2026 INSC 1217

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) No. 20619 OF 2026

KISHORE AVARSEKAR AND ORS. … PETITIONERS

VERSUS

ASSETS CARE AND RECONSTRUCTION ENTERPRISES LTD. AND ORS. …RESPONDENTS

O R D E R

DIPANKAR DATTA, J.

1. Petitioners, who figure as accused in a complaint[1] alleging offence punishable under Section 138 of the N.I. Act[2], impugn a judgment and order dated 3rd August, 2026[3] of a Single Judge of the High Court[4] dismissing their writ petition[5].

2. The question that arose for decision in the writ petition before the High Court and arising in this special leave petition is one and the same. It is well-captured in the first paragraph of the impugned judgment, reading as follows:

> "1. The short question raised in the present petition is whether an

1 C.C. No.2800021/SS/2017
2 Negotiable Instruments Act, 1881
3 impugned judgment
4 High Court of Judicature at Bombay
5 Criminal Writ Petition No. 2776 of 2023

> Asset Reconstruction Company (ARC), which acquires a bank's financial assets, including cheques taken as security under a Deed of Assignment executed pursuant to Section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), can be substituted as the complainant in a pending prosecution under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 (NI Act), in place of the bank that originally instituted the complaint as payee of the dishonoured cheque."

3. According to Mr. Dave, learned senior counsel for the petitioners, there is no authoritative pronouncement of the Supreme Court on the said question of law although there are two decisions of the Delhi High Court [***Man Singh Tusaria v. JM Financial Asset Reconstruction Company Private Limited and Anr.***[6] and ***Paam Pharmaceuticals (I) (P) Limited v. India SME Asset Reconstruction Company Limited***[7]] and one decision of the High Court [***Harikrishnan Selvakumar v. L&T Infrastructure Finance Co. Ltd.***[8]] which were noticed by the Single Judge in following the course of action that was ultimately adopted. However, referring to the decisions of the High Court in ***Indorama Synthetics (India) Ltd. v. State of Maharashtra***[9] and ***Tayal Cotton Pvt. Ltd. v. State of Maharashtra***[10], which respectively considered Section 446 of the Companies Act[11] and Section 14(1)(a) of the IBC[12], Mr. Dave contends that the provisions of sub-sections (4) and (5) of Section 5 of the SARFAESI Act[13] should be so read so as to exclude the right of an assignee to substitute itself as a complainant in the pending proceedings

6 2014 SCC OnLine Del.3469
7 2012 (132) DRJ 82
8 Criminal Application No.329 of 2015 decided on 07th March, 2016
9 2016 (4) Mh. L.J. 249
10 MANU/MH/2352/2018
11 Companies Act, 1956
12 Insolvency and Bankruptcy Code, 2016
13 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

under Section 138 of the N.I. Act.

4. Mr. Dave was further heard to contend that the first respondent, which is an ARC[14], is not the "payee" of the subject cheques and that the High Court erroneously proceeded to hold that it has become a *"holder in due course"* by virtue of the deeming fiction in sub-section (2) of Section 5 of the SARFAESI Act, overlooking the three cumulative statutory conditions of Section 9 of the N.I. Act which it did not satisfy; hence, the first respondent does not qualify to step into the shoes of the original lender.

5. Finally, Mr. Dave, also refers to the expression *"other proceeding of whatever nature"* in Section 5(4) of the SARFAESI Act to contend that the same ought to be read *ejusdem generis* the words *"suit"* and *"appeal"* preceding it; and, if the impugned judgment is left uncorrected, it will (i) convert every criminal prosecution under Chapter XVII of the N.I. Act into a transferable "financial asset" tradeable amongst ARCs; (ii) permit strangers to the negotiable instrument to prosecute drawers for a personal, penal offence; and (iii) render Section 142(1)(a) of the N.I. Act a strict, non-obstante embargo, on cognizance, a dead letter.

6. Resting on the aforesaid contentions, Mr. Dave submits that the question calls for an authoritative pronouncement by this Court.

7. Having heard Mr. Dave, and on perusal of the impugned judgment, we see no reason to take a view different from that of the High Court; hence, the same deserves to be upheld. However, we propose to briefly assign our reasons in support thereof.

8. For context, it is noted that the trial magistrate[15] by her order dated 5th

14 Asset Reconstruction Company
15 Metropolitan Magistrate, 28th Court, Esplanade, Mumbai

September, 2018 allowed an application for substitution of the first respondent upon consideration of the decisions of the Delhi High Court, referred to above. The said order was carried in a revision[16] by the petitioners before the Sessions Court[17]. The revision having been dismissed by an order of 11th February, 2021 was followed by invocation of the jurisdiction of the High Court under Article 226 of the Constitution read with Section 482 of the Cr. PC[18] by the petitioners, *albeit* unsuccessfully.

9. At the outset, we have no hesitation to record that the decisions in ***Indorama Synthetics (India) Ltd.*** (supra) and ***Tayal Cotton Pvt. Ltd.*** (supra) cannot be called in aid to support the contention advanced by Mr. Dave. Those decisions arose in the context of Section 446 of the Companies Act and Section 14 of the IBC, respectively. The statutory provisions falling for consideration therein operate in different milieu whereas Section 5 of the SARFAESI Act is intended to achieve a distinct object. The reasoning in those decisions, therefore, cannot govern the interpretation of the specific provisions falling for consideration in the present case. We record that the High Court was right in not being guided thereby in arriving at its conclusions.

10. In the present case, there exists an assignment agreement between the original lender[19] and the first respondent which, *inter alia,* refers to and includes the three post-dated cheques issued by the petitioners to the original lender, since dishonoured, the cheque return memos, and the

16 Criminal Revision Application No.1062 of 2018
17 Court of Sessions for Greater Mumbai at Mumbai
18 Code of Criminal Procedure, 1973
19 Axis Bank Ltd.

demand notice under Section 138, N.I. Act, along with conferment of the right to institute, continue and enforce legal proceedings including the pending complaints.

11. An informed decision on the question of law arising for decision would necessarily require us to read with appropriate care Section 5[20] of the SARFAESI Act in the light of the scheme of such enactment, with particular emphasis on sub-sections (4) and (5) thereof.

20 **5. Acquisition of rights or interest in financial assets**.—(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any asset reconstruction company may acquire financial assets of any bank or financial institution,—

(*a*) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(*b*) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(1-A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of Section 8-F of the Indian Stamp Act, 1899 (2 of 1899):

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.

(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the asset reconstruction company, such asset reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(2-A) If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).

(3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the asset reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, asset reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of asset reconstruction company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the asset reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the asset reconstruction company, as the case may be.

(5) On acquisition of financial assets under sub-section (1), the asset reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the asset reconstruction company in such pending suit, appeal or other proceedings.

12. What appears on a bare reading is that Section 5 permits an ARC[21] to acquire the financial assets of a bank/financial institution. In terms of sub-section (1), *inter alia*, it could be by entering into an agreement for transfer, on such terms and conditions as may be agreed upon between them. Sub-section (2), which serves as the foundation for sub-section (4), provides for substantive vesting of rights. By a deeming fiction, on acquisition of the financial assets by transfer, an ARC becomes the lender and all rights of the bank/financial institution vest in it. Sub-section (3) ordains that all contracts, deeds, bonds, agreements, etc. relating to the asset continue to remain in force in favour of the ARC. While sub-section (4) is the law providing for procedural continuity, sub-section (5) governs the procedural aspect for the tribunals, courts and other authority to abide by when approached by an ARC with a request for substitution. Such substitution, however, is subject to the requirement thereunder that the application be made with the consent of the originator.

13. To summarise, the scheme of Section 5 is that on acquisition of the financial assets, the ARC is deemed to be the lender and as a sequel thereto, all rights, title and interest of the bank/financial institution vest in the ARC. The ARC can, subject to fulfilment of the statutory requirements, continue pending proceedings instituted by the bank/financial institution, as if it were the original secured creditor. By virtue of sub-sections (4) and (5), having stepped into the shoes of the original secured creditor, the ARC is entitled to pursue the remedies

21 asset reconstruction company

available to the original secured creditor in relation to the financial assets so acquired. The right to continue proceedings would, however, be subject to compliance with the requirements of the statute governing that particular proceeding or remedy.

14. Whether, sub-sections (4) and (5) of Section 5, authorise the ARC to seek substitution in a pending complaint under Section 138, N.I. Act necessarily has to be answered by meaningfully construing the expression *"other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution"* in sub-section (4) and *"for the purpose of substitution of its name in any pending suit, appeal or other proceedings"* in sub-section (5).

15. In our considered opinion, the principle of *ejusdem generis* would have no application whilst interpreting either sub-section (4) or sub-section (5). Sub-section (4) has an in-built exception clause. When expressly referring to the SICA[22], Parliament in its wisdom provided that if a reference to the BIFR[23] abates under SICA, then sub-section (4) of Section 5 will not save it. However, this exception does not apply to all proceedings; it applies to only one proceeding, i.e., under the SICA. The words *"suit, appeal or other proceeding"* are not qualified as 'civil' or 'recovery' proceedings; on the contrary, the expression *"other proceeding of whatever nature"* is deliberately unqualified. It takes colour from the engrafted exception – the third proviso to Section 15(1), SICA – which relates to a proceeding before the BIFR, a proceeding that is

22 Sick Industrial Companies (Special Provisions) Act, 1985
23 Board for Financial and Industrial Reconstruction

neither a suit nor an appeal. The exception, thus, shows that *"other proceeding"* cannot be read *ejusdem generis* with the words *"suit"* and *"appeal"* and is intended to travel beyond suits and appeals, which are generally associated with civil proceedings, and to include proceedings of a different nature, including a complaint under Section 138, N.I. Act relating to a financial asset. This interpretation is also consistent with the legislative object underlying Section 5, which is to facilitate acquisition of financial assets and ensure continuity of the rights and remedies attached thereto. The fact that a proceeding under Section 138 of the N.I. Act is criminal in form would not, by itself, exclude it from the expression *"other proceeding of whatever nature"*, provided that it relates to the financial asset acquired by the ARC and was pending by or against the bank or financial institution on the date of such acquisition. Sub-section (4) of Section 5, for all intents and purposes, having provided for a continuity and the words *"other proceeding of whatever nature"* used by Parliament being very wide, the same must be allowed to operate in its full amplitude. Such width is intentional to ensure that no proceeding relating to the financial asset is lost for want of a party to prosecute it.

16. However, we add a caveat here. While a pending complaint under Section 138, N.I. Act does not abate on assignment to an ARC of the financial asset/debt under sub-section (1) of Section 5 of the SARFAESI Act, such assignment does not, *per se*, make the ARC the payee or the holder in due course. The ARC, to continue proceedings, must still prove that (i) the cheque, since dishonoured, itself was transferred and

delivered to it along with the financial asset and not merely the underlying debt; (ii) there has been an endorsement/assignment in its favour sufficient to constitute it as a holder in due course under Sections 8 and 9 of the N.I. Act; (iii) the ingredients of Section 138 of the N.I. Act are satisfied; and (iv) there is no attempt to improve upon the case of the original complainant/secured creditor. Therefore, while permitting a substitution, the ARC has to be put to strict proof that the ARC is the *"holder in due course"*. Such question(s) of fact must obviously be decided on the basis of evidence led at the trial.

17. We, therefore, dismiss the special leave petition.

18. However, it is clarified that apart from the points decided by the trial magistrate while granting the prayer for substitution of the first respondent, since confirmed by the Sessions Court and ultimately by the High Court in the impugned judgment, all other contentions of the accused/petitioners, available in law, are kept open for being urged before the trial magistrate for being decided in accordance with law.

19. Connected applications, if any, shall stand disposed of.

.....J.
(DIPANKAR DATTA)

.....J.
(SHEEL NAGU)

NEW DELHI;
NOVEMBER 04, 2026

ITEM NO.29 COURT NO.7 SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).20619/2026

[Arising out of impugned final judgment and order dated 03-08-2026 in CRLWP No.2776/2023 passed by the High Court of Judicature at Bombay]

KISHORE AVARSEKAR & ORS. Petitioner(s)

VERSUS

ASSETS CARE AND RECONSTRUCTION ENTERPRISES LTD. & ORS. Respondent(s)

(FOR ADMISSION)

(With I.A. No.330211/2026 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 04-11-2026 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE SHEEL NAGU

For Petitioner(s) **Mr. Siddhartha Dave, Sr. Adv.**
Ms. Poonam Tahilyani, Adv.
Mr. Aniruddha Deshmukh- 2483, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1. The special leave petition stands dismissed in terms of the signed reportable order.

2. Connected applications, if any, shall stand disposed of.

(SAPNA BISHT) **(SUDHIR KUMAR SHARMA)**
ASTT. REGISTRAR-cum-PS **COURT MASTER (NSH)**

(Signed reportable order is placed on the file)