

**IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT
KOLKATA**

**HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

Appeal No.29 of 2024
(Arising out of S.A. No. 50 of 2017 in DRT-Visakhapatnam)

1. Myneni Subba Rao, son of Appa Rao, Vidyanagar, Vigneswara Estates, Koritipadu Extension, Guntur-522007.
2. Smt. Myneni Anuradha, wife of Sri M. Subba Rao, Vidyanagar, Vigneswara Estates, Koritipadu Extension, Guntur-522007.

...Appellants

-Versus-

1. ICICI Home Finance Company Limited represented by Authorised Officer. ICICI Bank Towers, Bandra Kurla Complex, Mumbai - 400051.
2. ICICI Home Finance Company Limited, represented by its Branch Manager, 2nd Floor, PMG Complex, Main Road, Lakshmpuram, Guntur -522007.

....Respondents

Counsel for Appellants

Mr. Nemani Srinivas

Counsel for Respondents

Mr. Avishek Guha, Mr. Srijit Bose

JUDGMENT

: 19th June,2026

THE APPELLATE TRIBUNAL :

Instant Appeal has arisen against a judgment and order dated 29th January, 2021 passed by Learned Debts Recovery Tribunal Visakhapatnam in S.A. No. 50 of 2017 along with

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I.A. No. 1877 of 2019, I.A. No. 1878 of 2019 and I.A. No. 1879 of 2019 (*Myneni Subba Rao and another versus ICICI Home Finance Company Ltd. And another*) whereby the S.A. No. 50 of 2017 along with I.A. No. 1877 of 2019, I.A. No. 1878 of 2019 and I.A. No. 1879 of 2019 were dismissed.

2. As per pleadings of the parties, a Securitisation Application under Section 17 of the SARFAESI Act, 2002 was filed by the Appellants seeking relief of setting aside the action of the Bank under Section 13(4) measures and to set aside the Possession Notice dated 22.12.2016 with a consequential action initiated by the Bank on the ground that the Appellants are the borrower of a housing loan of Rs.65,60,000/- repayable in 180 monthly instalments whereby security interest was also created in the mortgaged property. Initially in September, 2008 Appellants have taken the business loan which was subsequently converted into the housing loan. Certain instalments were paid regularly upto 2011. But subsequently, the loan account became irregular and was classified as NPA. Action under the SARFAESI Act,2002 was initiated by the Bank. But the Appellants entered into a compromise wherein Rs. 25 lacs was paid on 30th March 2012. But the same was adjusted in the loan Account. The Statement of Account is not properly maintained in accordance with law.

3. Demand Notice issued on 31.10.2014 was not served upon the Appellants. Compliance of Section 13(2), 13(3) of the SARFAESI Act and Rule 8(1) of the SARFAESI Rules, 2002 regarding service of publication and affixation was not

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made. Possession of secured assets was taken by the Bank illegally. An amount of Rs. 53,77,143/- was paid by the Appellants upto 19th October, 2015 but in the Possession Notice an amount of Rs.86,87,930/- is shown as the amount due. Accordingly, Securitisation Application under Section 17 of the Act, 2002 was filed to set aside the action initiated by the Bank under Section 13(4) measures and also to set aside the Possession Notice dated 22.12.2016.

4. Opposition was filed by the Bank stating that admittedly Appellants are the borrower of the Company who committed default in repayment of the loan amount and the Account was classified as NPA. Amount of Rs.65,66,000/- was sanctioned in the month of September,2008. Appellants were irregular in payments of the instalments from the very beginning. Accordingly, on 23.09.2014, Bank recalled the entire outstanding for a sum of Rs.85,10,069/-.

5. Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 31.10.2014 which was duly served upon the Appellants and was also published in newspapers 'Business Standard' in English and Telegu newspaper 'Andhra Prabha' at Hyderabad and Guntur. Possession Notice was issued on 18.03.2015 which was also sent to the Appellants and was also published in two newspapers. When the amount was not paid, orders under Section 14 of the SARFAESI Act, 2002 dated 21.09.2016 were obtained and the physical possession was taken on 22.12.2016. Pre-sale Notice was issued on 22.12.2016. Thereafter, e-auction Sale Notice was issued on 23.02.2017 fixing the date of auction as on

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07.04.2017. On e-auctions, Appellants approached the Bank for settlement but did not comply the terms and conditions. All the actions were taken in accordance with Rules. S.A. is liable to be dismissed.

6. It appears that pending S.A., the I.A. No. 1878 of 2019 was filed by the Appellants for redelivery of the secured assets. I.A. No. 1879 of 2019 was filed for punishing the Authorised Officer for disobedience of the orders of the Hon'ble Debts Recovery Appellate Tribunal and I.A. No. 1879 of 2019 was filed for awarding compensation for Rs.1,00,00,000/- to Appellants. Objections to the I.A.s were filed by the Bank which were duly considered by the Learned DRT and I.A.s were dismissed.

7. Learned DRT after considering the submissions made by the Learned Counsel for the parties, recorded a finding that the Notice under Section 13(2) of the SARFAESI Act, 2002 was duly issued and served upon the Appellants when the same was not complied by the Appellants. Possession Notice was issued on 18.03.2015 which was also sent to the Appellants and was published in two newspapers, one in English and another in vernacular language on 21.03.2015. Hence, the Learned DRT recorded a finding that both the notices were duly issued and served upon the Appellants. Notices under Rule 8(1) of Security Interest (Enforcement) Rules, 2002 dated 22.12.2016 was also served in accordance with law. Subsequently, e-auction was fixed on different dates wherein the Appellants also preferred Writ Petition No. 20035 of 2017, Writ Petition No. 43974 of 2017,

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Writ Petition No. 3228 of 2018, Writ Petition No. 11657/2018 and Writ Petition No. 1500 of 2019. Ultimately, all the auction notice issued by the Bank for the e-auction could not be fructified. And the sale was conducted on 25.01.2019 for an amount of Rs.1,15,50,000/- and the bid amount was duly paid by the auction purchaser and the Sale Certificate is also issued in his favour. Consequently, Learned DRT also did not find any ground for allowing any of the I.A.s and dismissed the S.A. along with I.A.s.

8. I have heard the Learned Counsel for the parties and perused the records.

9. Learned Counsel for the Appellant would submit that the Notice under Section 13(2) of the SARFAESI Act, 2002 was not duly served. Time gap of 60 days was not allowed by the Bank while issuing Symbolic Possession Notice on 18.03.2015 which was published on 21.03.2015 although the same was not served upon both the Appellants. Hence, the whole action of the Bank is violative of Section 13(2) and 13(4) of the SARFAESI Act, 2002 for want of due service.

10. It is further submitted that the physical possession taken on 22.12.2016 was also not in accordance with law. It is further submitted that additional interest of 24% over and above as contractual rate of 18% totaling 42% was not in accordance with law which was exorbitant.

11. It is further submitted that a sum of Rs. 1,09,69,087/- was paid by the Appellants against a loan of Rs.65,60,000/-. Notice under Section 13(2) of the SARFAESI Act. 2002 was

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published in the newspaper on 16.12.2014 before expiry of 60 days from the date of Demand Notice dated 31.10.2014 which is not the due compliance of Rule 3 of the Security Interest (Enforcement) Rules, 2002. Accordingly, all subsequent actions are invalid.

12. Possession Notice dated 18.03.2015 was not affixed on the conspicuous part of the secured assets and is in violation of Rule 8(7) of the Rules. Notice dated 18.03.2015 was only sent in the name of Appellant No. 2. There is nothing on record to show that the same was also issued to Appellant No. 1. Further, there is no evidence of service of Notices.

13. Per contra, Learned Counsel for the Respondent would submit that notice under Section 13(2) of the SARFAESI Act, 2002 was duly served and published. Possession Notice dated 18.03.2015 was also duly served and published on the last known addresses. No representation under Section 13(3A) of the SARFAESI Act, 2002 was made by the Appellants. Accordingly, Possession Notice was issued and was also affixed on the conspicuous part of the secured assets.

14. Secured assets were auctioned after obtaining the valuation report. All the steps were taken in accordance with law. It is also submitted that challenge to the notice dated 22.12.2016 is made by the Appellants in the S.A. There is no challenge to the notice dated 18.03.2015 which was duly served upon the Appellants and was also within their knowledge but was not challenged within 45 days. Hence, his right to challenge the same stands waived by the

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Appellants. It is further submitted that in S.A. No.50 of 2017 and S.A. No. 52 of 2019, it was disclosed by the Bank that Possession Notice dated 18.03.2015 is issued by the Bank but despite it, the same was not challenged. Accordingly, now Appellants cannot challenge the Notice dated 18.03.2015.

15. Main challenge to the Securitisation action initiated by the Bank is basically on the ground of violation of the provisions of Section 13(2) and 13(4) of the SARFAESI Act, 2002. At the very outset, it is to be seen as to whether Learned DRT has considered the ground taken by the Appellants in the Securitisation Application?

16. Law is very well settled that if the mandatory provisions of the Act are not complied by the secured creditor in accordance with law, whole exercise of the secured creditor can be quashed.

17. In a recent judgment delivered by the Hon'ble Supreme Court on 9th June, 2026 in ***M.R. Vasumathi versus The Authorised Officer & Ors 2026 SCC OnLine SC 1103***, it was held that the validity of an auction conducted under the statutory regime is not to be tested on equitable considerations but strictly on the ground whether the mandate of the statute and the Rules has been breached or not. The SARFAESI Rules being subordinate legislation, bind the secured creditor as well as the auction purchaser with equal rigour.

18. It was further held in Para No. 36 that –

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"36. While it is trite that the rights of an auction purchaser and the sanctity of a confirmed sale ordinarily merit due protection, such protection is by no means absolute. It must yield where the very process engendering the sale is demonstrated to be legally infirm or to be incongruous with the statutory framework. The object of proceedings under the SARFAESI Act is not the mere culmination of a sale in a mechanical manner, but the lawful realisation of the secured asset through a process that is fair, transparent and strictly compliant with the prescribed rules. In the present case, the non-adherence to the timeline that the SARFAESI Rules contemplate constitutes a material irregularity going to the root of the matter. The mere factum that the sale stood confirmed cannot, therefore, foreclose judicial scrutiny."

19. Mandate of the law has to be complied with by the secured creditor in exercising the powers under the SARFAESI Act. At the same time, when a challenge is made to any of the actions of the secured creditor regarding violation of the Rules or the provisions of the Act, it is incumbent upon the DRT to consider the same and record a categorical finding as to whether the challenge made by the borrower find support from the Act/ Rules or not? Learned DRT is also expected to scrutinize the materials available on record to arrive at its conclusion regarding compliance of the mandatory provisions of the Act as well as the Rules. A superficial approach of recording general observations without scrutinizing the material on record to the effect that all the actions were taken by the Bank are in accordance with law cannot held to be a judicious exercise of powers by the DRT.

20. Now in this background we have to see as to whether the Learned DRT has proceeded in the matter and recorded its finding in accordance with law?

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21. A challenge is made by the Appellants regarding service of notice under Section 13 (2) of the SARFAESI Act, 2002 dated 31.10.2014. A plea is taken that the notices were not duly served and were published in the newspaper on 16.12.2014 and the mandatory period of 60 days were not allowed to the Appellants. The secured creditor filed the speed post details of the notices issued to the borrowers. But no track report is filed by the secured creditor to show that whether the notices were served or not? The publication was made on 16.12.2014. The Learned DRT should have gone into this aspect and should have recorded a categorical finding as to whether the service of notice under Section 13(2) of the SARFAESI Act. 2002 was duly made upon the borrowers or not? Whether the mandatory provisions of allowing 60 days' time to make good the demanded dues was accorded to the borrowers? But a vague finding is recorded that the notices were duly served.

22. Possession Notice dated 18.03.2015 was issued by the Bank which was published on 21.03.2015 which is also under challenge on the ground that the same was not served upon the borrowers. We have summoned the record of the DRT and perused the Notice dated 18.03.2015 also wherein Xerox copy of the notices is filed with a copy of postal receipt of the same in the name of 'Anuradha Myneni'. It was also published on 21.03.2015 in two newspapers but the Learned DRT has not gone into the aspect as to whether the notice was duly served upon the borrowers or not?

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23. In the Securitisation Application under Section 17 of the Act, 2002, relief sought for was regarding the notice dated 22.12.2016 issued under Rule 8(1) of the Act. Learned DRT proceeded on the basis of that notice. There is also a finding by the Learned DRT regarding the notice dated 18.03.2015 while there is no specific challenge to the same. In the absence of a specific challenge to the notice dated 18.03.2015 whether Learned DRT can look into validity of that notice or not? This issue should also have been considered by the Learned DRT. Whether despite bringing the same to the notice of the borrower in S.A. No. 52 of 2019, if the challenge is not made to the notice dated 18.03.2015 would it amount to the waiver of its right by the borrower?

24. As far as the submissions made by the Learned Counsel for the parties in the Appeal are concerned, all the submissions relate to the above issues wherein a finding is to be recorded by the Learned DRT. No doubt, Appeal is continuation of the original proceedings. But at the same time, a vague finding is recorded by the Learned DRT or a finding unsustainable in law is recorded by the Learned DRT, any fresh finding may curtail the right of an Appeal of the parties. Hence, all the issues have to be considered by the Learned DRT afresh.

25. Another issue is raised by the Appellants regarding the statement of Account as well as charging the exorbitant interest @ 42%, 24% over and above the contractual rate of interest of 18%. This issue also has to be considered by

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the Learned DRT coupled with the consequences, if any. Learned DRT simply recorded a general finding without considering the documents on records about the compliance of the provisions of the SARFAESI Act or Rules? Such a finding has to be set aside and matter to be remanded back to the Learned DRT to decide it afresh in the light of the observations made in the body of the judgment. Accordingly, Appeal is liable to be allowed and matter is to be remanded to the Learned DRT for decision afresh.

ORDER

Appeal is allowed. Matter is remanded to the Learned DRT to decide it afresh in the light of the observations made in the body of the judgment after affording an opportunity of hearing to the parties. Needless to observe that since this is an old matter, the DRT should decide the S.A. as expeditiously as possible.

No Order as to costs.

File be consigned to Record Room.

Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 19th day of June, 2026.

(Anil Kumar Srivastava,J)
Chairperson

Dated 19th June, 2026
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