

The Borrower's Shield

Defense Against Foreclosure & SARFAESI Actions

Patra's Law Chambers

Expert Legal Defense in Banking Law & DRT Litigation

Kolkata | Delhi



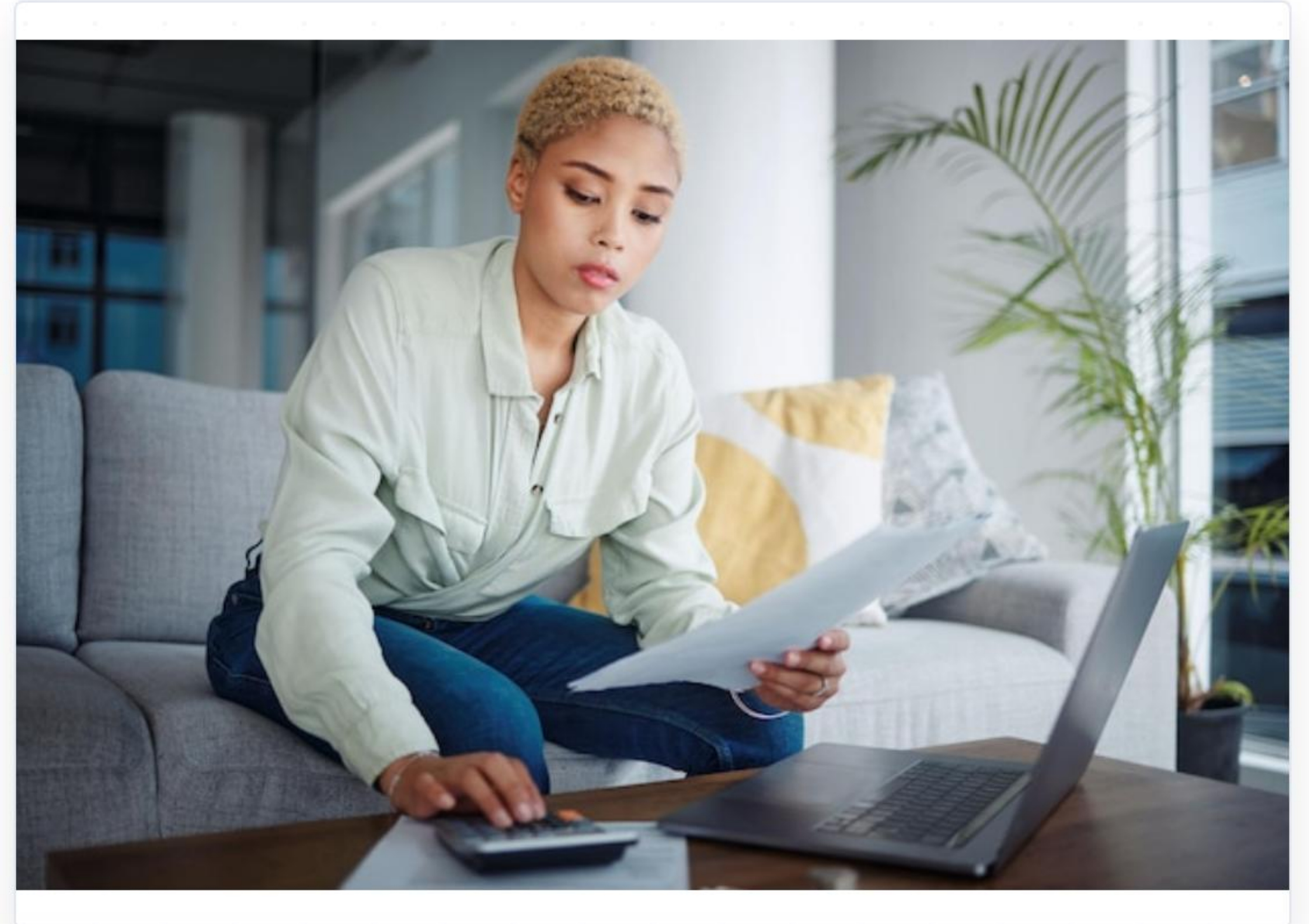
Loan Default is Civil, Not Criminal

Don't Panic

The fear of losing your home is overwhelming, but default is a contractual breach, not a crime. You have specific rights protected by the RBI and Indian Courts.

Your Legal Toolkit

- ▶ Right to Fair Notice
- ▶ Right to Settlement (OTS)
- ▶ Right to Approach DRT



The "Loan Recall" Trap

Before Section 13(2) Notice

You only owe the "**Overdue Amount**" (the missed EMIs). The relationship is still standard, and you can simply pay the arrears to normalize the account.

After Section 13(2) Notice

The bank "**Recalls**" the loan. The entire outstanding Principal + Interest becomes the "Due Amount". The bank is no longer legally obliged to accept just the EMIs.

Right to Settlement (OTS)



RBI Circular (June 8, 2023)

Framework for Compromise Settlements

- ▶ Banks **MUST** have a Board-approved policy for settlements.
- ▶ Even borrowers classified as "Wilful Defaulters" or "Fraud" are not automatically barred from negotiation.
- ▶ Provides a structured process for calculating the Minimum Settlement Amount.

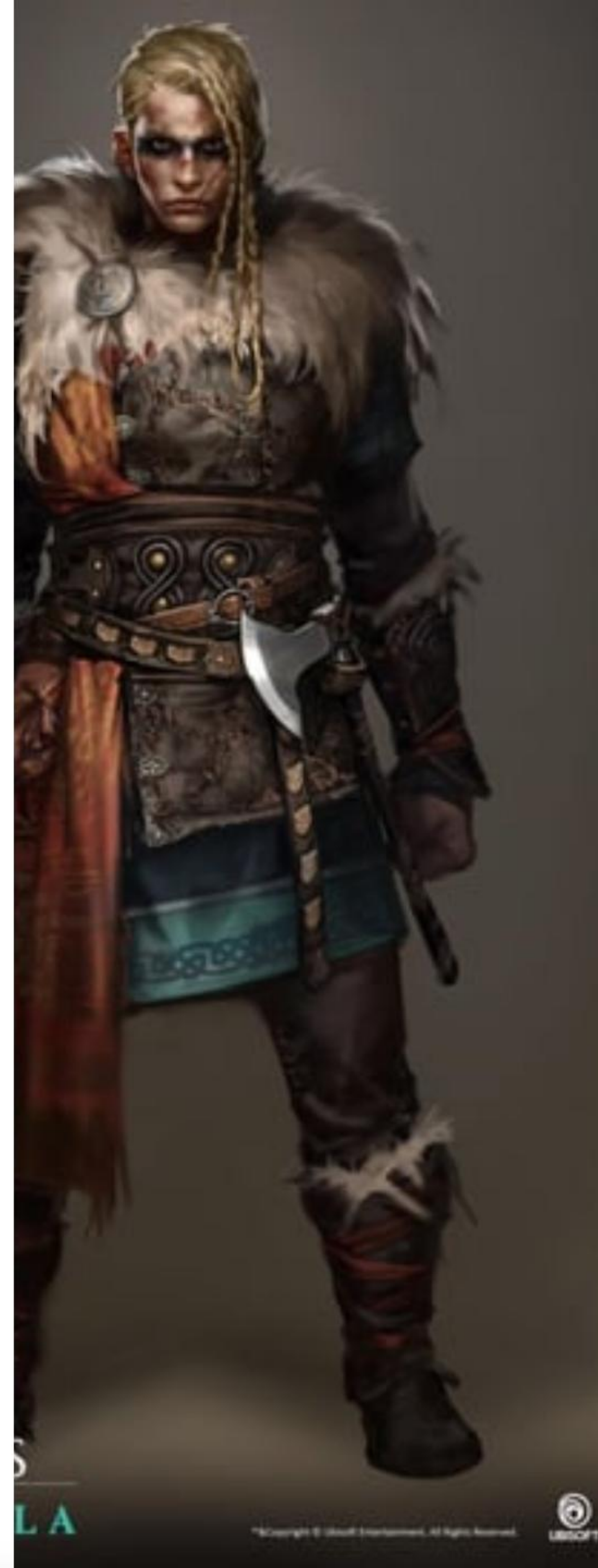
Ban on "Penal Interest"

RBI Circular (Aug 18, 2023)

Effective Jan 1, 2024, banks cannot "Capitalize" penal charges.

Old Trap: Adding penalty to principal and charging interest on it (compounding).

New Rule: Penalties must be kept separate. No interest can be charged on the penalty amount. If your bank violates this, their debt claim is illegal.



Return of Property Documents

RBI Circular (Sep 13, 2023)

Once you pay off the loan or settle it via OTS, the bank must return your original property deeds.

Strict Timeline

- ▶ **Deadline:** Within 30 days of full payment.
- ▶ **Penalty:** Bank must pay YOU ₹5,000 for every day of delay beyond 30 days.



Defense 1: NPA Classification Error

The 90-Day Rule

A loan becomes NPA only if interest/principal is overdue for strictly 90 days. If you made a partial payment on Day 89, the classification is invalid.

The Consequence

If the NPA date is wrong, the entire foundation of the SARFAESI action collapses. The Demand Notice and Possession Notice can be quashed by the DRT.

Defense 2: Section 13(3A) Violation



Your Objection

After receiving the 13(2) notice, you file a detailed Representation/Objection raising disputes.



Mandatory Reply

The Bank is LEGALLY BOUND to reply within 15 days, giving valid reasons for rejection.



The Defense

If the bank ignores this or replies late, their subsequent actions are void (ITC Ltd vs Blue Coast Hotels).

Valuation & Exemptions



Undervaluation Defense

Banks often set low Reserve Prices for quick sales. You can challenge this in DRT to prevent loss of asset value.

Agricultural Exemption

Section 31(i) SARFAESI Act: Agricultural land is strictly EXEMPT from foreclosure under this Act. Even if a house is built on it, the land classification matters.

The DRT Strategy



File S.A.

File Securitisation Application (S.A.) u/s 17 within 45 days of Possession Notice.



Regularization

Offer to deposit "Overdue EMIs" upfront. Pray for the court to "Regularize" the account.



Stay Order

Seek a Stay on the auction based on procedural lapses (13(3A) violation, Valuation).

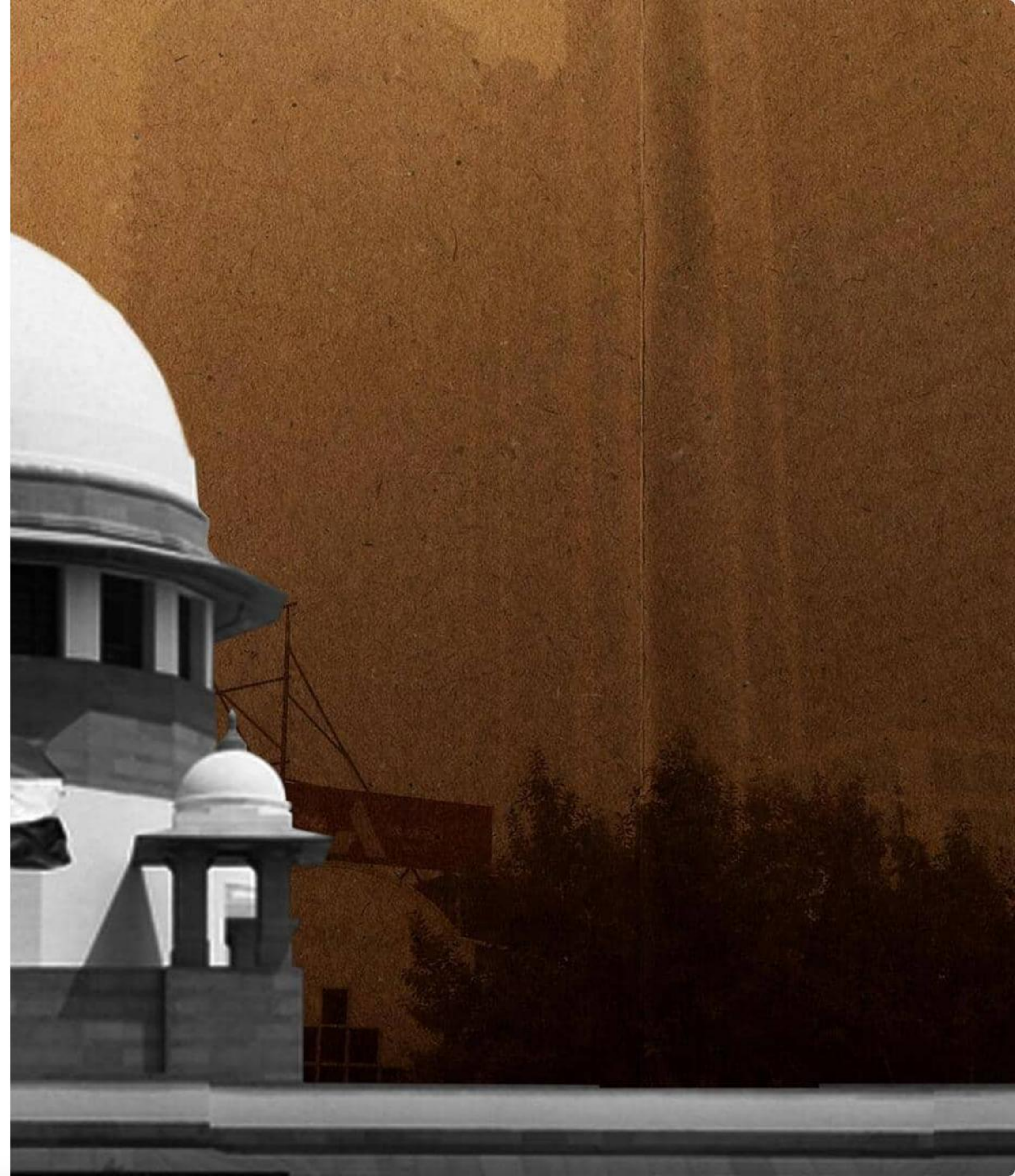
Landmark Judgments

Mardia Chemicals vs. UOI

Upheld borrower's right to approach DRT under Section 17 without paying 75% upfront (deposit only needed for appeals/stays).

Mathew Varghese vs. M. Amritha Kumar

Right to Property is constitutional. Bank MUST give clear 30-day notice before sale. Secret sales are illegal.



Key Precedent

Section 13(3A) is mandatory. The creditor cannot brush aside the objection.

SUPREME COURT: ITC LTD VS. BLUE COAST HOTELS (2018)

This judgment ensures banks cannot act arbitrarily without listening to your defense.

Frequently Asked Questions



Can I be arrested?

No. Loan default is a civil matter.
Police cannot arrest you for inability to pay unless there is fraud.



Can tenants be evicted?

If tenancy was created BEFORE the mortgage, the tenant is protected and cannot be summarily evicted.



Redemption Right?

You can pay full dues to reclaim property ONLY until the Auction Notice is published.

Contact Patra's Law Chambers

Kolkata Office

NICCO HOUSE, 6th Floor

2, Hare Street, Kolkata-700001

(Near Calcutta High Court)

Contact

+91 890 222 4444

+91 9044 04 9044

Delhi Office

House no: 4455/5, First Floor

Ward No. XV, Gali Shahid Bhagat Singh

Main Bazar Road, Paharganj

New Delhi-110055

Online

admin@patraslawchambers.com

www.patraslawchambers.com