IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2851 OF 2026

Aloukik Construwell LLP, through its
Authorized Representative … Petitioner
vs.
Pradeep Gordhandas Vora & Anr. … Respondents

WITH
WRIT PETITION NO. 3233 OF 2026

HDFC Bank Limited, through its
Authorized Representative Trupti Surve … Petitioner
vs.
Pradeep Gordhandas Vora & Anr. … Respondents

Mr. Ankit Lohia a/w Ms. Saloni Sulakhe and Ms. Krushika Udeshi, i/b. Dhaval Vussonji and Associates for petitioner in WP/2851/2026 and for respondent No. 2 in WP/3233/2026.

Mr. Charles DeSouza a/w Mr. Rupa Sawangikar, Ms. Pragati Gothi, Ms. Manaswi Agrawal, i/b. Meraki Chambers for petitioner in WP/3233/2026 and for respondent No. 2 in WP/2851/2026.

Mr. Girish Godbole, Senior Advocate, a/w Mr. S. S. Kanetkar, Ms. Bharti Bhansali and Farzeen Pardiwala, i/b. FZB & Associates for the respondent No. 1 in both petitions.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.
Reserved on : 10th APRIL, 2026
Pronounced on : 08th JUNE, 2026

Judgment (*Per Manish Pitale, J.)* :

. An auction purchaser and a bank (secured creditor) have filed these two writ petitions, challenging orders dated 18.11.2025 and

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08.12.2025 passed by the Debts Recovery Appellate Tribunal, Mumbai (DRAT). By order dated 18.11.2025, the DRAT, while adjourning hearing on an application for waiver of pre-deposit filed by respondent-borrower, directed the parties to maintain *status quo*. By order dated 08.12.2025, the DRAT allowed the application for waiver of pre-deposit and directed the appeal filed by the respondent-borrower and the application for stay, to be registered, for further consideration. According to the petitioners, both the impugned orders are not sustainable.

2. The respondent - borrower i.e. proprietor of M/s. Vora Enterprises availed credit facilities from the petitioner-bank. These facilities were secured by mortgaging a flat and a piece of land, forming the secured assets. On 01.05.2020, the account of the respondent - borrower was classified as Non-Performing Asset (NPA). In this backdrop, on 04.09.2020, the petitioner - bank issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the said Act').

3. On 16.12.2020, the respondent - borrower filed Securitisation Application No. 52 of 2020 before the Debts Recovery Tribunal-I, Mumbai (DRT-I). An interim application was also filed, but the same was rejected by DRT-I by an order dated 30.11.2021. The respondent - borrower filed Writ Petition No. 1610 of 2022 before this Court. On 02.12.2021, this Court directed the respondent - borrower to pay ₹ 1 crore to the petitioner - bank by 04.12.2021 and further directed that in the meanwhile, taking over of possession of the mortgaged land

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would be deferred, although the petitioner - bank was permitted to take physical possession of the mortgaged flat. The respondent - borrower complied with the said condition of payment of ₹ 1 crore. But, no further steps were taken for hearing of the writ petition or for payment of further dues and therefore, on 15.03.2022, the said writ petition was disposed of with liberty to the respondent - borrower to approach the DRAT. Ad-interim relief granted by this Court on 02.12.2021 was continued only for a period of two weeks.

4. On 28.03.2022, the respondent - borrower filed Miscellaneous Appeal No. 15 of 2022 before the DRAT to challenge the aforesaid order dated 30.11.2021 passed by DRT-I. On 06.04.2022, the DRAT directed respondent - borrower to make pre-deposit in two installments, as per proviso to Section 18(1) of the said Act. These deposits were made and thereupon, the DRAT, on 15.07.2022, passed an order, remanding the matter back to the DRT-I for hearing on the securitisation application itself on merits and it was directed to dispose of the same within a period of two months. Interim stay granted by order dated 06.04.2022 was continued till final disposal of the said application.

5. On 12.05.2023, the DRT-I dismissed the said securitisation application on merits by a reasoned order. The respondent - borrower filed Appeal (D) No. 950 of 2023 on 10.06.2023 before the DRAT. By order dated 07.12.2023, the DRAT directed the respondent – borrower to deposit an amount of ₹ 12 crores as pre-deposit, under proviso to Section 18 of the said Act. Since the respondent - borrower failed to comply with the said direction, the aforementioned appeal was

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dismissed. Thereafter, on 07.01.2025, the petitioner - bank took possession of the mortgaged land, in accordance with an order passed by a Competent Magistrate, under Section 14 of the said Act. In April 2025, the respondent - borrower approached the DRAT for withdrawal/refund of the amount deposited in Miscellaneous Appeal No. 15 of 2022. Although, the petitioner - bank opposed the said prayer, on 04.06.2025, the DRAT allowed the respondent - borrower to withdraw the said amount.

6. On 09.05.2025, the petitioner - bank issued an e-auction notice in respect of the mortgaged land and it was served upon the borrower on 10.05.2025. The auction was held on 19.06.2025, wherein the petitioner - auction purchaser was the successful bidder. At this point in time, on 26.06.2025, the respondent - borrower filed its second Securitisation application, this time before the DRT-II bearing Securitisation Application (D) No. 1068 of 2025. Since the said application was filed beyond the period of limitation, it was accompanied by an application, bearing Miscellaneous Application No. 81 of 2025, for condonation of delay. On 15.09.2025, DRT-II dismissed the application for condonation of delay. On 16.09.2025, the petitioner - auction purchaser deposited the entire bid amount with the petitioner-bank.

7. At this stage, on 22.09.2025, the respondent - borrower filed Writ Petition (Lodging) No. 30370 of 2025 before this Court, to challenge the order dated 15.09.2025 passed by DRT-II, rejecting the application for condonation of delay. On 26.09.2025, the respondent - borrower withdrew the said writ petition and all rights and

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contentions of the parties were kept open. In the meantime, on 23.09.2025, the petitioner - bank issued sale certificate in favour of the petitioner - auction purchaser in respect of the mortgaged land and it was duly registered in the office of the Sub-Registrar. On 01.10.2025, the petitioner - bank handed over physical possession of the mortgaged land to the petitioner - auction purchaser and addressed communications to the respondent - borrower to remove its movable assets lying in the mortgaged land and also intimated it that the petitioner - bank intended to refund the surplus sale proceeds upon the respondent - borrower accepting the sale. As a matter of fact, the petitioner - bank deposited the surplus sale proceeds in a fixed deposit and intimated the respondent - borrower about the same.

8. At this stage, on 14.10.2025, the respondent-borrower filed Appeal (D) No. 1711 of 2025 before the DRAT, to challenge the said order dated 15.09.2025 passed by the DRT-II, dismissing the application for condonation of delay and consequently, the securitisation application of the respondent - borrower. The respondent - borrower filed Interim Application No. 718 of 2025 for waiver of pre-deposit and also Interim Application (D) No. 1712 of 2025 for interim relief. It is relevant to note that on 04.11.2025, the respondent-borrower filed Securitisation Application No. 491 of 2025 before the DRT-II, for setting aside the sale certificate. The same is pending.

9. On 18.11.2025, preliminary arguments were heard on the said waiver application when the DRAT passed an order, directing the parties to maintain *status quo*. The petitioners have impugned the said

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order, particularly on the ground that it was passed in an application seeking waiver, which could not have been done and secondly, that there was no discussion in the said order justifying the order of *status quo*.

10. The waiver application was heard on 08.12.2025, when the DRAT allowed the same and granted complete waiver to the respondent - borrower. As a consequence, it was directed that the appeal shall be registered. It is a matter of record that thereafter, the proceedings were listed on various dates before the DRAT, when the ad-interim order of *status quo* was continued. The petitioners are seriously aggrieved by the aforesaid two impugned orders dated 18.11.2025 and 08.12.2025.

11. Mr. Ankit Lohia, the learned counsel appearing for the petitioner - auction purchaser submitted that the DRAT erred in allowing the waiver application by relying upon judgment of this Court in the case of *M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another*, (**order dated 03.09.2024 passed in Writ Petition No. 12028 of 2022**), for the reason that in the appeal before the DRAT, the respondent - borrower had prayed for substantial reliefs on merits, apart from challenging dismissal of the application for condonation of delay by DRT-II.

12. In that context, attention of this Court was invited to the prayers in the pending appeal, which included direction to restrain the petitioners from taking further steps upon confirmation of sale, restraining the petitioner - auction purchaser from creating third party rights in the subject land and also, a challenge was raised with respect

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to the sale certificate dated 23.09.2025. It was submitted that in the face of such substantive prayers made in the appeal before the DRAT, the respondent - borrower could not be permitted to rely upon the order passed by this Court in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*). In the said case, this Court was concerned with an appeal filed before the DRAT, which *simplicitor* challenged dismissal of application for condonation of delay by the concerned DRT.

13. It was further submitted that the approach adopted by the DRAT is erroneous, in the light of the recent judgment of Division Bench of this Court in the case of *M/s. Sunshine Builders and Developers vs. HDFC Bank Limited and others*, (**judgment and order dated 04.02.2026 passed in Writ Petition No. 3929 of 2024**). It was submitted that in the said judgment, the relevant proviso to Section 18 of the said Act, pertaining to the requirement of pre-deposit, was interpreted in detail and after referring to judgments of the Supreme Court and this Court, it was held that any order of the DRT, when made subject matter of challenge before the DRAT at the behest of a borrower, required pre-deposit in terms of the said proviso. It was submitted that in the said recent judgement, even the order passed in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*) was referred to in the discussion. On this basis, it was submitted that in the facts of the present case, the waiver application ought not to have been allowed.

14. It was further submitted that thereafter, this Court, in a recent order passed in the case of *M/s. D Corp Agro Foods Pvt. Ltd. and*

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another vs. Bank of Baroda and others, (**order dated 27.03.2026 passed in Writ Petition No. 10869 of 2025**), followed the position of law clarified by the said judgment of this Court in the case of **M/s. Sunshine Builders and Developers vs. HDFC Bank Limited and others** (*supra*).

15. It was further submitted that the petitioner - auction purchaser clearly has locus to maintain challenge against the impugned orders, for the reason that the sale certificate is already issued in its favour, which has been registered and the said petitioner is also put in physical possession of the subject land. Any order passed in the proceedings before the DRAT, would affect the interest of the said petitioner and therefore, it is entitled to maintain the challenge in the present writ petition.

16. It was further submitted that the respondent - borrower cannot rely upon orders passed by the DRAT subsequent to 18.11.2025, merely continuing the ad-interim order, for the reason that if the impugned order dated 18.11.2025 is set aside, the effect of the subsequent orders merely continuing the ad-interim order, would stand nullified. It was submitted that the contentions raised on behalf of the respondent - borrower, as regards alleged fraud and collusion between the petitioner - bank and petitioner - auction purchaser, are matters to be agitated before the DRAT, if at all, and therefore, the said contentions do not deserve any consideration before this Court.

17. It was emphasized that while passing the order dated 18.11.2025, the DRAT did not make reference to any of the three parameters for considering interim relief i.e. *prima facie* case, balance

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of convenience and grave and irreparable loss. This was apart from the fact that the order of *status quo* was passed in the waiver application and not in the application seeking interim relief. On this basis, it was submitted that both the impugned orders deserve to be set aside and the respondent - borrower has to be put to terms with regard to pre-deposit, as per the mandatory proviso to Section 18 of the said Act.

18. Mr. Charles DeSouza, learned counsel appearing for the petitioner – HDFC Bank in Writ Petition No.3233 of 2023 supported the submissions made by the learned counsel appearing for the petitioner in Writ Petition No.2851 of 2026. Additionally, he submitted that the order of this Court in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*), is rendered *per incuriam*, as it was pronounced ignoring the binding precedents of the Supreme Court and a Division Bench of this Court on the point in issue. It was submitted that although the Division Bench of this Court, which rendered the order in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*), did refer to the relevant provision i.e. Section 18 of the said Act, the judgements rendered by the Supreme Court and a Division Bench of this Court were not brought to the notice of the said Division Bench.

19. In this context, reference was made to the judgement of the Supreme Court in the case of *Narayan Chandra Ghosh vs. UCO Bank and others*, **(2011) 4 SCC 548**. It was submitted that the Supreme Court categorically held that the condition of pre-deposit, under

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proviso to Section 18(1) of the said Act was mandatory and therefore, a complete waiver was beyond the provisions of the said Act and the DRAT would not have any power to grant such complete waiver. It was emphasized that the Supreme Court, in the case of *Union Bank of India vs. Rajat Infrastructure Private Limited and others*, **(2020) 3 SCC 770**, followed the aforesaid earlier judgement in the case of **Narayan Chandra Ghosh vs. UCO Bank and others** *(supra)*.

20. Much emphasis was placed on judgement of a Division Bench of this Court in the case of *Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs. Axis Bank, Mumbai* [**2011(1) Mh.L.J. 882**], particularly paragraph Nos.8 and 9 thereof. It was contended that in the said judgement, the Division Bench of this Court categorically held that where the amount of debt is yet to be determined by DRT and appeal is preferred before the DRAT, the condition of pre-deposit would continue to apply, as the borrower would be liable to deposit 50% of debt due from him, even when there is no determination by the DRT. This was based on the interpretation of plain language of Section 18(1) of the said Act.

21. It was submitted that in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*), the Division Bench of this Court referred to Section 18 of the said Act. But, no reference was made to the said binding precedents of the Supreme Court and Division Bench of this Court. Instead, reliance was placed on an order of a learned Single Judge of this Court in the case of *Dilawar Hakim Shah vs. Special Recovery Officer, Chiplun Urban Co-operative Bank Ltd. and others,* [**2006(3) Mh.L.J. 256**], in the

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context of a completely different provision i.e. Section 154 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the MCS Act).

22. It was submitted that sub-section (2A) of Section 154 of the MCS Act necessarily pertains to a situation, where the debt due from the borrower, was specifically determined in the form of recovery certificate issued by the Registrar under Section 101 or 154B-29 thereof. In contrast, under proviso to Section 18(1) of the said Act, the borrower is mandatorily required to deposit 50% of the amount due, as determined by DRT or as claimed by the secured creditor, whichever is less. This aspect was completely ignored by the Division Bench of this Court, while rendering its order in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*) and hence, the said order is rendered *per incuriam*.

23. It was further submitted that in any case, a Division Bench of this Court, in a recent judgement in the case of **M/s. Sunshine Builders and Developers vs. HDFC Bank Limited and others** (*supra*), considered the aforesaid provision i.e. Section 18 of the said Act in detail and upon detailed reasoning, rendered a finding that the words 'any order' used in Section 18(1) of the said Act included all orders without exception. It was brought to the notice of this Court that the said judgement was further followed in the aforesaid recent order of this Court in the case of **M/s. D Corp Agro Foods Pvt. Ltd. and another vs. Bank of Baroda and others** (*supra*). On this basis, it was submitted that the impugned order, allowing the application for waiver of pre-deposit, deserves to be set aside.

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24. It was further submitted that the recoveries made through sale by the petitioner – bank i.e. the secured creditor, cannot be considered for the statutory pre-deposit under Section 18(1) of the said Act, as laid down by the Supreme Court in its judgement in the case of *Sidha Neelkanth Paper Industries P. Ltd. and another vs. Prudent ARC Ltd. and others*, 2023 SCC OnLine SC 12. On this basis, it was submitted that even though the auction proceeding had been completed and the auction purchaser i.e. the petitioner in the companion petition had deposited the entire amount, with the sale certificate also being issued and registered, the same cannot be a factor while deciding the application filed by the respondent for waiver of pre-deposit under Section 18(1) of the said Act. On this basis, it was submitted that the writ petition deserves to be allowed.

25. On the other hand, Mr. Godbole, learned senior counsel appearing for the respondent – borrower in both the petitions submitted that no interference was warranted in the impugned orders. As regards the impugned order dated 18.11.2025, it was submitted that the petitioners are not justified in contending that the order of *status quo* was passed in the application for waiver of pre-deposit, for the reason that the record would show that the application for interim relief was also listed along with application for waiver of pre-deposit before the DRAT, when the impugned order dated 18.11.2025 was passed.

26. The learned senior counsel referred to the said impugned order and submitted that although brief, reasoning was indeed recorded in the said order before the direction of *status quo* was issued. It was not

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as if the said impugned order was bereft of any reasoning, while granting the direction of *status quo*. On this basis, it was submitted that the said order could be treated as an ad-interim order and that the DRAT could be directed to hear the parties on confirmation of the ad-interim order. On this basis, it was submitted that no interference is warranted in the impugned order dated 18.11.2025.

27. As regards the impugned order dated 08.12.2025, whereby DRAT allowed the application granting waiver of pre-deposit under Section 18(1) of the said Act, it was submitted that an existing precedent was duly followed by the DRAT. This Court, in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*), has clearly laid down that the requirement for depositing the amount as engrafted in the statute as a pre-condition, would not be applicable while dealing with an order rejecting an application for condonation of delay. Hence, no fault could be found with the said impugned order.

28. It was further submitted that the appeal filed by the respondent before the DRAT, challenged the order passed by the DRT, refusing to condone the delay and therefore, the only question for consideration before the DRAT in the pending appeal is, as to whether delay in approaching the DRT could have been condoned.

29. It was conceded that in the appeal memo filed before the DRAT, diverse prayers were made, apart from seeking quashing and setting aside of the order of DRT, refusing to condone the delay. But, such prayers could be ignored and the DRAT could certainly be directed to decide the appeal on the aforesaid question pertaining to condonation

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of delay, in an expeditious manner. It was submitted that even if the appeal was obviously to be restricted to the question of correctness or otherwise of the order of DRT, refusing to condone the delay, the respondent was clearly entitled to pursue its prayer for interim relief/*status quo*. On this basis, it was submitted that the petitions deserve to be dismissed.

30. It was further submitted that the despite the order of *status quo* granted on 18.11.2025, being subsequently continued on various dates and even on the last date of listing before the DRAT, none of the said orders have been challenged by the petitioners, thereby indicating the lacuna in the challenge raised in the writ petitions.

31. On the question of order of the Division Bench of this Court in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*) being *per incuriam*, it was submitted that the said contention is fallacious, for the reason that the judgements of the Supreme Court and the Division Bench of this Court relied upon by the petitioners, concerned interim orders passed by the DRT. None of the cases concerned a situation of disposal of application filed under Section 17 of the said Act, as a consequence of dismissal of application for condonation of delay. The argument of *per incuriam* could have been made only if the factual background in which the cases arose before the Supreme Court and the Division Bench of this Court, was similar/identical to the factual position in the present case.

32. Reliance was placed on judgement of the Supreme Court in the case of *Dr. Shah Faesal and others vs. Union of India and another*, **(2020) 4 SCC 1**, to contend that the argument of *per incuriam* cannot

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be entertained in a casual manner. It is an exception to the rule of precedent i.e. *stare decisis* and it is only within a narrow compass that the said principle can be invoked for ignoring precedents. On this basis, it was submitted that the writ petitions deserve to be dismissed.

33. We have considered the rival submissions in the light of the documents placed on record and the judgements brought to our notice. By the impugned order dated 08.12.2025, the DRAT allowed the application for waiver of pre-deposit filed by the respondent – borrower, primarily relying upon the order of the Division Bench of this Court in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*).

34. The petitioner in Writ Petition No.2851 of 2026 has challenged the same on the ground that the appeal filed before the DRAT not only seeks quashing and setting aside of the order passed by the DRT, refusing to condone the delay, but it also seeks further reliefs in the form of direction to restrain the petitioners from taking further steps upon confirmation of sale, restraining the petitioner – auction purchaser from creating third party rights in the subject land and a challenge is raised even to the sale certificate dated 23.09.2025.

35. We indeed find that the appeal filed by the respondent – borrower is not restricted to seeking quashing and setting aside of the order of the DRT, refusing to condone the delay and that substantive reliefs have been sought. If such reliefs are taken into consideration, it can be said that the order passed by the Division Bench of this Court in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*), may not apply.

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Consequently, it could be said that the proviso to Section 18(1) of the said Act, mandatorily requiring pre-deposit, would come into operation.

36. But, we find that since the appeal filed before the DRAT arises purely from the order of DRT, refusing to condone delay, the only question that can be considered in the appeal is, as to whether delay could have been condoned. If the appeal is to be allowed, the DRAT would obviously have to send the matter back to DRT for consideration of application of the respondent – borrower filed under Section 17 of the said Act, on its own merits. It is only at this stage that the question of considering substantive prayers would arise. Thus, even if the respondent – borrower may have prayed for reliefs beyond the only question that could arise in the appeal before the DRAT, it cannot be said that the DRAT could act as the forum of first instance, to consider the substantive prayers. Consequently, if the appeal filed before the DRAT is to be considered for the only question arising before it i.e. the correctness or otherwise of the order of the DRT, refusing to condone the delay, the order of the Division Bench of this Court, in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*), assumes significance.

37. It is for this reason that the argument invoking the principle of *per incuriam* raised on behalf of the petitioner – bank (secured creditor) needs to be considered. A perusal of the order passed by the Division Bench of this Court in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*) shows that the relevant provision i.e. Section 18 of the said Act has

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been referred to and relied upon. As a matter of fact, the said provision has been quoted in the said order. Hence, it cannot be said that the said order was rendered in ignorance of the relevant statutory provision. But, the principle of *per incuriam* has been invoked on the ground that binding precedents concerning that very provision i.e. Section 18 of the said Act, were not brought to the notice of the Division Bench, when the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*) was decided. As a consequence, the said order was passed in ignorance of the binding precendents.

38. In this context, it would be appropriate to refer to Section 18 of the said Act, which reads as follows:

> "**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

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amount to not less than twenty-five per cent. of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

39. The Supreme Court, in the case of **Narayan Chandra Ghosh vs. UCO Bank and others** *(supra)*, in the context of mandatory nature of pre-deposit under proviso to Section 18(1) of the said Act, held as follows:

"7. Section 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates 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. However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five per cent of the debt, referred to in the second proviso. **Thus, there is an absolute bar to the entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity**.

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8. It is well-settled that when a statute confers a right of appeal, while granting the right, the legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.

9. The argument of the learned counsel for the appellant that as the amount of debt due had not been determined by the Debts Recovery Tribunal, the appeal could be entertained by the Appellate Tribunal without insisting on pre-deposit, is equally fallacious. Under the second proviso to sub-section (1) of Section 18 of the Act the amount of fifty per cent, which is required to be deposited by the borrower, is computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt is yet to be determined by the Debts Recovery Tribunal, the borrower, while preferring an appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. **Therefore, the condition of pre-deposit being mandatory, a complete waiver of deposit by the appellant with the Appellate**

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> **Tribunal, was beyond the provisions of the Act, as is evident from the second and third provisos to the said section. At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an amount not less than twenty-five per cent of the debt referred to in the second proviso. We are convinced that the order of the Appellate Tribunal, entertaining the appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed**.
>
> (Emphasis supplied)"

40. Subsequently, in the case of **Union Bank of India vs. Rajat Infrastructure Private Limited and others** (*supra*), the Supreme Court followed the said earlier judgement in the case of **Narayan Chandra Ghosh vs. UCO Bank and others** *(supra*).

41. It is crucial to note that a Division Bench of this Court, in its judgement rendered as far back as on 16.11.2010, in the case of **Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs. Axis Bank, Mumbai** (*supra*), held that where the amount of debt due from the borrower was yet to be determined by the DRT, the borrower would still be liable to deposit 50% of the amount of debt due, in terms of second proviso to Section 18(1) of the said Act. This was based on plain words used in proviso to Section 18(1) thereof i.e. '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'.

42. The said judgement of the Division Bench of this Court in the case of **Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs.**

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Axis Bank, Mumbai (*supra*), arose from an order passed by the DRT in an application seeking interim relief in pending proceedings under Section 17 of the said Act. The relevant portion of the aforesaid judgement of the Division Bench of this Court in the case of **Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs. Axis Bank, Mumbai** (*supra*), reads as follows:

> "8. Section 18 provides a right of appeal to a person aggrieved by any order made by the Debts Recovery Tribunal under section 17. The right of appeal under section 18 arises in respect of "*any order* made by the Debts Recovery Tribunal" albeit under section 17. The section refers to any order and those words are comprehensive enough to include a final as well as an interlocutory order. There is no reason or justification for this Court to exclude an interlocutory order from the purview of sub-section (1) of section 18. The plain language of section 18 must be interpreted and given effect to. A restriction not envisaged cannot be read into section 18. The Court cannot rewrite legislation. An order under section 17 of the Act undoubtedly includes an order finally disposing of the proceeding. on a proceeding questioning the measures taken by the secured creditor under sub-section (4) of section 13. But, equally, the Tribunal while exercising its power in an Appeal under section 17 has the jurisdiction to pass interlocutory orders which are in aid of and ancillary to the exercise of the jurisdiction. That the Tribunal's jurisdiction under section 17 encompasses the passing of an interlocutory order as well is no longer res integra, but is now well settled by the judgment of the Supreme Court in Mardia Chemicals Limited vs. Union of India (*supra*). While summarizing its conclusion, the Supreme Court observed as follows:
>
> 'That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order

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subject to the condition as it may deem fit and proper to impose.'

9. The second proviso to section 18 postulates that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty percent of the amount of debt due from him as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. The Appellate Tribunal has the power to reduce the amount, for reasons to be recorded in writing, to not less than twenty-five percent of the debt referred to in the second proviso. Under the second proviso, the amount of fifty per cent which is required to be deposited by the borrower, is computed either with reference to (i) the amount of debt due from him as claimed by the secured creditors or (ii) the amount of debt due from him as determined by the Debts Recovery Tribunal. The lesser of the two amounts has to be deposited as a condition precedent to. the appeal being entertained. In a situation where the amount of the debt is yet to be determined by the Debts Recovery Tribunal, obviously, the second limb can have no application. As already noted earlier, the scope of an appeal under section 17, where a measure has been adopted by the secured creditor under section 13(4) is the determination as to whether the measure has been adopted in accordance with the provisions of the Act and the rules. **Where the amount of the debt is yet to be determined by the Tribunal and an appeal is preferred before the Appellate Tribunal by the borrower, the condition of pre-deposit would continue to apply by virtue of sub-section (1) of section 18. In such a situation, the borrower would be liable to deposit fifty per cent of the amount of debt due from him inasmuch as there is no determination at that stage by the Tribunal of the amount of the debt.**

(Emphasis supplied)"

43. It is to be noted that when the Division Bench of this Court, on 03.09.2024, passed its order in the case of **M/s. Gadekar Ginning and**

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Pressing Pvt. Ltd. and another vs. Canara Bank and another (*supra*), the aforementioned two judgements of the Supreme Court in the cases of **Narayan Chandra Ghosh vs. UCO Bank and others** *(supra*) and **Union Bank of India vs. Rajat Infrastructure Private Limited and others** (*supra*); and judgement of Division Bench of this Court in the case of **Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs. Axis Bank, Mumbai** (*supra*), were clearly holding the field. As a matter of fact, the said judgements still continue to hold the field.

44. Yet, the said order dated 03.09.2024 passed by the Division Bench of this Court at Aurangabad Bench, makes no reference to the said judgements of the Supreme Court and the Division Bench of this Court. The said judgements were clearly not brought to the notice of the Division Bench of this Court that rendered the order in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*).

45. As a matter of fact, only the order of a learned Single Judge of this Court, in the case of **Dilawar Hakim Shah vs. Special Recovery Officer, Chiplun Urban Co-operative Bank Ltd. and others** (*supra*), was brought to the notice of the Division Bench of this Court. The said order of the learned Single Judge of this Court concerns a completely different statutory provision i.e. Section 154 of the MCS Act. The said provision concerns revisionary powers that can be exercised by the State Government or Registrar of Co-operative Societies. Sub-section (2A) of the said Section specifically provides that no application for revision shall be entertained against the recovery certificate issued by the Registrar under Section 101 or Section 154B-29, unless the

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revision applicant deposits with the concerned society fifty per cent of the amount of dues recoverable. It is clear from the said statutory provision that it necessarily concerns challenge to a recovery certificate, under which the Registrar has already determined the amount recoverable.

46. It is in the context of such a statutory provision that the learned Single Judge of this Court in the case of **Dilawar Hakim Shah vs. Special Recovery Officer, Chiplun Urban Co-operative Bank Ltd. and others** (*supra*) proceeded to hold that when only an application for condonation of delay in filing revision application under Section 154 of the MCS Act, was being considered by the revisionary authority, the requirement of depositing 50% of recoverable amount was not applicable. It was only when the revision application was to be considered on merits that Section 154(2A) thereof, mandatorily requiring 50% deposit, would come into play.

47. The Division Bench of this Court, in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*), proceeded to hold as follows:

> "6. The language used u/s 18 is quite similar to the language u/s 154 of the M.C.S. Act. Entertaining an Appeal on the merits is the main limb of the litigation. That stage would arrive only if the delay is condoned. The Petitioner before us stands on a better footing. It's delay application was rejected by the learned Tribunal on it's merits, purely on the issue of limitation. There was no occasion to touch the merits in the proceeding initiated by the Petitioner u/s 17 of the SARFAESI Act. Unless the delay is condoned, the proceedings would not be registered, much less, be taken up for adjudication

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by the DRT. Having suffered a rejection order on the Application for condonation of delay, the Petitioner approached the Appellate Tribunal (DRAT).

7. In our view, mistakenly, the Petitioner has preferred an application for waiver of pre-deposit, when the issue was purely on whether the delay application was rightly rejected or not. This Application for waiver was not required to be filed, much less to be considered, since the only issue before the DRAT was as regards the condonation of delay. If the said proceedings before the DRAT would have been allowed, the Application for condonation of delay, filed before the DRT, would have stood allowed. Thereafter, the main proceedings before the DRT u/s 17 would have been registered and the DRT would have then commenced the hearing on the merits of the application filed u/s 17. The DRAT only had to consider whether the order of the DRT can be construed to be perverse and erroneous so as to cause interference.

8. In view thereof and considering the law as is settled by this Court in Dilawar Hakim(supra), the DRAT could not have directed the Petitioner to deposit 50% of the amount due from him keeping in view that an auction sale had already occurred and **the DRT had not determined any amount to be recovered from the Petitioner**. Moreover, the Petitioner has deposited Rs. 50,00,000/- with the DRAT.

9. We, therefore, conclude that in the matters of condonation of delay, unless the delay is condoned, the main proceedings would not be taken up for hearing. Hence the stage of depositing the amount as may be prescribed / engrafted in any statute as a pre-condition for entertaining a substantive proceeding, would not be applicable for dealing with applications for condonation of delay.

(Emphasis supplied)"

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48. We find that the Division Bench of this Court, in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*), ignored the binding precedent of this Court in the form of the judgement of the Division Bench rendered as far back as in the year 2010 in the case of **Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs. Axis Bank, Mumbai** (*supra*). In the above-quoted portion of the said judgement, particularly the portion emphasized upon in paragraph No.9 shows that the said Division Bench of this Court had categorically held that where the amount of debt is yet to be determined by the tribunal and an appeal is preferred before the DRAT by the borrower, the condition of pre-deposit would continue to apply, as the borrower would be liable to deposit 50% of the amount due. This was based on the specific words used in second proviso to Section 18(1) of the said Act, which clearly stipulates that the mandatory deposit of 50% before the DRAT is with reference to the amount either determined by the DRT or the amount of debt claimed by the secured creditor.

49. This shows that the Division Bench of this Court, in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*) remained ignorant of the specific binding precedent of the earlier Division Bench of this Court in the case of **Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs. Axis Bank, Mumbai** (*supra*), particularly the position of law determined as a ratio of the said judgement in paragraph No.9 quoted and emphasized hereinabove.

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50. The mandatory nature of pre-deposit, emphasized upon by the Supreme Court in the aforementioned judgments in the cases of **Narayan Chandra Ghosh vs. UCO Bank and others** *(supra)* and **Union Bank of India vs. Rajat Infrastructure Private Limited and others** (*supra*), was also not brought to the notice of the Division Bench of this Court, when the order was passed in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*).

51. Although the learned senior counsel appearing for the respondent – borrower contended that the aforesaid judgements of the Supreme Court and the judgement of the Division Bench of this Court in the case of **Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs. Axis Bank, Mumbai** (*supra*), did not consider a situation of an appeal challenging an order passed by DRT, refusing to condone the delay, we are of the opinion that the ratio of the said judgements clearly does not depend on the nature of application disposed of by DRT and that the Division Bench of this Court, in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*), passed the order in ignorance of binding precedents. Hence, it is rendered *per incuriam*.

52. In the case of **Dr. Shah Faesal and others vs. Union of India and another** (*supra*), while dealing with the concept of *per incuriam*, the Supreme Court indeed cautioned that the rule of *stare decisis* and binding precedents has to be followed and that *per incuriam* is indeed an exception, which can be resorted to only in rare circumstances. It is also indicated that if there is a difference of opinion with a co-ordinate

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Bench, generally a reference is to be made to a larger Bench, except in situations where the principle of *per incuriam* applies. In the said judgement of the Supreme Court in the case of **Dr. Shah Faesal and others vs. Union of India and another** (*supra*), it was held as follows:

> "25. In this line, further enquiry requires us to examine, to what extent does a ruling of coordinate Bench bind the subsequent Bench. A judgment of this Court can be distinguished into two parts : ratio decidendi and the obiter dictum. The ratio is the basic essence of the judgment, and the same must be understood in the context of the relevant facts of the case. The principal difference between the ratio of a case, and the obiter, has been elucidated by a three-Judge Bench decision of this Court in *Union of India v. Dhanwanti Devi*, wherein this Court held that : (SCC pp. 51-52, para 9)
>
> '9. … It is not everything said by a Judge while giving judgment that constitutes a precedent. *The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. … A decision is only an authority for what it actually decides.* … The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. *It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution*.'
>
> (emphasis supplied)
>
> 26. The aforesaid principle has been concisely stated by Lord Halsbury in *Quinn v. Leathem* in the following terms : (AC p. 506)

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"… that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that *a case is only an authority for what it actually decides*."

(emphasis supplied)

27. Having discussed the aspect of the doctrine of precedent, we need to consider another ground on which the reference is sought i.e. the relevance of non-consideration of the earlier decision of a coordinate Bench. In the case at hand, one of the main submissions adopted by those who are seeking reference is that, the case of *Sampat Prakash* did not consider the earlier ruling in *Prem Nath Kaul* .

28. The rule of per incuriam has been developed as an exception to the doctrine of judicial precedent. Literally, it means a judgment passed in ignorance of a relevant statute or any other binding authority [see Young v. Bristol Aeroplane Co. Ltd. [see *Young v. Bristol Aeroplane Co. Ltd.*]. The aforesaid rule is well elucidated in *Halsbury's Laws of England* in the following manner:

"1687. … the court is not bound to follow a decision of its own if given per incuriam. *A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords*. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords."

(emphasis supplied)"

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53. In a Constitution Bench judgement in the case of *Bajaj Alliance General Insurance Company Limited vs. Rambha Devi and others*, **(2025) 3 SCC 95**, the Supreme Court held as follows:

> "159. In Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, the Court expanded the definition of per incuriam in the Indian context and noted that : (SCC p. 642, para 19)
>
> "19. … A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta."
>
> (emphasis in original)
>
> 160. In a recent decision in *Shah Faesal* v. *Union of India* [*Shah Faesal* v. *Union of India*], a five-Judge Bench of this Court reiterated that the principle of per incuriam only applies on the ratio of the case.
>
> 161. After having examined the above decisions, when dealing with the ignorance of a statutory provision, we may bear in mind the following principles. These may not however be exhaustive:
>
> 161.1. A decision is per incuriam only when the overlooked statutory provision or legal precedent is central to the legal issue in question and might have led to a different outcome if those overlooked provisions were considered. It must be an inconsistent provision and a glaring case of obtrusive omission.
>
> 161.2. The doctrine of per incuriam applies strictly to the ratio decidendi and does not apply to obiter dicta.

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161.3. If a court doubts the correctness of a precedent, the appropriate step is to either follow the decision or refer it to a larger Bench for reconsideration.

161.4. It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam. In exceptional instances, where by obvious inadvertence or oversight, a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of *per incuriam* may apply."

54. Applying the aforementioned position of law, we find that the order passed by the Division Bench of this Court in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*) on the central legal issue, was inconsistent with the position of law already laid down by the Division Bench of this Court way back in the year 2010 in the case of **Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs. Axis Bank, Mumbai** (*supra*). The ratio of earlier judgement clearly lays down the position of law, which was ignored in the aforesaid subsequent order of the Division Bench of this Court dated 03.09.2024 in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*). As a matter of fact, it appears that the said earlier judgement of the Division Bench of this Court was not brought to the notice of the Division Bench that rendered the order in **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*).

55. There was also no reference to the aforementioned judgements of the Supreme Court rendered squarely on the very same provision i.e. Section 18 of the said Act. Therefore, we are constrained to hold

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that the order passed by the Division Bench of this Court in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*) is rendered *per incuriam* and hence, the impugned order dated 08.12.2025, allowing complete waiver of pre-deposit, deserves to be set aside.

56. Moreover, in the aforesaid recent judgement of a Division Bench of this Court in the case of **M/s. Sunshine Builders and Developers vs. HDFC Bank Limited and others** (*supra*), a detailed discussion had been undertaken on the interpretation of Section 18(1) of the said Act, particularly with reference to the true meaning of the expression 'any order' found in the said Section. A specific reference is made to the said judgement of the Division Bench in the case of **Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs. Axis Bank, Mumbai** (*supra*). Even the order passed by the Division Bench of this Court in the case of **M/s. Gadekar Ginning and Pressing Pvt. Ltd. and another vs. Canara Bank and another** (*supra*) is also taken note of and it has been authoritatively reiterated that when the borrower challenges any order passed by the DRT, the proviso to Section 18(1) of the said Act, mandating pre-deposit, clearly applies.

57. The relevant portion of the said judgement of the Division Bench of this Court in the case of **M/s. Sunshine Builders and Developers vs. HDFC Bank Limited and others** (*supra*) reads as follows:

> "45. In any event, as more particularly held by the Division Bench of this Court in **Vinay Container Services** (*supra*), the requirement of pre-deposit under sub-section (1) of Section 18 of the SARFAESI Act would also apply where an appeal is filed before

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the DRAT against an interlocutory order passed by the DRT under Section 17 of the Act since the power of the DRT to pass an interlocutory order in ancillary to its jurisdiction under Section 17 and the provisions of Section 18(2) cannot be so interpreted to mean that an interlocutory order passed by the DRT is not referrable to the provisions of Section 17. A similar view has also been taken by the Division Bench of the Delhi High Court in **Satnam Agri Products** (*supra*), which goes on to hold that there is no reason to exempt the appeals arising out of the orders passed by the DRT on interlocutory applications merely on the ground that the said orders do not have the effect of staying the action or measures taken by the secured creditor under sub-section (4) of Section 13 of the SARFAESI Act for enforcement of security interest. In **Rajat Infrastructure** (*supra*), the Supreme Court after relying on past judicial pronouncements has held that the right of appeal under Section 18(1) is only subject to the condition of deposit laid down in the second proviso therein.

46. Moreover, the provisions of sub-section (1) of Section 18 are very clear inasmuch as, they clearly include the words, "*Any person aggrieved, by any order made by the Debts Recovery Tribunal under Section 17, may prefer an appeal…*". There is no qualification provided by the legislature restricting the applicability of this sub-section to only some class or category of orders, whether a procedural one or otherwise, a final order which determines the liability of the borrower or any other person. Instead, the only prescribed requirement is that the order must be one that is passed by the DRT under Section 17 of the SARFAESI Act and as discussed above, if any person is aggrieved with the measures undertaken by a secured creditor under Sections 13 and 14 of the SARFAESI Act, an application can be made to the DRT challenging the same and the various provisions relating thereto, are contained in Section 17 of the Act. Here again, there is no

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qualification provided by the legislature restricting the applicability of invoking this Section only against some class or category of measures that may be undertaken under Sections 13, 14 and instead, Section 17 can be availed by any person, not merely a borrower, to challenge any and all measures undertaken by the secured creditor.

47. In this background, when we consider the words, "***any*** *order*" found in sub-section (1) of Section 17, it is difficult to restrict its applicability to only a final order which determines the liability of the borrower or other person, as urged by Mr. Purohit. There are several judicial pronouncements which have been relied upon by the Respondents, including inter alia **Lucknow Development Authority** (*supra*), **Man Global** (*supra*) and **Raj Kumar Shivhare** (*supra*) which interpret the word, 'any' as contained in several statutes to mean the word, '*all*'. Similarly, even the Black's Law Dictionary does not restrict the meaning of the word 'any' and describes it thus – "*Any does not necessarily mean only one person, but may have reference to more than one or to many*". Merrium Webster's Dictionary explains the pronoun '*any*' to be either, singular or plural in construction.

48. Upon consideration of the discussion above, we are unable to accept the submission of Mr. Purohit that the provision of pre-deposit cannot be attracted to the common order passed by the DRT and his reliance on the decision of the Supreme Court in **Gade Sreenivas Reddy** (*supra*) which came to be passed whilst interpreting certain provisions of the RDB Act, is wholly misconceived and cannot be applied to the facts of the present case. So also, his reliance on the decision of the Division Bench of this Court in **Gadekar Ginning and Pressing** (*supra*) does not take his case further, inasmuch as, the said decision holds that the DRAT could not have passed the order of pre-deposit when the appeal before it merely challenged an order which rejected an Interlocutory Application which sought condonation

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> of delay. Further, the contents of the said Interlocutory Application and the exact nature of the reliefs sought therein are not clearly spelt out in the said judgment."

58. It is an admitted position that the special leave petition filed against the said judgement and order of the Division Bench of this Court, was dismissed, thereby confirming the same. The said judgement of the Division Bench was recently followed by this Court in the case of **M/s. D Corp Agro Foods Pvt. Ltd. and another vs. Bank of Baroda and others** (*supra*), wherein it was observed as follows:

> "13. We find that since a Coordinate Division Bench of this Court has laid down the law specifically with regard to the interpretation of Section 18(1) of the Securitisation Act and particularly in the light of the requirement of pre-deposit specified therein, the said position of law would be binding on us. It is also relevant to note that the Special Leave Petition (Civil) No. 9823 of 2026 filed to challenge the said recent judgment and order of the Division Bench of this Court was dismissed by the order dated 20/03/2026 passed by the Supreme Court.
>
> 14. We are unable to agree with the learned counsel appearing for the Petitioners that the above-quoted observations in the case of **M/s Sunshine Builders and Developers V/s HDFC Bank Limited through the Branch Manager and Ors** (*supra*) were made in the peculiar facts of the said case, inasmuch as there was inordinate delay on the part of the Petitioners in taking recourse to remedies under the Securitisation Act.
>
> 15. We find that the dictum laid down in the above-quoted paragraphs of the judgment of the Coordinate Bench of this Court in the case of **M/s Sunshine Builders and Developers V/s HDFC Bank Limited through the Branch Manager and Ors** (*supra*) is based

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> on interpretation of the language and words used since under Section 18(1) of the Securitisation Act. It cannot be said that the interpretation of the provision was necessarily coloured by any factual position.
>
> xxx xxx xxx xxx
>
> 17. We are of the opinion that the Coordinate Bench of this Court in the case of **M/s Sunshine Builders and Developers V/s HDFC Bank Limited through the Branch Manager and Ors** (*supra*) has considered the question and answered it in a particular manner.
>
> xxx xxx xxx xxx
>
> 20. In the light of the said position of law laid down by this Court, we do not find any error committed by the DRAT in passing the impugned order. As per Section 18(1) of the Securitisation Act pre-deposit of amount between 25% to 50% of the debt due can be imposed as a pre-condition for entertaining the appeal."

59. The admitted position on facts also needs to be noted, as it brings to the fore an anomaly. It is undisputed that the respondent – borrower filed Securitisation Application No.52 of 2020 before the DRT as far back as on 16.12.2020, in the light of the action undertaken by the petitioner – bank (secured creditor) under the provisions of the said Act. The said application was dismissed on merits by the DRT on 12.05.2023 by a reasoned order.

60. The respondent – borrower filed an appeal before the DRAT and by an order dated 07.12.2023, the DRAT directed the respondent – borrower to deposit an amount of ₹ 12 crores as pre-deposit under the proviso to Section 18 of the said Act. As the respondent – borrower failed to make such pre-deposit, the appeal was dismissed. Thereafter, the petitioner – bank took possession of the mortgaged land, followed

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by its auction, in which the petitioner – auction purchaser was a successful bidder. As on today, the auction purchaser has a registered sale certificate in its favour and physical possession is also with the petitioner – auction purchaser.

61. Thereafter, the respondent – borrower filed Securitisation Application (D) No.1068 of 2025 on 26.06.2025, being the second such application before the DRT, after the auction was already conducted. In the said second application, an application for condonation of delay was moved, which stood dismissed by an order dated 15.09.2025 passed by the DRT. It is this order that is the subject matter of challenge in the appeal filed by the respondent – borrower before the DRAT.

62. Thus, if the contentions raised on behalf of the respondent – borrower are to be accepted and the reasoning adopted by the DRAT is to be confirmed, a borrower, who files an application under Section 17 of the said Act before the DRT, which suffers from delay, would be in a better position that a borrower, who files such an application within the period of limitation. As a matter of fact, the respondent – borrower itself had to mandatorily make pre-deposit of amounts in the appeal challenging dismissal of the first securitisation application, when the same was filed within limitation. On failure to make pre-deposit, the appeal stood dismissed.

63. Thus, the anomalous situation is that this very respondent – borrower filed the second securitisation application which suffered from delay and upon the application for condonation of delay being dismissed, the respondent – borrower claims that the mandatory

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requirement of pre-deposit cannot apply. The respondent – borrower cannot be in a better position while approaching the DRT, after the period of limitation has expired, apart from the fact that the claims made by the respondent – borrower, seeking complete waiver, are in the teeth of the binding position of law laid down by the Supreme Court in the aforementioned judgements and the Division Bench of this Court in the case of **Vinay Container Services Pvt. Ltd., Navi Mumbai and others vs. Axis Bank, Mumbai** (*supra*). Therefore, the impugned order dated 08.12.2025 is wholly unsustainable and it deserves to be set aside.

64. There can also be no quarrel with the position of law clarified by the Supreme Court in the case of **Sidha Neelkanth Paper Industries P. Ltd. and another vs. Prudent ARC Ltd. and others** (*supra*), that even if there is recovery from auction sale, the amount so recovered is not relevant for the purpose of mandatory pre-deposit, as per proviso to Section 18(1) of the said Act. Therefore, the fact that the petitioner – auction purchaser deposited the entire bid amount, the sale certificate was issued and registered and possession of secured asset was handed over to the petitioner – auction purchaser, cannot be said to be circumstances relevant for deciding the question of pre-deposit to be made by the respondent – borrower, in terms of proviso to Section 18(1) of the said Act.

65. As regards the impugned order dated 18.11.2025, a bare perusal of the same shows that the application for waiver of pre-deposit was being heard by the DRAT. There is no reference to the application for interim relief/stay in the said impugned order. Even if

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the contention raised on behalf of the respondent – borrower that the application for interim relief was also listed, is to be accepted, there is clearly no reference to such an application in the impugned order dated 18.11.2025.

66. The impugned order dated 18.11.2025 shows that the DRAT, while considering the application for waiver of pre-deposit, proceeded to grant the direction of *status quo*, while observing as follows:

> "It is seen from the Appeal Cause Title the auction purchaser Aloukik Construwell LLP is also shown as Additional Respondent. Both Respondents want to file objections to the stay application and other applications. It is claimed by the Learned Counsel for the auction purchaser on the ground that no application was allowed for impleadment of the auction purchaser as Respondent before the Tribunal. Be that as it may. Now the auction purchaser is shown as a party and there is apprehension raised that there may be possibility of creation of third-party interest and alteration of features of the property.
>
> In order to facilitate filing the reply by Respondents, post the matter on 28.11.2025.
>
> Wavier Application will also be heard along with Stay Application.
>
> Meanwhile, parties are directed to maintain *status quo* as on today."

67. We are of the opinion that the only semblance of reasoning, while granting the order of *status quo*, pertains to the auction purchaser having come into picture and the possibility of creating third party interest. We are unable to agree with the respondent – borrower that such cursory observation satisfies the requirement on the part of the DRAT, of giving reasoning on the well-known

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parameters for granting ad-interim/interim relief. There is no discussion on how the respondent – borrower had made out a *prima facie* case, if any, in its favour, as to whether the balance of convenience was in its favour and what was the irreparable loss that the respondent – borrower would suffer in the event the ad-interim/interim relief was not granted. We find that the DRAT completely failed to apply its mind to examine as to whether the said mandatory parameters for granting ad-interim/interim relief were at all satisfied by the respondent – borrower. The impugned order dated 18.11.2025, granting *status quo*, was passed in a most casual and cavalier manner.

68. In a recent order dated 04.03.2026 passed in Writ Petition No.15718 of 2025 (**Anil Ankush Pawar and another vs. The Authorized Officer, Union Bank of India and others**), this Court observed as follows:

> "8. We find on perusal of the impugned order that it suffers from a serious procedural infirmity. The Application considered and decided in the impugned order dated 14th May 2025 was only the Application seeking waiver of pre-deposit under Section 18 of the Securitisation Act. The only prayer made on behalf of Respondent Nos. 2 and 3 before the DRAT was for such waiver on the basis of statements made in the said Application. While considering the said Application the DRAT discussed the rival submissions, made certain observations and thereupon found that the Respondent Nos.2 and 3 were required to deposit 40% of the amount due and that complete waiver from pre-deposit was not warranted. Having reached the said conclusion the DRAT was expected to issue a positive direction to Respondent Nos.2 and 3 to deposit such 40%

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amount towards pre-deposit so that the Appeal could be registered and then take up the Application for interim relief and the Appeal for further consideration.

9. Instead, we find that after issuing such a positive direction to Respondent Nos.2 and 3 to deposit 40% of the amount due, failing which the Appeal would stand rejected, in the next paragraph, without any discussion on the reasons for giving the blanket interim direction, it was observed as follows :

"On deposit of Rs.75,83,600/- on or before 21.5.2025, respondents are restrained from creating 3rd party interest effecting change in revenue records with regard to ownership of the property from the date of deposit till next date of hearing".

10. We find that the aforesaid approach adopted by the DRAT suffers from serious procedural irregularity and infirmity. It appears that the DRAT proceeded on an assumption that the moment a pre-deposit direction was issued in an Application seeking waiver thereof, the interim relief would follow as a matter of course upon the amount so directed to be deposited, in fact being deposited by the Appellants (Respondent Nos.2 and 3 herein). We find that the approach of the DRAT is unsustainable.

xxx xxx xxx xxx

13. We are of the opinion that the DRAT should have considered the aspect of interim relief by hearing parties on the pending application for interim relief filed by the Respondent Nos. 2 and 3. All the required parameters ought to be considered including the factors pertaining to prima facie case, balance of convenience and irreparable loss being suffered by the applicants, in the event interim reliefs are not granted. No such consideration is found in the impugned order and therefore, we are inclined to interfere to the limited extent indicated herein above."

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69. Therefore, we find that the impugned order dated 18.11.2025 also deserves to be set aside. We do not find any substance in the contention raised on behalf of the respondent – borrower that the impugned order dated 18.11.2025 may be treated as an ad-interim order and further that the petitioners ought to have challenged the subsequent orders continuing the said order of *status quo*. There is no question of treating the order dated 18.11.2025 as an ad-interim order, for the reasons stated hereinabove. We are of the opinion that the subsequent orders merely continuing the direction of *status quo* granted in the order dated 18.11.2025, not being challenged, cannot go against the petitioners. Once the basic order dated 18.11.2025 is set aside, the edifice of the subsequent orders merely continuing the direction of *status quo*, would obviously collapse.

70. In view of the above, the writ petitions are allowed. The impugned orders dated 18.11.2025 and 08.12.2025 are quashed and set aside. The application seeking waiver of pre-deposit shall now be decided afresh by the DRAT, as there is no question of complete waiver being granted to the respondent – borrower, for the reasons recorded hereinabove. The subsequent orders merely continuing the impugned order of *status quo* dated 18.11.2025 stand consequently vacated.

71. The appeal shall stand de-registered in view of the impugned orders being set aside. Since the DRAT has discretion to direct pre-deposit between 25% to 50% of the amount due, it would be for the DRAT to decide as to what would be the percentage of pre-deposit to be made by the respondent – borrower, after hearing the rival parties. This Court is not expressing any opinion on the said aspect of the

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matter. The DRAT is also at liberty to consider the application for interim reliefs filed by the respondent – borrower on its own merits, after hearing the rival parties. All contentions of the parties in that regard are also kept open.

72. Pending applications in these writ petitions, if any, are also disposed of.

(SHREERAM V. SHIRSAT, J.) (MANISH PITALE, J.)

Bipin / Priya

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