BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Justice Vivek Bharti Sharma, Chairperson

Misc. Appeal Dy. No. 381/2026

Between

Bank of Maharashtra … Appellant/s

V/s.

M/s Kamdar Plastic & Ors. …Respondent/s

-: Order dated:04/06/2026:

Present:

Mr. Charles De'Souza along with Mr. Sachin Patil , Ms. Nameeta Malvankar i/b Nitesh Agarwal Advocate for Appellant. Bank.

Mr Puneet Gogad along with Ms Sneha Rane & Ms Priti B. i/b Nemi Bhavsar, Advocate for Respondents.

This order shall dispose of Misc. Appeal Dy. No. 381/2026 whereby the order in I.A. No. 430/2026 dated 02.03.2026 in *Securitisation Application (S.A.) No. 70/2026* passed by the Learned DRT-III, Mumbai has been challenged.

By impugned judgment, Learned DRT has directed the Appellant Bank (*Respondent Bank in S.A.*) to restore the possession of the premises taken by it.

2. Brief facts of the Appeal are as under-

(a) Respondents/Borrowers filed the S.A. No. 70/2026 before DRT-III, Mumbai and Interlocutory Application (*I.A.*) No. 350/2026 with prayer, interalia, to restrain the Appellant/Bank (*Respondent in S.A.*) and its officers etc. from taking physical possession of the mortgaged property on

09.02.2026 in pursuance of Notice dated 22.01.2026.

(b) This I.A. No. 350/2026 was heard on 09.02.2026 and after hearing the same, Learned DRT-III, Mumbai passed the following orders.

> ***"Advocate Puneet Gogad a/w Adv. Amar Dube for the Appellant.***
>
> ***Advocate appeared for the Respondent.***
>
> ***IA No. 351 of 2026 stands disposed off as matter has come up today.***
>
> ***As the possession in intended today, detailed argument notes are also filed. The matter has come up for hearing only today. The matter is adjourned for want of time to pass orders.***
>
> ***List the matter on 12.02.2026."***
>
> *(Emphasis supplied)*

(c) On 12.02.2026, that is on the date of pronouncement of order of I.A. No. 350/2026 for the interim relief, Learned DRT-III, Mumbai was informed by Respondents/Borrowers that the Appellant/Bank has taken possession on 09.02.2026 notwithstanding the facts that the Learned Lower Tribunal, after hearing the I.A., because of paucity of time had reserved the orders to be pronounced on 12.02.2026. It was further submitted by Respondents/Borrowers (*Applicants before DRT*) that the Appellant/Bank was fully aware that the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 (*IBC*) was in operation and despite all these facts took the possession of the mortgaged property.

(d) The Respondents/Borrowers filed another I.A. No. 430/2026

in the Lower Tribunal on 12.02.2026 itself **with the prayer, interalia, to pass an order of restoration of physical possession of the mortgaged property to the Respondents/Borrowers.**

(e) However, despite notice nobody appeared on behalf of the Appellant/Bank in the DRT on 12.02.2026, consequently, the Learned Lower Tribunal passed the following orders.

> "*2. Applicant represented. Respondent absent.*
>
> *No representation.*
>
> *3. The matter which was heard on stay of possession on 09.02.2026 was completed only by 2:30 PM on 09.02.2026 and the matter was adjourned to this date for order, for want to time for passing orders on that day. The respondent though was asked to hold their hands till orders are passed in the matter, is now represented to have taken possession on the evening of 09.02.2026 itself. Even though such an order was not passed, the proper course for respondent would have been to wait till order are passed today either way. So now the applicant has filed I.A. No. 430 of 2026. Though it is stated that respondent is given notice of this petition, respondent had remained absent without representation.*
>
> *4. Order in I.A. No. 350 of 2025 is not being passed as possession is reported to be taken on 09.02.2026.*
>
> *5. For objection by respondent to I.A. No. 430 of 2026 and for appearance or representation for respondent list this matter on 19.02.2026."*
>
> *(Emphasis supplied)*

(f) As evident from above, on 12.02.2026 an opportunity was given to the Appellant/Bank to file reply/objection to I.A. No. 430/2026 on 19.02.2026.

(g) On 19.02.2026, the Appellant/Bank sought time to file reply to the I.A. No. 430/2026 for restoration of possession.

(h) However, on the next date i.e. 27.02.202, the case was called by the Learned Lower Tribunal in the morning and Counsel for the Appellant/Bank appeared through Video Conference and requested the matter be passed over for filing reply/objections to the I.A. No. 430/2026 at 12:00 noon, however, nobody appeared for the Appellant/Bank.

(i) When the case was again called at 2:15 PM, the Learned Counsel for the Appellant/Bank appeared through Video Conference and requested that the reply is being processed and will be filed but no reply was filed on 27.02.2026 and the case of posted for 02.03.2026.

(j) On 02.03.2026, nobody appeared for Appellant/Bank on first hearing, consequently, case was fixed at 12:00 PM. At 12:15 PM, Appellant/Bank Counsel appeared on Video Conference and would submit that reply was being processed and would be filed. However, no reply was filed till 2:15 PM when Learned Lower Tribunal heard the application. The Learned Lower Tribunal passed the order thereby directing the Appellant Bank to restore the possession of the premises within two weeks from the date of order i.e. 02.03.2026 and passed the detailed order on the same date.

Aggrieved by the same, the Appellant/Bank has preferred

the present Appeal under Section 18 of the "*Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(hereinafter referred to as "the SARFAESI Act*")".

3. Heard the Learned Counsel for the respective parties.

4. Mr. Charles D'Souza, Learned Counsel for the Appellant/Bank would submit that the order dated 09.02.2026 did not restrain the Bank from taking possession. **He would further submit that the oral directions are invalid and unrecorded "*oral directions*" hold no legal weight; that, Only the final, signed written order is legally binding**.

He would further submit that the Appellant/Bank legally took possession of the asset only after reviewing the written order dated 09.02.2026 order and verifying there was no stay.

He would further submit that the Hon'ble High Court in its order dated 18.03.2026 has opined that the practice of issuing '*oral direction*' cannot be countenanced in proceedings conducted by the judicial/quasi-judicial authorities. He would rely the judgments "*Salimbhai Hamidbhai Menon V/s Niteshkumar Maganbhai Patel & Anr. (2022) 18 SCC 662*, *Godrej Finance Ltd. V/s Ashok Rajkumar Gupta & Ors., passed by Hon'ble Bombay High Court in Writ Petition No. 3374/2026*.

5. Per Contra, **Learned Counsel for the Respondents/Borrowers would submit that the Appeal is not maintainable as the Appellant/ Bank failed to file the certified copy of detailed order till date with this appeal**, hence, invalidating

the Appeal under DRAT Rules. He would further Submit that the Appellant/Bank misled the Registry, this Appellate Tribunal and even the Hon'ble High Court by only filing the certified copy of the order sheet dated 02.03.2026 not the certified detailed order dated 02.03.2026 running to six pages.

6. Learned Counsel for the Respondents/Borrowers would further submit that on 09.02.2026, the Bank's Counsel explicitly agreed in open court not to take possession, therefore, Appellant/Bank is legally bound by this solemn undertaking given at bar and cannot argue the opposite now. He would further submit that the Appellant Bank never filed a reply to the restoration application I.A. No. 430/2026 in DRT and failed to show up to argue against it on 12.02.2026, 19.02.2026 and 27.02.2026. Having remained silent then Appellant/Bank cannot invent a defense now in Appeal when there is no rebuttal to the averments made in I.A. No. 430/2026.

7. Learned Counsel for the Respondents/Borrowers would submit that the Appellant/Bank cannot be allowed to improve upon the case in appeal over and above his pleadings before Lower Tribunal. He would further submit that in the application for restoration of possession, it was stated in unequivocal words that there was an oral Undertaking by the Appellant/Bank to maintain *status quo* as the Learned DRT had reserved the order on 09.02.2026 after hearing the final arguments due to paucity of time on that date; that, notwithstanding more than ample and several opportunity being afforded to the Appellant/Bank to file reply/objections to this

application for restoration I.A. No. 430/2026, the Appellant/Bank did not file any reply to the same; that, in these circumstances, there was no denial and rebuttal by the Appellant/Bank to the averments made by the Respondents/Borrowers in this I.A. for restoration of possession that Appellant/Bank had undertaken to maintain *status quo*, hence, Appellant/Bank cannot be allowed to improve upon his case when there was no rebuttal and denial by the Appellant/Bank that the Appellant/Bank has not given any oral undertaking to maintain *status quo* till reserved order be passed on 12.02.2026.

8. Learned Counsel for the Respondents/Borrowers would also submit that the final order is based on sequence of earlier orders dated 09.02.2026, 12.02.2026 19.02.2029 and 27.02.2026; that, as the Appellant/Bank never challenged those earlier orders, the final order stands.

He would also submit that the Appellant/Bank lied in its pleadings by claiming it applied for the full certified copy of the detailed order; that, receipts show Appellant/Bank never applied for certified copy of detailed order. Furthermore, they falsely blamed the Tribunal for delays just to cover up their own negligence. **On these arguments, he would submit that the Appeal contains non-curable defects of not filing certified copy of the detailed impugned order dated 02.03.2026, hence, Appeal is not maintainable, therefore, it should be dismissed with heavy costs.**

9. In rebuttal, Learned Counsel for the Appellant/Bank would submit that the objections raised by the Respondents regarding alleged

procedural defects — including non-filing of certified copies, absence of lodging numbers, or lack of physical filings — are wholly misconceived and hyper-technical in nature. **Although he would fairly admit at bar that the certified copy of the impugned detailed order is not filed with appeal but that would not be fatal for the Appeal**. He submitted that the DRAT Rules do not mandate dismissal of an Appeal on such grounds.

10. Learned Counsel for the Appellant/Bank would further submit that the Respondents' contention regarding the finality of judicial orders, in fact, supports the case of the Appellant/Bank. According to him, the final written orders clearly demonstrate that no stay or restraint against taking possession was ever granted, thereby establishing that the Appellant/Bank acted strictly in accordance with law.

11. Considered and perused the records.

12. The submission of the Learned Counsel for the Appellant/Bank that they had filed reply/objection to this Application I.A. No. 430/2026 for restoration of possession online is nothing but an eyewash as Appellant/Bank knew it very well that on 02.03.2026 at 2:30PM the Learned DRT had already allowed this application and passed the for restoration of possession and reply to the same was filed online later. It would not be out of place to note here that even prior to 02.03.2026, the Appellant/Bank was given several opportunities to file reply/objection to the I.A. No. 430/2026 on 19.02.2026 and 27.02.2026. Therefore, by the time the impugned

order was passed, there was no rebuttal and denial to the allegations and averments made in the application for restoration of possession.

Although, the statutory provisions of Civil Procedure Code are not strictly applicable to the working of this Appellate Tribunal, however, the spirits and philosophy of law enshrined in Order 8 Rule 3, 4 and 5 of the Civil Procedure Code shall guide the working of the Tribunals. These provisions are reproduced hereunder:

> *"**3. Denial to be specific.** —It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.*
>
> ***4. Evasive denial**. —Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.*

Rule 5 Sub Rule 1 of Order 8 further says:

> ***"5. Specific denial. — [(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:***
>
> *Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission."*

It would be pertinent to refer Section 141 of Civil Procedure Code

> *"**141. Miscellaneous proceedings**. —The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.*
>
> *Explanation. —In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding*

under article 226 of the Constitution.

In considered view of this Appellate Tribunal, the proceedings conducted by the Learned DRT-I, Mumbai deciding I.A. No. 430/2026 shall be guided by the spirit and philosophy enshrined in Order 8 Rule 3, 4 and 5 by virtue of Section 141 of Civil Procedure Code.

13. Hon'ble Supreme Court of India in its judgment "*Kisundeo Raout and Ors Vs Govind Rao and Ors, MANU/SC/1059/2025"* observed in para 24.

> *"24. It is important to remember that the basic Rule of law of pleadings is, that a party can only succeed according to what he has alleged and proved, otherwise, on the principle of secundum allegata et probata, a party is not allowed to succeed, where he has not set up the case which he wants to substantiate. "*

There is no denial and rebuttal by Appellant/Bank to the allegation that on 09.02.2026 the case was reserved for judgment and not simply adjourned for further hearing on the stay application.

14. It would pertinent to note further that the Hon'ble High Court in its judgment dated 18.03.2026 in Writ Petition No. 3609/2026, while directing this Appellate Tribunal to decide this Miscellaneous Appeal in time bound manner, though, has initially observed that the practice of issuing '*oral directions*' cannot be countenanced in proceedings conducted by the judicial authorities and in the light of contents of the order dated 09.02.2026, *prima facie* no presumption on the basis of which the order dated 02.03.2026 is passed, is made out. However, in concluding part of para 12, Hon'ble High Court has specifically observed that ***these are only prima facie observations,***

since substantive appeal of the petitioner-bank is still pending before the DRAT.

15. The conduct of the Appellant/Bank before the DRT on 12.02.2026 and thereafter, is self-explanatory. A judicial forum has to appreciate the conduct of the party not only before the case is filed but during the pendency of case also. When the case was listed on 12.02.2026 for pronouncement of judgment having that being reserved on 09.02.2026, there was no reason for the Appellant/Bank not to appear on that date i.e. 12.02.2026 before the Learned DRT. And, when opportunity was provided to the Appellant/Bank to file reply/objection to the application for restoration of possession I.A. No. 430/2026, that was not filed on 19.02.2026, 27.02.2026 and till the date the impugned order was passed on 02.03.2026. It would not be out of place to observe that on 09.02.2026 the proceeding was not simply adjourned but after hearing the arguments of the parties on I.A. No. 350/2026 for ad-interim relief, the case was fixed for pronouncement of the judgment on the same as there was no time left due to paucity of time on 09.02.2026. In considered view of this Appellate Tribunal, the Learned DRT was in process of passing the order from 09.02.2026 till 12.02.2026.

This shows the malafide on the part of the Appellant/Bank. As observed above, when judgment was reserved by judicial authority to be pronounced on 12.02.2026, then no party to the case in supposed to subvert the process of dispensation of justice to the utter shock to the other party and surprise to that judicial/quasi-judicial authority.

Therefore, in the opinion of this Appellate Tribunal even without any oral undertaking or instructions if at all that was there, party should have waited for the judgment till 12.02.2026.

16. It is admitted case of the parties that this Appeal is also on diary number till today. That is to say it is not registered formally since the Appellant/Bank has not removed the office objection.

Learned Counsel for the Appellant/Bank would fairly admit at bar that at the time of filing the Appeal only the order passed on the order sheet (*Roznama*) dated 02.03.2026 was filed. He would further admit that a detailed order was also passed by the Learned DRT on 02.03.2026 and it was specifically stated in the Rozanama of the order sheet dated 02.03.2026 it was stated in 2nd last line "*detailed order vide separate sheet*".

Learned Counsel for the Appellant/Bank would further fairly admit that this detailed order was not filed by the Appellant/Bank with this Appeal till today. Initially, he tried to submit that the detailed order was filed. However, the certified copy which he referred was only comprising of one page however the detailed order dated 02.03.2026 was running to six pages.

It is important to mention here that the certified copy of the impugned detailed order dated 02.03.2026 is neither filed with the Appeal and not produced until the date of final arguments by this Appellate Tribunal.

It is pertinent to mention that Rule 11 of the *Debts Recovery*

Appellate Tribunal (Procedure) Rules mandates the production of the certified copy of the impugned order with the memo of Appeal and non-compliance of the same mandates that the Registrar should decline the Appeal.

On this point, the Hon'ble Supreme Court in its judgment in *Anglewoods Apartments Allottees Association Vs. M Lalitha & Anr. in Civil Appeal Nos. 14439-14440 of 2025* has observed as under:

> *"6. In effect, even after the refiling of the appeal on 10.03.2025, one of the glaring defects that still remained was that a certified copy of the order dated 14.08.2024, sought to be impugned in the appeal, was not filed. No doubt, delay in refiling of a proceeding would, ordinarily, not be tested by the same strict standards that would be applied to delay in the filing of such proceeding but we find that, in the case on hand, the appeal which was refiled by respondent No. 1 was defective beyond redemption. Defect No. 07, noted supra, indicates that the appeal was refiled without a certified copy of the order dated 14.08.2024 passed by the NCLT.*
>
> *7. Rule 22 of the NCLAT Rules pertains to presentation of appeals. Rule 22(2) categorically states that every appeal shall be accompanied by a certified copy of the impugned order. In this regard, the 3-Judge Bench decision of this Court in* ***V. Nagarajan vs. SKS Ispat and Power Limited and others*** *assumes significance. Therein, this Court noted that the parties could not automatically dispense with their obligation to apply for and obtain a certified copy for filing an appeal under Rule 22. It was further noted that a person wishing to file an appeal is expected to file an application for the certified copy before the expiry of the limitation period, upon which 'the requisite time' for obtaining the certified copy is liable to be excluded while computing limitation. Further, it was observed that though Rule 14 of the NCLAT Rules enabled parties being exempted from compliance with the requirement of the rules and though waiver on the filing of an appeal with a certified copy is often granted, it does not confer an automatic right on the applicant to dispense with*

compliance and render Rule 22(2) of the NCLAT Rules nugatory. This Court, therefore, held that the act of filing an application for a certified copy is not just a technical requirement for computation of limitation but an indication of the diligence of the party in pursuing the litigation in a timely fashion.

8. In the case on hand, as stated earlier, a certified copy of the NCLT's order dated 14.08.2024, that was sought to be appealed against by respondent No. 1, was not filed along with the refiled appeal but long thereafter. Perusal of the photocopy of the said certified copy reflects that respondent No. 1 applied for the same only on 21.04.2025 and though the certified copy was prepared on 24.04.2025, it was not collected till 12.06.2025. Therefore, on 10.03.2025, when it was refiled, the appeal was not accompanied by a certified copy of the order dated 14.08.2024.

10. However, as noted earlier, respondent No. 1 did not even apply for a certified copy of the NCLT's order dated 14.08.2024 till 21.04.2025, long after the refiling of the appeal on 10.03.2025. To make matters worse, respondent No.1 did not even choose to file an application for exemption from filing such certified copy at any point, be it at the time of filing the appeal on 28.09.2024 or its refiling on 10.03.2025. This was the minimum requirement for respondent No. 1 to have complied with, when she filed and refiled her appeal without a certified copy of the NCLT's order dated 14.08.2024. Any such application could have been considered by the NCLAT under Rules 14 and 15 of the NCLAT Rules to enable the filing of the certified copy by respondent No.1 within such further time as is stipulated by the NCLAT. In effect, the appeal, as filed and refiled, was not a merely defective appeal, wherein the defects could be cured, but was a wholly incompetent appeal that did not satisfy the essentials to pass muster, in terms of the requirements prescribed under the Code and the NCLAT Rules. However, the NCLAT totally lost sight of these vital aspects while considering the two applications filed by respondent No. 1 seeking condonation of delay in the filing and the refiling of the appeal. The NCLAT ought not to have extended such indulgence to respondent No. 1, without first ascertaining whether her appeal was instituted in

accordance with the norms. We find that the NCLAT failed to undertake this exercise."

(*Emphasis supplied*)

It would be pertinent to reiterate that Rule 11 of the *Debts Recovery Appellate Tribunal (Procedure) Rules* says that every memo of Appeal should be accompanied with certified copy of the impugned order. Rule 6 of the *Debts Recovery Appellate Tribunal (Procedure) Rules* further directs the Registrar to decline the Appeal if same is not complied with certified copy of the impugned order.

In considered view of this Appellate Tribunal, the procedures laid down in *Debts Recovery Appellate Tribunal (Procedure) Rules* are similar to that of in NCLT Rules. Therefore, law laid down by Hon'ble Supreme Court "*Anglewood Apartments Case*" (*Supra*) shall be applicable in the facts and circumstances of present case.

17. In view of the facts of the case and law discussed above, this Appellate Tribunal is of the considered view that in absence of the certified copy of the detailed order dated 02.03.2026, the present Misc. Appeal Dy. No. 381/2026 is liable to be rejected as there no appeal in the eyes of law.

Accordingly, the Misc. Appeal Dy No. 381/2026 Bank of Maharashtra v/s M/s Kamdar Plastic & Ors. is disallowed.

Sd/-
Chairperson

MKS (PS)