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Reserved On : 19/12/2025
Pronounced On : 09/01/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/APPEAL FROM ORDER NO. 209 of 2025
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/APPEAL FROM ORDER NO. 209 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

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Approved for Reporting	Yes	No

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VARUN PROCON PVT LTD & ORS.
Versus
STATE BANK OF INDIA & ORS.

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Appearance:
MR IH SYED, SR. ADVOCATE WITH MR.ADITYA J PANDYA(6991) for the Appellant(s) No. 1,2,3
MR PC KAVINA, SR. ADVOCATE WITH MS. BHAVNA D ACHARYA(6406) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

CAV JUDGMENT

1. The present Appeal from Order, at the instance of original plaintiffs under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, is directed against order dated 29th September, 2025 passed by learned City Civil Court No.23, Ahmedabad in Civil Suit No.778 of 2016 below Exh.7. By the said order, learned City Civil Court was pleased to dismiss the interim

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application under Order XXXIX Rules 1 and 2 of the Code, 1908.

Case of the Appellants (Original Plaintiffs)

2. Plaintiff No.1 is a company engaged in the business of real estate development, construction and allied activities. Plaintiff Nos.2 and 3 were appointed as Directors of Plaintiff No.1 on 05.09.2014 and 07.03.2016 respectively. Defendant No.5, who is the nephew of Plaintiff Nos.2 and 3, was appointed as a Director of Plaintiff No.1 on 31.10.2014.

2.1 Ms. Avani Dharmesh Patel, who claims to be a Director of Plaintiff No.1, was only an Additional Director and was never appointed as a Director in the Annual General Meeting of Plaintiff No.1.

2.2 It is the case of the plaintiffs that, taking advantage of the strained relationship between Plaintiff No.2 and his wife, Defendant No.5, in collusion with the other defendants, removed all original documents such as sale deeds and other title documents relating to the suit property from the residence of Plaintiff No.2. At the relevant time, Plaintiff No.2 was detained at Navrangpura Police Station and was restrained from entering the Navrangpura area pursuant to an

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order passed by this Court.

2.3 It is further alleged that Defendant No.1 Bank accepted the suit property as security without verifying the title of the property or the authority of the person executing the mortgage deed and without obtaining any title clearance report. According to the plaintiffs, the Bank officials were in collusion with the other defendants.

2.4 Plaintiff No.2 came to know about the alleged fraudulent mortgage deed executed by Defendant No.5 only when a complaint came to be lodged at Navrangpura Police Station.

2.5 Consequently, the plaintiffs were constrained to file Civil Suit No.778 of 2016 before the learned City Civil Court, Ahmedabad, seeking a declaration that the mortgage deed dated 12.01.2015 is illegal, that the defendants have no right, title or interest in the suit property, and for permanent injunction.

2.6 Defendant No.1 Bank appeared in the said suit and filed its written statement, denying the averments made in the plaint. The Bank primarily contended that the Civil Court had no jurisdiction in view of the initiation of

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proceedings under the SARFAESI Act, and that the mortgage was validly created.

2.7 After filing of the suit, the matter was transferred from one court to another and, for a substantial period from June 2016 to December 2020, it remained before a vacant court on account of administrative reasons.

2.8 Thereafter, Defendant No.1 Bank obtained an order dated 18.07.2025 in Criminal Miscellaneous Application No.5169 of 2025 under Section 14 of the SARFAESI Act for taking physical possession of the suit property. According to the plaintiffs, the said order was obtained on the basis of a fraudulent mortgage deed, which is the subject matter of challenge in the civil suit.

2.9 The learned City Civil Court, after considering the pleadings and submissions, dismissed the injunction application at Exh.7 by order dated 29.09.2025.

Case of Respondent No.1 - Bank

3. On 05.01.2015, the State Bank of India, Bareja Branch, Ahmedabad, sanctioned a loan of Rs.16.50 crores in favour of M/s. Satsang Infrabuild Private Limited, consisting of a cash

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credit limit of Rs.15.00 crores and a term loan of Rs.1.50 crores. Respondent Nos.3 and 4, namely Mr. Ritesh D. Kotak and Mr. Nilesh D. Kotak, stood as personal guarantors. Plaintiff No.1 – M/s. Venus Procon Private Limited – and Astha Organisers Private Limited stood as corporate guarantors.

3.1 At the time of sanction of the loan, Mr. Ritesh Kotak and Mr. Nilesh Kotak were Directors of the borrower company. Mr. Krunal H. Patel (Respondent No.5) and Ms. Avni D. Patel were Directors of Plaintiff No.1.

3.2 Mr. Krunal Patel and Ms. Darshana Patel were Directors of Astha Organisers Private Limited at the relevant time.

3.3 On 10.01.2015, a corporate guarantee agreement was executed by Plaintiff No.1, followed by execution of a registered mortgage deed dated 12.01.2015, bearing Serial No.343 of 2015 before the Sub-Registrar.

3.4 On 24.12.2015, the borrower's loan account was classified as a Non-Performing Asset (NPA).

3.5 Thereafter, on 28.12.2015, a demand notice under Section 13(2) of the SARFAESI Act

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was issued to the borrower and guarantors, though effective service could not be completed.

3.6 On 08.01.2016, Respondent No.1 Bank filed Original Application No.8 of 2016 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before the learned Debt Recovery Tribunal.

3.7 On 12.01.2016, the learned Debt Recovery Tribunal passed an order in favour of the Bank in terms of paragraph 7(c) thereof. The said order has not been challenged by the appellants.

3.8 On 11.04.2016, the appellants filed the present Civil Suit No.778 of 2016 along with an injunction application at Exh.7 against the Bank and others, without disclosing the pendency of the proceedings before the Debt Recovery Tribunal. The Bank filed its written statement in the suit on 31.12.2016.

3.9 On 03.01.2025, the Bank initiated fresh proceedings under the SARFAESI Act by issuing a notice under Section 13(2) to the borrower and corporate guarantors, which was served on 08.01.2025.

3.10 On 15.03.2025, Appellant No.2 replied to the said notice through his advocate. The Bank,

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by communication dated 20.03.2025, conveyed its reasons for not accepting the objections raised.

3.11 On 04.04.2025, when the Bank attempted to affix the possession notice on the suit property, its authorised officer was obstructed.

3.12 Consequently, on 14.05.2025, the Bank filed Criminal Miscellaneous Application No.5169 of 2025 under Section 14 of the SARFAESI Act for enforcement of its security interest. The said application was allowed by order dated 18.07.2025. The said order has not been challenged by the appellants in accordance with law. The injunction application at Exh.7, which had been pending since 2016, was pressed only in the year 2025 after the Bank initiated proceedings under Section 14 of the SARFAESI Act.

Under Challenge

4. Being aggrieved and dissatisfied with the order dated 29.09.2025 passed by the learned City Civil Court No.23, Ahmedabad in Civil Suit No.778 of 2016 below Exh.7, the appellants, who are the original plaintiffs, have preferred the present Appeal From Order before this Court.

5. This Court has heard learned Senior Advocate Mr. I.H. Syed assisted by learned

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Advocate Mr. Aditya Pandya for the appellants, and learned Senior Advocate Mr. Percy Kavina assisted by learned Advocate Ms. Bhavna Acharya for respondent No.1 Bank, who appeared on caveat.

5.1 Considering that the issue involved in the present Appeal From Order is within a limited scope, and with the consent of the learned advocates appearing for the main contesting parties, the Appeal From Order is taken up for hearing at the stage of admission.

6. Learned Senior Advocate Mr.Syed for the appellants, while assailing the impugned order, has made following submissions:

6.1 It is submitted that the impugned order passed by the learned City Civil Court is ex facie illegal, arbitrary and contrary to the settled provisions of law and, therefore, the same deserves to be quashed and set aside.

6.2 At the outset, it is contended that there was no resolution of Plaintiff No.1-company authorising creation of a mortgage or empowering any person to execute such mortgage. In view of Section 179 of the Companies Act, creation of a mortgage requires a specific resolution of the company. In absence of such resolution, the

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mortgage is void and non est in law. It is, therefore, submitted that the learned trial court ought to have granted injunction in favour of the appellants.

6.3 It is further submitted that no valid resolution was placed on record before the trial court. The so-called resolution produced across the bar before this Court bears the signature of a person who was not a Director at the relevant time. Hence, the said resolution cannot be treated as a valid resolution in compliance with Section 179 of the Companies Act.

6.4 It is also submitted that the learned trial court failed to appreciate that the Bank had not exercised due diligence before sanctioning and disbursing the loan and before accepting the suit property as security. Had the Bank verified the records properly, it would have noticed that there was no valid resolution authorising creation of the mortgage in respect of the company's property for a loan granted to a third party. In these circumstances, the balance of convenience was clearly in favour of the appellants, and the trial court ought to have granted injunction.

6.5 It is contended that the finding of the

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learned trial court that a Director, being treated as a 50% owner of the company, could validly deal with 50% of the company's assets, is wholly erroneous and contrary to the provisions of the Companies Act. Such a finding is legally unsustainable and deserves to be set aside, and consequently the application at Exh.7 ought to have been allowed.

6.6 It is further submitted that the principal challenge in the suit is to the mortgage deed allegedly executed by Defendant No.5 in respect of a loan granted to Defendant No.2, on the grounds of fraud and collusion. The Civil Court, being competent to adjudicate upon such issues, ought to have protected the suit property by granting injunction. It is submitted that if the measures initiated by the Bank under the SARFAESI Act are permitted to proceed and the property is not protected, the suit itself would become infructuous. Therefore, in the interest of justice, the learned trial court ought to have granted the injunction as prayed for by the appellants.

6.7 To strengthen the aforesaid submission, heavy reliance is placed on the decision in case of **Central Bank of India v. Prabha Jain [(2025) 4 SCC 38].**

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6.8 By making above submissions, Learned Senior Advocate for the appellants, has prayed to allow the Appeal From Order.

7. Learned Senior Advocate Mr.Kavina, while supporting the impugned order, has made following submissions:

7.1 At the outset, learned Senior Advocate for respondent No.1 Bank contended that the learned trial court ought to have rejected the application at Exh.7 on the ground of lack of jurisdiction. It was submitted that in the written statement, the Bank had raised a preliminary objection regarding the competence of the Civil Court to entertain the suit. According to the Bank, the Debt Recovery Tribunal alone has jurisdiction to adjudicate the grievances raised by the appellants and the suit itself is liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908. It was further submitted that although the learned trial court rejected Exh.7 on different grounds, it ought to have decided the issue of jurisdiction and rejected the application on that basis. Since jurisdiction is a pure question of law, the ultimate rejection of Exh.7 cannot be faulted.

7.2 Learned Senior Advocate further

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submitted that prior to filing of the civil suit, the Bank had already initiated recovery proceedings before the learned DRT under the RDDB Act, wherein an interim order was passed in favour of the Bank against the present appellants. It was pointed out that the appellants neither appeared before the learned DRT nor challenged the interim order passed therein. According to the Bank, filing of the civil suit without pursuing the remedy before the DRT amounts to an abuse of process of law and is intended only to delay the recovery proceedings.

7.3 It was also submitted that the appellants have not approached the Civil Court with clean hands. There has been a deliberate suppression of material facts inasmuch as the pendency of proceedings before the learned DRT was not disclosed in the plaint. This conduct, according to the Bank, ought to have been taken into consideration by the learned trial court while rejecting the application at Exh.7.

7.4 Learned Senior Advocate submitted that considering the limited scope of the Civil Court in matters of this nature, the impugned order rejecting Exh.7 does not call for interference. It was further submitted that since the issue of

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jurisdiction is purely a question of law, this Court, while deciding the present Appeal From Order, may substitute its own reasoning while maintaining the operative part of the impugned order.

7.5 It was contended that, in substance, the appellants have challenged the validity of the mortgage and creation of security, which squarely falls within the jurisdiction of the learned DRT under Section 17 of the SARFAESI Act. The appellants, being corporate guarantors, fall within the definition of "borrower" under Section 2(f) of the Act, 2002. Once measures under Section 13 of the Act are initiated, any grievance against such measures can be raised before the DRT, which has ample power to examine even the validity of the security interest. Therefore, it was prayed that the Appeal From Order be dismissed even if this Court finds fault with the reasoning adopted by the learned trial court, as the rejection of Exh.7 is otherwise justified.

7.6 To substantiate the aforesaid submissions, learned Senior Advocate for respondent No.1 Bank placed reliance on Section 34 of the SARFAESI Act, contending that the

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jurisdiction of the Civil Court is expressly barred in respect of matters which the DRT or the Appellate Tribunal is empowered to determine under the Act. It was submitted that the suit itself is barred under Section 34 and, on this ground also, the application at Exh.7 was liable to be rejected.

7.7 It was further submitted that the learned trial court has misapplied the decision of the Hon'ble Supreme Court in the case of **Prabha Jain (supra).** According to the Bank, the facts of the said case were entirely different, as possession of the property had already been taken and the principal relief before the Civil Court related to the validity of a sale deed. In the present case, by way of Exh.7, the appellants seek injunction against measures taken under Section 14 of the Act, 2002, and possession has not yet been taken by the Bank. Therefore, the Civil Court ought to have accepted the objection regarding lack of jurisdiction.

7.8 It was also pointed out that although the suit and the application at Exh.7 under Order XXXIX Rules 1 and 2 of the Code were filed in the year 2016, the application was not effectively pressed until the year 2025. Only after the Bank obtained an order under Section 14 of the Act,

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2002, the appellants sought to activate Exh.7 with a view to frustrate the said order. It was submitted that once SARFAESI proceedings have been initiated and statutory measures are taken, the Civil Court is barred under Section 34 from granting any injunction against such measures. Hence, the learned trial court was justified in rejecting the application.

7.9 Lastly, it was submitted that though the appellants have challenged the mortgage deed in the civil suit, they have not disputed or challenged the corporate guarantee agreement executed by Plaintiff No.1. Thus, the status of the appellants as corporate guarantors is admitted. The challenge to the mortgage on the ground of non-compliance with Section 179 of the Companies Act is, therefore, nothing but an attempt to obstruct and delay the lawful recovery proceedings initiated by the Bank.

7.10 By making above submissions, Learned Senior Advocate for respondent No.1 requested this Court to dismiss the Appeal From Order.

8. Points for determination:

(i) Whether the learned trial court could have granted injunction which would amount to granting stay against the measures taken under

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Section 14 of the SARFAESI Act, 2002?

(ii) Whether under Section 17 of the SARFAESI Act, 2002 learned DRT has jurisdiction to decide the validity of a deed/document by which security interest is created?

9. To decide the aforesaid questions, this Court feels necessary to refer certain relevant provisions of the Act, 2002.

2(f) "**borrower**" means any person who, or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 which has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who, or a pooled investment vehicle which becomes borrower of a asset reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance or who has raised funds through issue of debt securities;

13. Enforcement of security interest.—(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability

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to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Provided that—

(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such

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representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

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(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

(5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.

(5C) The provisions of section 9 of the Banking Regulation Act, 1949 shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).

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(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this

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sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

(9) Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of] financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956:

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot

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be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimate dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measured specifies in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice

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referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

17. Application against measures to recover secured debts.—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

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(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(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; 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.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal,

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shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.

34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Analysis of the Statutory Provisions:

10. A plain reading of Section 2(f) of the SARFAESI Act clarifies the meaning of the term "borrower". The provision makes it clear that not

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only the principal debtor, but also any person who has given a guarantee or has created a mortgage or pledge as security for financial assistance granted by a bank or financial institution, falls within the definition of a borrower.

10.1 Section 13 of the Act empowers banks and financial institutions to enforce the security interest created in their favour without the intervention of any court or tribunal. However, the exercise of such power is subject to compliance with the mandatory procedure prescribed under the Act. Under Section 13(2), a statutory demand notice is required to be issued to the borrower, calling upon him to discharge his liability in full within a period of sixty days.

10.1.1 Section 13(3A) further provides that if, upon receipt of such notice, the borrower makes any representation or raises any objection, the secured creditor is duty-bound to consider the same. If the secured creditor finds the representation or objection to be unacceptable, reasons for such non-acceptance are required to be communicated to the borrower within the stipulated period.

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10.1.2 Upon completion of the above process, Section 13(4) authorises the secured creditor to take recourse to one or more of the measures specified therein for enforcement of the security interest.

10.2 Section 17 provides a statutory remedy to any person, including the borrower, who is aggrieved by any of the measures taken by the secured creditor under Section 13(4). Such person is entitled to approach the learned Debt Recovery Tribunal having jurisdiction within forty-five days from the date on which such measures are taken.

10.2.1 As per Section 17(2), the learned DRT is required to examine whether the measures taken by the secured creditor under Section 13(4) are in accordance with the provisions of the Act and the Rules framed thereunder. Further, under Section 17(3), if the learned DRT, upon consideration of the facts, circumstances and evidence on record, comes to the conclusion that the measures taken are not in conformity with the provisions of the Act, it is empowered to declare such measures invalid and to restore possession of the secured asset or management thereof, as the case may be.

10.3 Section 34 of the Act expressly bars the

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jurisdiction of the Civil Court in respect of any matter which the learned DRT or the Appellate Tribunal is empowered to determine under the Act. The provision further mandates that no injunction shall be granted by any court or authority in respect of any action taken or proposed to be taken under the powers conferred by the SARFAESI Act, 2002 or under the RDDB Act.

11. For the purpose of answering the aforesaid questions, this Court deems it appropriate to note certain relevant and undisputed facts of the case, which are as under:

(i) The appellant-plaintiff is a corporate guarantor of M/s. Satsang Infrabuild Private Limited, to whom the State Bank of India has extended financial assistance amounting to Rs.16.50 crores.

(ii) In its capacity as a corporate guarantor, the appellant-plaintiff executed a corporate guarantee agreement in favour of the Bank and thereafter executed a mortgage deed creating a security interest over its properties. It is an admitted position that in Civil Suit No.778 of 2016, the plaintiff has challenged only the mortgage deed and has neither disputed nor challenged the corporate guarantee.

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(iii) The Bank instituted proceedings under Section 19 of the RDDB Act before the learned Debt Recovery Tribunal for recovery of its dues, wherein the learned DRT passed an interim order dated 12.01.2016 against the appellant-plaintiff. The said order has not been challenged by the appellant-plaintiff.

(iv) On 11.04.2016, the appellant-plaintiff instituted Civil Suit No.778 of 2016 along with an application for injunction against the Bank and others. Significantly, the plaint does not disclose the pendency of the proceedings under Section 19 of the RDDB Act.

(v) On 31.12.2016, the Bank filed its written statement in the suit as well as in the injunction application, raising a preliminary objection regarding maintainability of the suit in view of Sections 34 and 17 of the SARFAESI Act, 2002. Thereafter, for a continuous period of about nine years, the appellant-plaintiff did not effectively pursue the injunction application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, and allowed the same to remain pending.

(vi) On 03.01.2025, the Bank initiated proceedings under the SARFAESI Act by issuing a

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notice under Section 13(2) to the borrower and the corporate guarantor. On 15.03.2025, Plaintiff No.2 responded to the said notice. The Bank, by its communication dated 20.03.2025, conveyed the reasons for not accepting the objections raised. Thereafter, on 14.05.2025, the Bank filed an application under Section 14 of the SARFAESI Act, being Criminal Miscellaneous Application No.5169 of 2025, seeking assistance for enforcement of the security interest. The competent Court, by order dated 18.07.2025, allowed the application and permitted the Bank, inter alia, to take possession of the secured assets.

(vii) Pursuant to the said order, the Court Commissioner issued notice for taking possession of the secured assets, whereupon the appellant-plaintiff pressed into service the pending injunction application in the civil suit.

12. In view of the aforesaid factual background, this Court now proceeds to decide the points for determination framed hereinabove.

12.1 With regard to Point for Determination No.(i), on a careful examination of the record, it clearly emerges that the appellant-plaintiff is a corporate guarantor by virtue of a corporate guarantee agreement, which has admittedly not

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been disputed or challenged. In light of Section 2(f) of the SARFAESI Act, the appellant squarely falls within the definition of a "borrower". Once the appellant is treated as a borrower, any grievance relating to the measures taken under the SARFAESI Act, 2002 is ordinarily required to be adjudicated by the learned Debt Recovery Tribunal.

12.1.1 A perusal of the plaint shows that the principal challenge is to the mortgage deed by which the security interest has been created. Therefore, while considering the prayer for interim relief under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, the foremost issue that requires consideration is whether the Civil Court has jurisdiction to grant such relief, as the question of jurisdiction goes to the very root of the matter.

12.1.2 In the present case, the issue of jurisdiction was raised before the learned trial court and was dealt with by placing reliance on the decision of the Hon'ble Supreme Court in the case of **Prabha Jain (supra)**. This Court has, therefore, examined the said decision in detail. On a careful reading, it is evident that in **Prabha Jain (supra)**, the principal relief sought

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was for setting aside a sale deed alleged to be fraudulent. The subsequent prayers related to the mortgage created thereafter and recovery of possession. In that factual background, the Hon'ble Supreme Court held that the dispute, being primarily one of civil rights arising out of an alleged fraudulent sale, fell within the jurisdiction of the Civil Court. Significantly, in that case, possession had already been taken and transferred to a third party under the SARFAESI proceedings, and there was no direct challenge to the statutory measures taken under the SARFAESI Act.

12.1.3 The facts of the present case stand on an entirely different footing. Here, the appellant himself is a borrower and is facing proceedings not only under the RDDB Act but also under the SARFAESI Act. Statutory notice under Section 13(2) has been served, objections have been considered and rejected, and an order under Section 14 of the SARFAESI Act has already been passed against the appellant. Pursuant thereto, the Bank is entitled to take possession of the secured asset for enforcement of its security interest.

12.1.4 Though allegations of fraud and collusion

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have been pleaded, the substance of the suit is a challenge to the mortgage deed and the security interest created in favour of the Bank. Grant of injunction in such circumstances would, in effect, amount to staying the operation and implementation of the order passed under Section 14 of the SARFAESI Act. Such an injunction would directly run contrary to the express bar contained in Section 34 of the SARFAESI Act, which prohibits Civil Courts from granting injunctions in respect of actions taken or to be taken under the Act.

12.1.5 To further strengthen this conclusion, it is pertinent to note that the SARFAESI Act provides a complete and efficacious statutory remedy under Section 17 before the learned DRT, where even the validity of the security interest and the measures adopted by the secured creditor can be examined. Permitting parallel proceedings before the Civil Court at the interim stage would defeat the legislative intent and render the statutory bar under Section 34 otiose.

12.1.6 In view of the above discussion, this Court is of the considered opinion that the learned trial court could not have granted an injunction which would effectively stay the

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measures taken under Section 14 of the SARFAESI Act, 2002.

I answer the question accordingly.

12.2 With regard to Point for Determination No.(ii), a reading of Section 17 of the SARFAESI Act, 2002 makes it clear that the learned Debt Recovery Tribunal is vested with full authority to adjudicate any grievance raised by a person, including a borrower, who is aggrieved by any of the measures adopted by the secured creditor under the Act. The provisions of Sections 17(2) and 17(3) further reinforce that the learned DRT has ample jurisdiction to examine the validity and propriety of the measures taken by the secured creditor.

12.2.1 In particular, while considering the challenge to any measure, the learned DRT is competent to examine the validity of the security interest itself. This includes assessing whether the deed creating the security interest, such as a mortgage deed, was validly executed and enforceable. In the present case, the appellants' main contention is that the mortgage deed was executed without a statutory resolution of the company as required under Section 179 of the Companies Act. Such a challenge directly goes to

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the validity of the security interest and falls squarely within the jurisdiction of the learned DRT under Section 17. The DRT has full power to declare whether the security interest is legally enforceable or otherwise for the purposes of recovery under SARFAESI proceedings.

12.2.2 At this stage, it is important to note the explicit bar contained in Section 34 of the Act, which clearly stipulates that the Civil Court has no jurisdiction to entertain any suit or proceedings in respect of matters which the learned DRT or the Appellate Tribunal is empowered to determine. Section 34 also prohibits the Civil Court from granting any injunction against actions taken, or proposed to be taken, under the powers conferred by the SARFAESI Act or the RDDB Act.

12.2.3 In the present case, once proceedings under the SARFAESI Act were initiated and an order under Section 14 was passed permitting the Bank to take possession of the secured property, any attempt to seek an injunction in the Civil Court would effectively frustrate the statutory proceedings and would run contrary to the purpose, scope, and intent of the Act.

12.2.4 In my considered view, the learned DRT has

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full power to examine all questions that touch upon the validity of the mortgage deed and the security interest. While exercising powers under Section 17, the DRT can scrutinize, *inter alia*:

- whether the mortgage deed was legally executed;
- whether the borrower or corporate guarantor had the necessary authority to create the security;
- whether the deed is void or *non est* in law due to lack of statutory compliance;
- whether the property in question is exempted from being mortgaged;
- whether registration of the deed was mandatory and has been properly complied with; and
- generally, whether the security interest is valid, enforceable, and capable of being recovered under SARFAESI proceedings.

12.2.5 All these aspects are incidental and necessary to determine the legality of the SARFAESI action, and the learned DRT is fully empowered to decide such matters. Civil Courts

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cannot, under Section 34, assume jurisdiction over such disputes.

I answer the question accordingly.

Observations on Contentions of the Appellant:

13. With regard to the contention that there was no resolution of the company authorising the creation of the mortgage or empowering any person to execute the same under Section 179 of the Companies Act, it is observed that this issue primarily goes to the validity and enforceability of the security interest itself. As discussed hereinabove, such a question falls squarely within the jurisdiction of the learned DRT under Section 17 of the SARFAESI Act, 2002. Once the appellant is treated as a borrower under Section 2(f) of the Act, he cannot invoke the jurisdiction of the Civil Court in a manner which would directly or indirectly interfere with the statutory proceedings under the RDDB Act or the SARFAESI Act. Any dispute regarding the validity of the mortgage deed or the creation of the security interest can and ought to be raised before the learned DRT under Section 17, which has exclusive competence to adjudicate the matter.

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13.1 With respect to the contention regarding the finding of the learned trial court that a Director is the owner of the company and competent to deal with its assets, it is noted that although the reasoning adopted by the trial court may be erroneous, the final conclusion that the Civil Court cannot grant relief in the present circumstances, however, is correct. It is a well-settled principle of law that where the reasoning is flawed but the ultimate conclusion is correct, an appellate court can substitute its own reasoning to sustain the decision by applying the principle of "right conclusion, wrong reasoning". In the present case, while the trial court's findings regarding the ownership and competence of the Director are legally incorrect, a holistic examination of the record shows that, in view of Section 34 of the SARFAESI Act, the Civil Court prima facie lacks jurisdiction. This Court, therefore, upholds the final outcome of the trial court's order while disapproving the erroneous reasoning and findings.

13.2 Regarding the contention that the mortgage deed was executed fraudulently or in collusion, and that therefore the Civil Court has jurisdiction to adjudicate the dispute, this contention is not acceptable in the facts of the

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present case. The appellant, being a corporate guarantor within the definition of "borrower", chose not to appear before the learned DRT in the proceedings under the RDDB Act, nor did he challenge the interim order passed therein. Furthermore, the civil suit along with the interim injunction application was filed in 2016 but was allowed to remain dormant for nearly nine years, and was pressed into service only after the Bank initiated proceedings under the SARFAESI Act and obtained an order under Section 14.

13.2.1 Once the possession order under Section 14 has been passed, any injunction granted by the Civil Court would, in effect, amount to staying the statutory proceedings under the SARFAESI Act, which is expressly barred under Section 34. Allowing the Civil Court to entertain such a suit under the guise of allegations of fraud or collusion would open the door for unscrupulous borrowers to evade recovery proceedings through clever drafting and manipulation of legal pleadings.

13.2.2 In the circumstances, mere allegations of fraud or collusion cannot confer jurisdiction on the Civil Court to interfere with the statutory measures undertaken by the secured creditor under

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the SARFAESI Act. The proper forum for raising such challenges is the learned DRT, which has comprehensive powers under Section 17 to examine the legality, validity, and enforceability of the security interest, including any alleged irregularities in the execution of the mortgage deed.

14. For the foregoing reasons, the present Appeal From Order is devoid of any merits and thereby deserves to be dismissed and is dismissed accordingly with no order as to costs. Civil Application also stands disposed of accordingly.

(NIRAL R. MEHTA,J)

ANUP