(1) would include a third party like a tenant?**
 - ii. **Whether for the purpose of claiming the waiver of pre-deposit under Section 18 of SARFAESI Act, it is required to be established that the person claiming such waiver is a**



tenant under valid document and the tenancy is required to be subsisting?

iii. **Whether the impugned order passed by the DRAT dated 29th April 2026 in DRAT in AIR No.1801/2025 suffers from any legal impugntiy requiring interference in the hands of this court?**

iv. **What order?**

11. **Answer to point No.1: Whether the requirement of pre-deposit under Section 18(1) would include a third party like a tenant?**

11.1. Section 18 of the SARFAESI Act is reproduced hereunder:

Section 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.]

11.2.A plain and meaningful reading of Section 18(1) of the SARFAESI Act would indicate that the legislature has consciously conferred a right of appeal upon “any person aggrieved” by an order passed by the Debts Recovery Tribunal under Section 17 of the Act. The expression employed in the substantive part of Section 18(1) is of wide amplitude and is not confined merely to the borrower. The legislature, in its wisdom, has deliberately refrained from restricting the appellate remedy only to the borrower and has instead extended the remedy to every person who may be adversely affected by an order passed under Section 17.

11.3.The use of the expression “any person aggrieved” assumes significance in the context of proceedings under the SARFAESI Act, where several categories of persons, apart from the borrower, may assert independent or derivative



rights in respect of the secured asset. Such persons may include tenants, lessees, purchasers, guarantors, co-owners or any other person claiming lawful possession or interest in the secured asset. Thus, the statutory framework itself recognises that proceedings initiated under the SARFAESI Act may affect rights of persons other than the borrower and, therefore, consciously provides them with an appellate remedy under Section 18.

11.4. The first proviso to Section 18(1) assumes considerable importance in understanding the legislative intent. The said proviso authorises prescription of different fees for filing an appeal by a borrower and by a person other than the borrower. The very fact that the proviso separately refers to "the borrower" and "the person other than the borrower" demonstrates that the statute itself creates and recognizes two distinct categories of appellants.

11.5. The distinction made in the first proviso is neither incidental nor superfluous. It reflects a conscious legislative classification between:



11.5.1. a borrower, who is directly liable for the debt due to the secured creditor; and

11.5.2. a non-borrower, who may nevertheless be aggrieved by orders passed under Section 17 on account of independent rights claimed in respect of the secured asset.

11.6. Therefore, the statutory scheme under Section 18 itself clearly contemplates that appeals may be filed both by borrowers and by non-borrowers.

11.7. The second proviso to Section 18(1), however, is couched in materially different language. The second proviso stipulates 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 creditor or as determined by the Debts Recovery Tribunal, whichever is less.

11.8. The language employed in the second proviso is explicit, precise and restrictive. Unlike the substantive provision, which uses the expansive



expression "any person aggrieved", and unlike the first proviso which specifically refers to "a person other than the borrower", the second proviso refers only to the "borrower".

11.9. In our considered opinion, this distinction is deliberate and cannot be ignored while interpreting the provision. The legislature, having consciously used different expressions in different parts of the same provision, must be presumed to have intended different consequences to flow from such usage. It is a settled principle of statutory interpretation that where the legislature uses a particular expression at one place and omits the same at another, such omission is intentional and meaningful.

11.10. If the legislative intent were to impose the condition of pre-deposit upon every appellant irrespective of status, nothing prevented the legislature from employing the expression "any person aggrieved" even in the second proviso. Equally, the legislature could have used the phrase "borrower or any other person" while prescribing the condition of pre-deposit.



Significantly, the legislature has chosen not to do so.

11.11. The Court cannot, under the guise of interpretation, enlarge the scope of the second proviso by reading into it words which the legislature has consciously omitted. Any such interpretation would amount to judicial legislation, which is impermissible in law. The Court is required to interpret the provision as it stands and give effect to the plain meaning emerging from the statutory language.

11.12. The object underlying the requirement of pre-deposit also supports the aforesaid interpretation. The liability to make pre-deposit is linked to the existence of a debt due from the borrower. The second proviso specifically refers to "the amount of debt due from him". Thus, the statutory condition is founded upon the borrower's liability arising out of the loan transaction.

11.13. A non-borrower such as a tenant neither avails financial assistance from the secured creditor nor undertakes liability to repay the debt. Such a person is not privy to the loan transaction and



does not owe any debt to the secured creditor. Therefore, compelling a non-borrower to deposit amounts allegedly due from the borrower would not only be inconsistent with the statutory scheme but would also lead to manifestly inequitable consequences.

11.14. In the present case, the petitioner claims independent tenancy rights in respect of the secured asset and challenges the measures taken by the secured creditor insofar as such measures allegedly affect its possession. Whether such tenancy is ultimately valid or otherwise is a matter falling for adjudication in the appeal. However, merely because the petitioner's claim is disputed, the petitioner cannot automatically be treated as a borrower for the purpose of imposing the condition of pre-deposit.

11.15. The question as to whether the tenancy is legally valid and enforceable pertains to the merits of the appeal. Such disputed questions cannot be pre-judged for the purpose of importing into the statute a condition which otherwise applies only to borrowers.



11.16. The Co-ordinate Bench of this Court in **M/s. Hindustan Polymers** case, has examined the aforesaid issue in detail. The Co-ordinate Bench, after analysing the scheme of Section 18, specifically considered whether a tenant could be brought within the meaning of the expression "borrower" occurring in the second proviso to Section 18(1).

11.17. The Co-ordinate Bench answered the said issue in unequivocal terms by holding that a tenant cannot be construed as a borrower and that the liability to make pre-deposit under the second proviso is confined only to the borrower. The Bench further held that the requirement of pre-deposit cannot, "by any stretch of imagination", be extended to a non-borrower.

11.18. The Co-ordinate Bench also held that insofar as a non-borrower is concerned, the only obligation contemplated under Section 18 is payment of such fee as may be prescribed under the Rules. On that basis, the direction issued by the DRAT in that case requiring the tenant to make substantial pre-deposit was held to be contrary to Section 18(1) of the Act.



11.19. We are in respectful agreement with the ratio laid down in the case of **M/s. Hindustan Polymers**. The interpretation adopted therein, in our considered opinion, flows directly from the plain language employed in Section 18 and accords with settled principles governing statutory interpretation.

11.20. Judicial discipline also requires that a Bench of co-equal strength follow the decision rendered by another Co-ordinate Bench unless the same is distinguished on facts or referred to a larger Bench. In the present case, we find that the ratio laid down in the case of **M/s. Hindustan Polymers** squarely governs the controversy involved herein.

11.21. The contention urged on behalf of the respondent-Bank that the petitioner must first establish a valid and subsisting tenancy before seeking exemption from pre-deposit cannot be accepted in the manner sought to be canvassed. The requirement of pre-deposit flows from the statutory status of the appellant as a borrower and not from the eventual success or failure of the claim raised in appeal.



11.22. Once the appellant is admittedly not a borrower within the meaning of the Act, the statutory requirement of pre-deposit under the second proviso cannot be imposed merely because the respondent disputes the appellant's claim on merits. To hold otherwise would amount to converting every disputed claimant into a borrower for the limited purpose of insisting upon pre-deposit, which would defeat the very distinction consciously created by the legislature.

11.23. Accordingly, we answer Point No.1 by holding that an appeal under Section 18 of the SARFAESI Act can be preferred not only by a borrower but also by any other person aggrieved by an order passed under Section 17 of the Act. The mandatory requirement of pre-deposit contemplated under the second proviso to Section 18(1) applies only to a borrower and not to a non-borrower. Consequently, a person other than the borrower, though aggrieved by an order passed under Section 17 and seeking to avail the appellate remedy under Section 18, cannot be compelled to make any pre-deposit as a condition precedent for maintainability of



the appeal. The only obligation cast upon such non-borrower is payment of the prescribed appellate fee in terms of the Rules.

12. Answer to point No.2: Whether for the purpose of claiming the waiver of pre-deposit under Section 18 of SARFAESI Act, it is required to be established that the person claiming such waiver is a tenant under valid document and the tenancy is required to be subsisting?

12.1. Sri Pundilikai Ishwara Bhat, learned counsel appearing for the respondent-Bank, has vehemently contended that even assuming, without conceding, that exemption from the requirement of pre-deposit under Section 18 of the SARFAESI Act may in a given case be available to a tenant or a non-borrower, such benefit can only be extended where the person claiming such status establishes the existence of a lawful, valid and subsisting tenancy recognised in law.

12.2. According to him, the mere assertion of tenancy or production of an unverified lease arrangement would not automatically entitle a person to seek waiver of pre-deposit. He submits that before claiming the status of a non-borrower tenant for the purpose of



avoiding statutory pre-deposit, the appellant must first demonstrate prima facie that the tenancy relied upon is legally enforceable, validly created and subsisting as on the relevant date.

12.3. Learned counsel submits that, in the present case, even according to the petitioner, the tenancy agreement relied upon by it is of the year 2022 and was operative only for the period from 2022 to 2025. Thus, by the petitioner's own showing, the lease period has already expired by efflux of time and there is presently no subsisting tenancy in favour of the petitioner.

12.4. He submits that once the contractual period of tenancy itself has expired, the petitioner cannot continue to claim protection as a tenant so as to avoid compliance with the statutory conditions governing the appellate remedy under Section 18 of the Act.

12.5. Learned counsel further contends that the alleged tenancy agreement itself suffers from serious legal infirmities. According to him, the lease deed relied upon by the petitioner is



neither executed on stamp paper of adequate value nor registered in accordance with law. Since the alleged tenancy is for a period exceeding eleven months, the document was compulsorily registerable under Section 17 of the Indian Registration Act, 1908.

12.6. In the absence of compulsory registration, he submits that the document cannot be relied upon for proving creation of any valid leasehold interest in the immovable property in question. Consequently, according to him, the petitioner cannot assert any legally enforceable tenancy rights on the basis of such an unregistered instrument.

12.7. Learned counsel therefore submits that the petitioner, who has failed to establish the existence of a valid and subsisting tenancy, cannot seek to place itself in the category of a bona fide non-borrower tenant for the purpose of claiming exemption from pre-deposit. He submits that unless the foundational requirement of a lawful tenancy is established, the petitioner cannot derive any benefit from



the interpretation sought to be placed upon Section 18(1) of the SARFAESI Act.

12.8. Learned counsel further submits that these very aspects have already been considered by the Debts Recovery Tribunal while adjudicating the proceedings under Section 17 of the SARFAESI Act. According to him, the Tribunal, upon appreciation of the material placed on record, has returned findings against the petitioner on the question of validity and subsistence of the tenancy. Such findings, according to him, cannot be ignored while examining the challenge to the order passed by the Debts Recovery Appellate Tribunal directing pre-deposit.

12.9. It is therefore his submission that the issue relating to waiver of pre-deposit cannot be decided in isolation or in the abstract merely on the basis of the nomenclature adopted by the petitioner as a tenant. The Court would necessarily have to examine whether the tenancy claimed is prima facie lawful, subsisting and legally recognisable, particularly



in light of the findings already recorded by the Tribunal against the petitioner.

12.10. The Debt Recovery Appellate Tribunal has held as under:

"Pre-deposit is mandatory for entertaining the appeal under Section 18 of the SARFAESI Act. The issue raised on maintainability of this appeal, as the tenancy is based on the unregistered lease agreement, will be decided in the main appeal."

12.11. A careful reading of the aforesaid observation would indicate that the Appellate Tribunal has proceeded on the premise that pre-deposit is mandatory even in respect of the present petitioner. It is this finding regarding the mandatory requirement of pre-deposit which forms the subject matter of challenge in the present writ petition and which we have already considered while answering Point No.1.

12.12. Insofar as the issue relating to maintainability of the appeal on the basis of the alleged tenancy and the effect of the unregistered lease agreement is concerned, the Appellate Tribunal itself has consciously kept the said issue open for adjudication in the main appeal. The Tribunal has categorically observed that the



question as to whether the appeal is maintainable in light of the tenancy being founded upon an unregistered lease agreement would be decided at the stage of final hearing of the appeal.

12.13. Thus, the Appellate Tribunal has not rendered any conclusive finding at this stage either on the validity of the tenancy, the legal effect of the unregistered lease deed, or the maintainability of the appeal preferred by the petitioner. The Tribunal has merely deferred consideration of those issues to the stage of adjudication of the appeal on merits.

12.14. Once the Appellate Tribunal itself has chosen not to adjudicate upon the said questions while considering the application for waiver of pre-deposit, in our considered opinion, it would neither be appropriate nor necessary for this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, to undertake such an examination at this interlocutory stage.



12.15. The questions as regards:

12.15.1. whether the petitioner is a lawful tenant;

12.15.2. whether the tenancy claimed is valid and subsisting;

12.15.3. whether the lease deed requires compulsory registration;

12.15.4. the effect of non-registration of the lease deed;

12.15.5. whether the tenancy created subsequent to the mortgage is binding upon the secured creditor; and

12.15.6. whether the appeal filed by the petitioner is maintainable,

are all matters which squarely fall within the domain of adjudication by the Appellate Tribunal in the pending appeal.

12.16. Any observation by this Court on the aforesaid issues at this stage may unnecessarily prejudice the rights and contentions of either party before the Appellate Tribunal. Judicial propriety therefore requires that such issues be



left open for consideration by the Appellate Tribunal on their own merits and in accordance with law.

12.17. In that view of the matter, while we have held that the mandatory requirement of pre-deposit under the second proviso to Section 18(1) is not applicable to a non-borrower, we refrain from expressing any opinion whatsoever on the merits of the petitioner's claim of tenancy or the maintainability of the appeal before the Debts Recovery Appellate Tribunal.

12.18. All contentions of both parties in that regard are expressly kept open. Liberty is reserved to the respondent-Bank to raise all objections available in law before the Debts Recovery Appellate Tribunal, including objections relating to validity, subsistence and enforceability of the alleged tenancy, admissibility of the lease deed, maintainability of the appeal and all other allied issues. The Appellate Tribunal shall consider and decide the same independently and uninfluenced by any observations made in the present order, except insofar as the question relating to mandatory pre-deposit is concerned.



12.19. This aspect would also be relevant here by considering Section 17(4)(A) of the SARFAESI Act, which is reproduced here under for perusal:

Section 17. [Application against measures to recover secured debts.]

xxx
xxx
xxx
xxx

(4A)[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 65A 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.]

12.20. Though Section 17(4-A), in terms, confers jurisdiction upon the Debts Recovery Tribunal, the principles and parameters contained therein necessarily continue to govern adjudication even at the appellate stage under Section 18 of the SARFAESI Act. An appeal being a continuation of the original proceedings, the Debts Recovery Appellate Tribunal, while considering an appeal arising out of an order passed under Section 17, would also be required to examine the issues contemplated under Section 17(4-A), insofar as they arise in the facts of the case.

12.21. A careful perusal of Section 17(4-A) would indicate that the statute itself contemplates a detailed factual adjudication whenever tenancy or leasehold rights are asserted in respect of a



secured asset. The provision specifically empowers the Tribunal to examine:

12.21.1. whether the tenancy has expired or stood determined;

12.21.2. whether the tenancy is contrary to Section 65-A of the Transfer of Property Act, 1882;

12.21.3. whether the tenancy is contrary to the terms of mortgage; and

12.21.4. whether the tenancy has been created after issuance of notice under Section 13(2) of the SARFAESI Act.

12.22. These are all matters requiring examination of facts, appreciation of evidence and adjudication on merits.

12.23. In the present case, the Debts Recovery Tribunal has already recorded findings on some of the aforesaid aspects, including the question whether the tenancy was created subsequent to the mortgage and whether the tenancy has expired by efflux of time. Those findings are presently under challenge before the Debts



Recovery Appellate Tribunal in the appeal preferred by the petitioner under Section 18 of the Act.

12.24. Once an appeal has been preferred, the entire matter, including the findings recorded by the Debts Recovery Tribunal on the issue of tenancy, becomes subject to appellate scrutiny. The Debts Recovery Appellate Tribunal would necessarily be required to independently examine the factual and legal issues arising under Section 17(4-A) and arrive at its own conclusions on the basis of the pleadings, documents and evidence available on record.

12.25. At this stage, it is also necessary to note that the enquiry contemplated under Section 17(4-A) is not a mere summary or superficial exercise. The provision expressly mandates examination of the "facts of the case and evidence produced by the parties". Therefore, the determination as regards validity, legality and subsistence of tenancy is essentially a matter to be adjudicated in the substantive proceedings before the Tribunal and, where challenged, before the Appellate Tribunal.



12.26. In our considered opinion, such adjudication cannot be pre-empted at the threshold stage while considering the limited issue relating to maintainability of the appeal or applicability of pre-deposit under Section 18. To insist that the Appellate Tribunal must conclusively determine the validity of the tenancy even before the appeal is entertained would, in effect, amount to requiring adjudication of the very subject matter of the appeal at the preliminary stage itself.

12.27. The contention urged on behalf of the respondent-Bank that the petitioner must first establish a valid and subsisting tenancy before the appeal can be entertained cannot therefore be accepted in the manner canvassed. Whether the tenancy is valid, subsisting, enforceable, contrary to the mortgage, hit by Section 65-A of the Transfer of Property Act, or rendered unenforceable on account of non-registration are all issues which properly fall within the ambit of adjudication in the appeal itself.

12.28. The Appellate Tribunal would therefore be required to consider all such contentions on



their own merits after the appeal is taken on record and after affording opportunity to both parties to advance their submissions and place material in support of their respective claims.

12.29. Hence, we answer Point No.2 by holding that at the stage of filing of an appeal under Section 18 of the SARFAESI Act, it is not necessary for the Appellate Tribunal to conclusively determine whether there exists a valid and subsisting tenancy as a condition precedent for entertaining the appeal. The said issue forms part of the subject matter of the appeal itself and is required to be adjudicated on merits in the appellate proceedings.

13. Answer to point No.3: Whether the impugned order passed by the DRAT dated 29th April 2026 in DRAT in AIR No.1801/2025 suffers from any legal impugntiy requiring interference in the hands of this court?

13.1. In view of our findings on Point Nos.1 and 2, we have already held that the requirement of mandatory pre-deposit under the second proviso to Section 18(1) of the SARFAESI Act applies only to a borrower and not to a person other than the borrower who is aggrieved by an order passed under Section 17 of the Act.



- 13.2. We have further held that the question as to whether the petitioner is able to ultimately establish a valid and subsisting tenancy is a matter falling for adjudication in the appeal itself and that such determination is not required to be conclusively rendered at the threshold stage while considering maintainability of the appeal or the question of pre-deposit.

- 13.3. In the present case, the Debts Recovery Appellate Tribunal, while passing the impugned order dated 29.04.2026, has proceeded on the premise that pre-deposit is mandatory for entertaining the appeal under Section 18 of the SARFAESI Act. Such a conclusion, in our considered opinion, runs contrary to the plain language employed in the second proviso to Section 18(1) of the Act.

- 13.4. The Appellate Tribunal has failed to notice the clear statutory distinction between a borrower and a non-borrower, despite such distinction being expressly recognised in the substantive provision as well as in the first proviso to Section 18(1).



- 13.5. The Appellate Tribunal did not have the benefit of appropriately appreciating the ratio laid down by the Co-ordinate Bench of this Court in **M/s. Hindustan Polymers**, wherein it has been categorically held that the requirement of pre-deposit cannot be extended to a non-borrower, such as a tenant and that the only obligation imposed upon such a person under Section 18 is payment of the prescribed appellate fee.
- 13.6. The law declared by the Co-ordinate Bench was binding upon the Appellate Tribunal and ought to have been duly considered while adjudicating the application seeking waiver of pre-deposit.
- 13.7. Significantly, the Appellate Tribunal itself has observed in the impugned order that the question relating to maintainability of the appeal, particularly in the context of the alleged tenancy being founded upon an unregistered lease agreement, would be considered at the stage of final hearing of the appeal.
- 13.8. Thus, the Appellate Tribunal consciously deferred adjudication on the issue of validity and maintainability of the tenancy claim to the stage of disposal of the appeal on merits.



Having done so, the Appellate Tribunal could not simultaneously insist upon mandatory pre-deposit by treating the petitioner as disentitled to the status of a non-borrower at the threshold stage itself.

13.9. In our considered opinion, the approach adopted by the Appellate Tribunal suffers from a clear legal inconsistency. On the one hand, the Tribunal kept open the issue relating to maintainability and validity of the tenancy for consideration in the main appeal; on the other hand, it proceeded to impose the condition of mandatory pre-deposit as though the petitioner stood conclusively excluded from the category of a non-borrower.

13.10. Such an approach, in our view, is legally unsustainable.

13.11. The impugned order therefore suffers from an error apparent on the face of the record insofar as it proceeds on an erroneous interpretation of Section 18(1) of the SARFAESI Act and imposes upon the petitioner a condition of mandatory pre-deposit which, in law, is applicable only to a borrower.



13.12. We are therefore of the considered opinion that the impugned order dated 29.04.2026 passed by the Debts Recovery Appellate Tribunal in AIR No.1801/2025 suffers from legal infirmity and perversity warranting interference in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

13.13. Accordingly, the impugned order dated 29.04.2026 passed in I.A. No.156/2025 in AIR No.1801/2025 by the Debts Recovery Appellate Tribunal, Chennai, insofar as it directs the petitioner to make pre-deposit for entertaining the appeal, is liable to be and is hereby set aside.

13.14. It is however made clear that this Court has not expressed any opinion on the merits of the rival claims relating to the validity, legality or subsistence of the alleged tenancy claimed by the petitioner. All contentions in that regard are kept expressly open to be urged before the Debts Recovery Appellate Tribunal, which shall consider the same independently and in accordance with law while adjudicating the appeal on merits.



14. Answer to point No.4: What order?

14.1. In view of our finding in respect of point Nos.1, 2 and 3, we pass the following

ORDER:

- i. Writ Petition is ***allowed***
- ii. A certiorari is issued the order/direction of the DRAT in its order dated 29th April 2026 passed on IA No.1556/2025 and AIR (SA) 1801/2025 directing the petitioner to pre-deposit 25% of Rs.13,33,02,744/- which comes to Rs.3,33,25,686/- in two equal instalments of Rs.1,66,62,843/- on or before 13.05.2026 and second instalment of Rs.1,66,62,843/- to be paid on or before 27.05.2026 is ***set aside***.
- iii. I.A.No.1556/2025 is allowed. The pre-deposit required of by the petitioner is waived.
- iv. The DRAT is directed to consider the appeal of the petitioner on merits without insisting on pre-deposit.
- v. All contentions as regards to maintainability of the appeal, the subsistence or otherwise of the tenancy entitling the tenant for protection are left open to be decided by the DRAT on merits.
- vi. Counsel appearing for the petitioner submits that the petitioner will co-operate



in all respects for expeditious disposal of AIR No.1801/2025.

- vii. The submission of Sri.Pundikai Ishwara Bhat, learned counsel for the respondent also wishes for expeditious disposal of AIR.
- viii. The submissions of the counsel for the petitioner as well as respondent is placed on record.
- ix. The DRAT is directed to consider the appeal expeditiously and pass necessary orders within a period of eight weeks from the first date on which the matter is taken up for hearing.

**SD/-
(SURAJ GOVINDARAJ)
JUDGE**

**SD/-
(DR.K.MANMADHA RAO)
JUDGE**