**IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD**

**Appeal Dy. No. 51/2021**

1. Master Anurag Kumar, S/o Baban Kumar, Aged about 10 yrs, R/o Sultanpur, P.O.-Danapur Cantonment, P.S.-Danapur, Distt. Patna-801503.
2. Master Gyan, S/o Baban Kumar, Aged about 03 yrs, R/o Sultanpur, P.O.-Danapur Cantonment, P.S.-Danapur, Distt. Patna-801503.
3. Ms. Kangna Kushwaha, D/o Baban Kumar, Aged about 15 yrs, R/o Sultanpur, P.O.-Danapur Cantonment, P.S.-Danapur, Distt. Patna-801503.
4. Narayani Kumari, D/o Baban Kumar, Aged about 5 yrs, R/o Sultanpur, P.O.-Danapur Cantonment, P.S.-Danapur, Distt. Patna-801503.
5. Mamta Devi, W/o Baban Kumar, Aged about 33 yrs, R/o Sultanpur, P.O.-Danapur Cantonment, P.S.-Danapur, Distt. Patna-801503.

..............................................................................Appellants

Versus

1. Authorized Officer, Canara Bank, SME Branch, Ashiana Digha Road, Distt. Patna-800014.
2. Shri Baban Kumar, S/o Late Nand Kishore Prasad, R/o Sultanpur, P.O.-Danapur Cantonment, P.S.-Danapur, Distt-Patna-801503.
3. Basdeo Prasad, S/o Jadish Prasad, R/o 84, Shah Toli, Gola Road, P.O. & P.S.-Danapur, Distt-Patna-801503 (Auction Purchaser).
4. Jai Shankar, S/o Jawahar Rai, R/o H.No. 64, Samasthu, Sthan, Bihta, P.O. & P.S. Bihta, Distt-Patna-801103 (Auction Purchaser).
5. Sharma Bhagat, S/o Late Ramapati Bhagat, R/o Village Gosain Tola, near DAV Public School, P.S. Danapur, Cantt., Patna.
6. Sunaina Devi, W/o Late Raghunath Bhandari, R/o Village Gosain Tola, near DAV Public School, P.S. Danapur, Cantt., Patna.
7. Rani Kumari, W/o Rajesh Kumar, R/o Kanhaiya Nagar, Khoja Imli, Phulwari Sharif, Patna.
8. Kalindi Prabha, W/o Brij Kishore Narayan, R/o Bukaro, Jharkhand.
9. Sunil Kumar, S/o Late Ishwar Chaudhary, R/o Amber Sherwana, Bihar Sharif, Nalanda.

..............................................................................Respondents

**Advocates, who appeared in this case:**

| | |
|---|---|
| For the appellants | Shri Ashok Pandey, Advocate |
| For the respondent-Bank | Shri S. K. Srivastava, Advocate |

| | |
|---|---|
| For the respondent no. 4-auction purchaser | Shri M. K. Srivastava, Advocate |
| For the respondents no. 7 to to 9 | Shri S. K. Gupta, Advocate |
| For respondents no. 2, 3, 5 & 6 | Ex-parte |

## JUDGMENT
**Date of Pronouncement:29.01.2026**

**JUSTICE R. D. KHARE, CHAIRPERSON**

1. The present appeal has been preferred by the appellants under section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "The SARFAESI Act") against the judgment and order dated 05.01.2021, whereby the S.A. No. 256/2019 filed by the appellants has been dismissed by the Tribunal below.

2. Brief facts of the matter are that one M/s Aryan Food and Agro Enterprises Pvt. Ltd. was granted certain credit facilities by the respondent no. 1-Bank through its directors including the respondent no. 2-Baban Kumar, who is father of appellants no. 1 to 4 and husband of appellant no. 5. In order to secure the said facilities, the respondent no. 2-Baban Kumar created equitable mortgage over his property by depositing original title deed with the Bank. Since the borrowers did not maintain the financial discipline, therefore, the account was classified as NPA on 14.08.2019 and a demand notice u/s 13(2) of the SARFAESI Act was issued on 19.08.2019 for a sum of Rs.1,55,16,828/-. Since the borrowers did not pay any heed to the said demand, therefore, possession notice u/s 13(4) of the said Act was issued and symbolic possession of the property was taken by the Bank.

3. The appellants challenged the possession notice before the Tribunal below by filing the S.A. No. 256/2019. Thereafter, the respondent-Bank issued sale notice on 19.12.2019 scheduling the auction of the property in question on 31.01.2020, which was challenged by the appellants by filing I.A. No. 14/2020, which was disposed of vide order dated 31.01.2020 being infructuous. However, the respondent-Bank filed an I.A. No. 44/2020 for restoring the I.A. No. 14/2020 to its original number by recalling the order dated 31.01.2020.

4. It appears that the respondent-Bank issued another auction sale notice dated 14.07.2020 scheduling the auction of the property pertaining to lot no. 1 on 28.08.2020. Another application being I.A. No. 65/2020 was also filed by the appellants seeking interim relief against the said auction. The earlier sale notice dated 19.12.2019 was published for sale of two lots of properties, but the lot no. 2 property was sold and the lot no. 1 was sold in the auction dated 28.08.2020. As per record, the properties as scheduled in these auctions have been sold and sale certificate was issued and physical possession has also been handed over to the auction purchasers.

5. The Tribunal below vide order impugned has dismissed the S.A. filed by the appellants holding that the action taken by the Bank with regard to its recovery is in accordance with law and there is no jurisdiction of the Tribunal below to decide the issue of partition title between the parties. Being aggrieved by the said order, the present appeal has been filed by the appellants.

6. Learned counsel for the appellants submitted that the respondent no. 2-Baban Kumar, who is father of the appellants no. 1 to 4 and husband of appellant no.5, is the Karta of the Hindu Undivided Family and custodian of the estate of the Hindu undivided family. It was further contended that in the year 2015, the respondent no. 2 under undue influence had executed a registered mortgage deed dated 10.05.2015 behind back of the appellants in favour of the respondent no. 1-Bank pertaining to the immovable property to secure the financial assistance in favour of M/s Aryan Foods and Agro Enterprises Pvt. Ltd., in which he was one of the directors. It was also contended that the appellants came to know about the said mortgage, when the respondent-Bank affixed the possession notice dated 07.11.2019 on one of the walls of the premises under mortgage and thereafter, they filed the present S.A. It was further contended that consequent upon issuance of the notice, the respondents appeared through their advocate before the Registrar on 14.01.2020 and filed his vakalatnama, but he did not file any written statement and the next date was fixed for 31.01.2020. It was further contended that despite putting appearance, the respondent-Bank published the auction notice dated 19.12.2019 in the newspapers on 20.12.2019 scheduling the auction on 31.01.2020, which was challenged by the appellants in the pending S.A. by filing I.A. No. 14 of 2020, which was dismissed as having become infructuous on the basis of statement of the Bank that no bid has been received, but the respondent no. 1-Bank after 49 days filed an I.A. No. 44/2020 stating therein that the property of lot no. 1 was sold, which could not be done as there was no selectivity of one of the properties because both the properties were involved in

the said auction notice. It was further contended that the mortgaged property was belonging to the HUF comprising of the respondent no. 2 and the appellants. Therefore, the respondent no. 2 as karta of the HUF could not have mortgaged, hence, the mortgage itself is bad in law.

7. Learned counsel for the appellants further submitted that the ground for rejection of appeal taken by the Tribunal below on the ground of disputing the mortgage after 5 years is unjustified and illegal. It was further contended that the Tribunal below has failed to consider that the mortgage deed was executed by the incompetent person i.e. respondent no. 2. It was also contended that the Tribunal below has also not considered that none of the appellants were the witness in execution of the mortgage deed by the respondent no. 2, hence the same was beyond the knowledge of the appellants.

8. In the last, learned counsel for the appellant submitted that possession notice was affixed only on one of the two secured assets. It was thus contended that the order impugned passed by the Tribunal below is otherwise bad in fact and in law, thus the same is liable to be quashed.

9. Learned counsel for the respondent-Bank submitted that the respondent no. 2 is also one of the directors of the borrower company and creation of simple mortgage was also registered by the Bank with the CERSAI. It was further contended that the respondent no. 2 has never raised any objection in respect of the SARFAESI proceedings of the Bank from the date of issue of demand notice till e-auction rather consented to the auction sale by receiving the surplus money realized by the Bank from auction sale of the property in question. It was thus

contended that the appellants being neither borrower nor guarantor or mortgager have no authority to challenge any of the measures taken by the bank under the SARFAESI Act. It was also contended that the appellant no. 5 is not coparcener/co-sharer and the appellants no. 1 to 4 being minors were not eligible for giving their consent, so the question was there for the respondent no. 2 to seek any consent from the appellants while creating the mortgage. It was further contended that the respondent no. 2 is not only the guarantor and mortgager in the loan accounts in question, but he was one of the directors of the company, to which the loan was granted.

10. It was also contended that as per Section 8 of the Hindu Succession Act, 1986, the property of the father, who dies in intestate devolves on his son in his individual capacity and not as karta of his own family. It was thus contended that the contention of the appellants that the respondent no. 2 was not competent to create the mortgage over the property in question is not sustainable.

11. It was lastly contended that since the appellants are neither borrowers nor guarantors or mortgagers, therefore, they have no right to challenge any of the proceedings initiated by the Bank under the SARFAESI Act. It was, therefore, prayed that the appeal filed by the appellants may be dismissed with costs.

12. Learned counsel for the appearing respondents-auction purchasers has adopted the arguments as advanced by the learned counsel for the respondent-Bank adding further that he is bonafide purchaser of the property in question and after depositing the entire sale consideration, the sale certificate was issued and the possession was also handed

over to the auction purchasers by the Bank. It was thus contended that the sale of the property in question cannot be disturbed at this stage. It was, therefore, prayed that the appeal filed by the appellants may be dismissed with heavy costs.

13. It appears that despite service of notice, no one had appeared on behalf of the other respondents, therefore, the present appeal is being decided ex-parte against them.

14. Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the appellants are neither borrowers nor guarantors or mortgagers to the credit facilities granted by the Bank in favour of M/s Aryan Foods and Agro Enterprises Pvt. Ltd. through its directors including the respondent no. 2, who is father of the appellants no. 1 to 4 and husband of appellant no. 5.

15. It is to be seen that the property in question previously belong to Charitar Mahto, who died in the year 2012 and Sujata Devi, the mother of the respondent no. 2 died in the year 2014, both leaving behind them two sons namely Bhagwat Prasad and Nand Kishore Prasad. Thereafter, a partition took place between them on 19.08.1994, in which the said land came in the share of Nand Kishore Prasad. Later on, Nand Kishore Prasad also died leaving behind him only the respondent no. 2 and thereafter, the said property was mutated in the name of respondent no. 2. As such the respondent no. 2 has become absolute and exclusive owner of the property as mentioned above. Hence, it cannot be said that the respondent no. 2 was not competent to create the mortgage over the said property in favour of the respondent no. 1-Bank.

16. So far as the contention of the appellant that the property in question was an ancestral property, therefore, the legal heirs of the respondent no. 2-mortgagor were also co-sharer of the same and it could not be mortgaged with the Bank, is not tenable. The appellants have already filed a Title Partition Suit No. 87/2018 before the Sub-Judge-1, Danapur, Patna against the respondent no. 2 on 29.10.2018, which is still pending for final adjudication, as the Tribunal has no power to decide the title of the party. The Tribunal has only power under the SARFAESI Act to see, as to whether any measures taken under Section 13(4) of the SARFAESI Act are in accordance with the provisions of the Act and Rules made thereunder or not? Therefore, this Tribunal is unable to express any opinion on the said issue.

17. As per record and pleadings of the case, the respondent no. 2 is alive and he being an absolute owner of the property in question had executed the registered mortgage over his property in favour of the Bank, as the fact that the appellants were nowhere party in the loan in question, therefore, there was no occasion for the respondent no. 1-Bank to serve the notices upon the appellants, except the respondent no. 2. Thus the contention of the appellants that no notice was served upon them is not tenable, because in the said facts and circumstances of the case, the appellants cannot be said to have any locus to challenge any of the proceedings initiated by the Bank under the SARFAESI Act for recovery of its dues. Thus there is no infirmity or illegality in the order impugned passed by the Tribunal below.

18. In view of the discussions as held above, the order impugned does not call for any interference by this

Tribunal. Consequently, the appeal filed by the appellants is dismissed with no order as to costs.

19. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.

**CHAIRPERSON**

VN GIRI,PS