IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 07th of May, 2026

PRESENT: Hon'ble Mr. *Justice G.* Chandrasekharan
CHAIRPERSON

M.A (SA):77/2025

*(*I.A. No. 1897/2024 in S.A. No. 385/2024 on *the file of DRT-I, Ernakulam)*

And

M.A (SA):78/2025

*(*I.A. No. 1898/2024 in S.A. No. 385/2024 on *the file of DRT-I, Ernakulam)*

BETWEEN

Sojan Paul, S/o. Paulose,
Kizhakkebhagatu House,
Kadavoor P.O.,
Kothamangalam, Ernakulam-686671.

... Appellant in both M.A (SA):77/2025 and M.A (SA):78/2025

And

1. State Bank of India,
Vazhakulam Branch, P.B. No.1 Kavana Road,
Muvattupuzha, Ernakulam-686670
Represented by its Manager.

2. State Bank of India
Regional Business Office-4
(Muvattupuzha) 2nd Floor, V.S. Tower,
Kacherithazham, Muvattupuzha, Ernakulam-686661,
Represented by its Authorised Officer

3. Authorised Officer,
State Bank Of India,
Stressed Asset Recovery Branch,
7th Floor, Vankarath Tower, Bypass Junction,
Palarivattom, Ernakulam, Kochi-682024

4. Benny K., S/o. Kuriakose,
Residing at Kalimattathil,
Najarakadavu, Kadavoor P.O.
Ernakulam-686671

... Respondents

Counsel for Appellant : *Mr. Navod Prasannan*
Counsel for R1 to R3 : *Mr. M. L. Ganesh*
Counsel for R4 : *Mr. Michael Francis*

COMMON ORDER

1. The Appeals in M.A (SA) :77/2025 and M.A (SA):78/2025 have been filed against the orders passed in I.A. No. 1897/2024 and I.A. No. 1898/2024 in S.A. No. 385/2024 respectively, by Learned Presiding Officer, DRT-I, Ernakulam.

2. S.A. No. 385/2024 has been filed by the Appellant seeking the following reliefs:

> *a). Call for all the records leading up to Annexure-A15 Memo dated 16/05/2024 from the Defendants 1 to 3 and Declare that Annexure-A1 Demand Notice, Annexure-A2 Possession Notice, Annexure-A7 Sale Notice, Annexure-A8 Demand Notice, Annexure-A10*

Possession Notice, Annexure-A11 Sale Notice, Annexure-A12 Sale Notice, Annexure-A14 Sale Notice, and sale held on 09/05/2024 and confirmed in favour of 4th Defendant are in violations of SARFAESI Act and Rules;

(b). Order setting aside Annexure-A8 Demand Notice, Annexure-A10 Possession Notice, Annexure-A14 Sale Notice, and sale held on 09/05/2024 and confirmed in favour of 4th Defendant;

(c). Direct the Defendant to restore the possession of the property described in Annexure-A8 Demand Notice to the Applicant;

(d). To pass order directing the Defendant to pay costs of the proceedings and compensation to the Applicant;

(e). Issue such other Order or Direction as this Hon'ble Tribunal may deem fit to grant under the facts and circumstances of the case.

3. During the pendency of the Securitisation Application, the Appellant filed IA 1897/2024 seeking appointment of an Advocate Commissioner to inspect the secured asset and submit a report with regard to its nature and cultivation, and IA 1898/2024 was filed seeking stay of all measures under SARFAESI Act, 2002. The Learned Presiding Officer, after considering the submissions of the parties, dismissed both the Applications. Challenging the same, these Appeals have been filed.

4. It is the submission of Learned Counsel for Appellant that one of the main grounds raised in the Securitisation Application is that the property in question to be proceeded under SARFAESI Act, 2002, is a garden land and fully cultivated with various crops of rubber trees and coconut trees, and therefore, there is bar under Section 31(i) of the SARFAESI Act, 2002, to proceed against the said property. He further submitted that a Certificate issued by the Agricultural Officer, Krishibhavan, Paingottoor, No. KB PGR/18/2022-23 dated 15.09.2022 and other documents produced, would clearly establish

that there are standing rubber trees and coconut trees in the property. Even in these Appeals, the Appellant has produced the documents like classification of land and farmers in the State of Kerala, reply given by the Village Officer, Land Revenue Officer to the RTI filed by the Appellant, Ration Card of the Appellant and report given by the Advocate Commissioner in OS No. 224/2025, to show that the land is of an agricultural land. So saying, it is submitted by Learned Counsel for Appellant that, the Tribunal has not considered the issue with proper perspective and dismissed the Application for appointment of an Advocate Commissioner and for grant of stay of all further proceedings. Hence, these Appeals.

5. In reply to these submissions, Learned Counsel for Respondent Bank submitted that the property in question is not an agricultural land but residential land, as seen from the valuation report produced in this case. In the Securitisation Application, the Appellant claimed that agricultural operations are being carried out on his own land and also on the leased property. It is further submitted that the Appellant is only a guarantor in respect

of the loan availed by M/s. Ruby Baby for the purpose of pineapple cultivation. However, neither before the Tribunal nor before this Appellate Forum, Appellant produced any material to show that the agricultural operations were going on at the time of creation of the mortgage and continued till date.

6. In the case before hand, the sale was held under the SARFAESI Act, 2002, and a Sale Certificate has been issued. There is no specific challenge to the sale conducted on 09.05.2024 in pursuance of Sale Notice dated 21.03.2024. The Respondent Bank has followed the measures under SARFAESI Act, 2002, meticulously starting from issuance of the Demand Notice, giving reply to the Objection raised by the Appellant, and thereafter issuing Possession Notice, Sale Notice and sale, as detailed hereinbelow:

> *"1.Demand notice issued under section 13(2) of SARFAESI Act on 11.12.2023.*
>
> *2. Demand notice acknowledged on 14.12.2023.*
>
> *3. Objections given by the appellant on 18.02.2024, received on 21.02.2024.*

4. Reply given by the respondent on 22.02.2024.

5. Possession notice issued under section 13(4) of SARFAESI Act on 20.02.2024.

6. Possession notice affixed on 20.02.2024.

7. Possession notice acknowledged on 24.02.2024.

8. Possession notice published in Malayalam and English Dailies on 21.02.2024.

9. Impugned sale notice issued on 21.03.2024.

10. Impugned sale notice affixed on 25.03.2024.

11. Impugned sale notice acknowledged on 30.03.2024.

12. Impugned sale notice published in Malayalam and English Dailies on 26.03.2024.

13. Valuation report obtained on 14.01.2024 and 17.01.2024.

14. Sale confirmed on 09.05.2024.

15. Sale certificate issued on 16.05.2025."

With a view to protract the proceedings, the Appellant has filed the Securitisation Application. Thus, he prayed for dismissal of the Appeals.

7. The Learned Counsel for the 4th Respondent, Auction Purchaser has also opposed these Appeals on the ground that the subject land is not an agricultural land, but only dry land, not capable of any cultivation. It is further submitted that the Appellant is preventing the Auction Purchaser from taking physical possession of the property.

8. Considered the rival submissions and perused the records.

9. From the records produced before this Tribunal, this Tribunal could find only xerox copy of tax receipt issued in favour of the Appellant. This document is dated 27.05.2025. This document is of no use for ascertaining whether the subject land is an agricultural land. Another document filed is a true copy of certificate issued by the Agricultural Officer, Krishi Bhawan dated 15.09.2022. This is a certificate of a living person, and from this certificate, it cannot be established that what was the starting period of cultivation of various crops like rubber and coconut trees, and whether such cultivation was prior to mortgage or subsequent to mortgage, or whether any

agricultural operations are going on from the date of mortgage and till now.

10. The Appellant has also produced a true copy of a Certificate given by the Deputy Rubber Production Commissioner dated 27.05.2025, to show that the Appellant had availed a subsidy through Rubber Production Incentive Scheme from 2015 to 2023. However, this is again a certificate issued by a living person, without furnishing any details about the incentives received.

11. Apart from these documents, as already stated, the Appellant produced certain documents in the Appeal. The RTI reply from the Village Administrative Officer shows that the land concerned in this case is dry land (Purayidam) i.e., it is not paddy land or wet land. It is also stated that there is no restrictions in cultivating other crops in this land. The Advocate Commissioner report filed in OS No. 224/2025 has also been produced. However, it is not known whether the Respondent Bank and the Appellant were the parties to this Suit. Therefore,

this report cannot be used in this case for determination of land as agricultural land. Except these documents, no other document has been filed to show that the agricultural operations are being conducted prior to the mortgage, from the date of mortgage and subsequently till now. If really, agricultural operations are being conducted, especially with rubber trees and coconut trees, the products like rubber extraction and the coconut, ought to have been sold to buyers directly or through intermediate seller. Appellant would have spent money in employing labourers for watering and manuring. However, no document to show the payments made to labourers, manuring and also the receipt of sale price for the rubber produce or coconut, is produced.

12. The reading of the order of Learned Presiding Officer shows that the Appellant has not produced any document to show that the secured asset was agricultural land as on the date of creation of security interest. Learned Presiding Officer referred to certain precedents. One of which is the decision in **Nithin Cashew Exports Vs. State Bank of**

India reported in *OP (DRT) No.275/2023*, wherein the Hon'ble High Court of Kerala, held that the appointment of an Advocate Commissioner will not serve any useful purpose, the reason being that, the Advocate commissioner would only report on physical features of the property available as of today, and not the physical features of the property at the time when the loan was availed and the security interest was created.

13. In this case, loan was availed long back, i.e., in the year 2016 by M/s. Ruby Baby. Admittedly, physical possession is not taken from the Appellant. Therefore, it is possible that, the Appellant would have planted the rubber trees and coconut trees in the land in question. With the passage of time, the trees would have been grown now. Therefore, the appointment of Advocate Commissioner, at this juncture, is not at all required. The Appellant is required to establish through documentary evidence that the land in question is agricultural land, prior to mortgage, at the time of creation of the mortgage, and that agricultural operations have been carried out, continuously till now.

14. It is also pertinent to refer the decision in **ITC Ltd. Vs. Blue Coast Hotels Ltd. & Ors.**, reported in *2018 KHC 6194*, which is referred to by the Learned Presiding Officer, DRT, that even in the case of agricultural lands, when the borrowers have created a security interest in respect of agricultural lands, it has to be construed that the borrowers / guarantors do not treat the land as agricultural land and, therefore, have offered the land as security. Here in this case, there is absolutely no material produced to show that the land in question is an agricultural land. Therefore, this Tribunal finds that dismissal of the Application filed for appointment of Advocate Commissioner in IA 1897/2024 is just and appropriate, and does not call for any interference.

15. As regards the Appeal in MA (SA) 78/2025, filed against the dismissal of stay application is concerned, this Tribunal finds that the sale in this case is over and sale certificate has been issued. There is no specific challenge to the sale held in the Securitisation Application. Therefore, the stay Application filed was without any basis,

and thus, dismissal of the stay Application by Learned Presiding Officer is correct.

16. In this view of the matter, the orders passed by the Learned Presiding Officer, DRT-I, Ernakulam, in IA 1897/2024 and IA 1898/2024 are hereby confirmed, and these Appeals in M.A (SA):77/2025 and M.A (SA):78/2025 are dismissed with costs of the Respondents. All pending IAs, if any stand closed.

[Dictated to Athistamani, PS, transcribed by her, corrected and signed by me this 07th of May, 2026]

[*Justice* G. Chandrasekharan]
CHAIRPERSON