

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

Appeal No. 85 of 2024  
(Arising out of S.A. 193 of 2018 in DRT-II, Hyderabad)

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

Order No. 22  
02.07.2026

M. Sridhar Raj ... Appellant  
-Vs-  
Indian Bank & 3 Others  
... Respondents

Mr. Nemani Srinivas with  
Mr. Tirthankar Das, Learned  
Counsel for Appellant

Mr. Debasish Chakrabarti,  
Learned Counsel for Respondents  
No. 1 & 2/Bank

With  
Appeal No. 110 of 2024  
(Arising out of S.A. 193 of 2018 in DRT-II, Hyderabad)

Indian Bank ... Appellant  
-Vs-  
A. Lakshmi Narasimha Rao & 2  
Others ... Respondents

Mr. Debasish Chakrabarti,  
Learned Counsel for Appellant

Mr. Nemani Srinivas with  
Mr. Tirthankar Das, Learned  
Counsel for Respondents

**THE APPELLATE TRIBUNAL:**

1. Since both the appeals are against a common judgment dated 14.6.2019 passed by Learned DRT-II, Hyderabad in S.A. 193 of 2018 (A. Lakshmi Narasimha Rao -vs- Indian Bank), both the appeals are being decided simultaneously.
2. Appeal No. 85 of 2024 (M. Sridhar Raj -vs- Indian Bank) is filed by the Auction Purchaser while

Appeal No. 110 of 2024 (Indian Bank -vs- A. Lakshmi Narasimha Rao) is filed by the Bank, Secured Creditor.

3. As per the pleadings of the parties, the Securitisation Applicant is the Borrower of the Bank who availed financial facilities from the Bank. Loan account became irregular and was classified as N.P.A. by the Bank. Bank proceeded under the provisions of the SARFAESI Act, 2002 (hereinafter referred as the 'Act'). Possession Notice was issued on 25.01.2012 wherein it is mentioned that the Demand Notice dated 22.9.2011 was issued. Possession Notice was also not published in two newspapers and was not served upon the Securitisation Applicant. Reserve price was very low. Sale Notice dated 15.7.2012 was issued fixing auction on 16.8.2012. Physical possession was taken by the Bank; accordingly, S.A. was filed for the relief for quashing the Sale Notice and auction held on 16.8.2012.

4. Bank filed opposition stating that Securitisation Applicant is the Borrower whose loan account became irregular and the loan account was classified as N.P.A. Demand Notice dated 22.9.2011 was issued. Possession Notice was issued on 19.01.2012 and published in Andhra Jyothi Telugu daily newspaper on 25.01.2012. Sale Notice was issued on 25.01.2012. S.A. was filed by Securitisation Applicant and a conditional stay was passed by DRT on 21.3.2012. Since Appellant failed to comply the conditions, possession was taken by the Bank under Section 14 of the

Act. Sale was conducted on 16.8.2012 in pursuance of the Sale Notice dated 15.7.2012 wherein M. Sridhar Raj was the successful Auction Purchaser in whose favour Sale Certificate was issued. Auction Purchaser also put in his appearance and adopted the contention raised by the Bank.

5. Learned DRT, after hearing the Learned Counsel for the parties, recorded a finding that there is no material on record regarding service of Demand Notice under Section 13(2) of the Act issued by the Bank. Further, Possession Notice was published in one newspaper and was not affixed on the secured assets. Accordingly, Learned DRT allowed the Securitisation Application and set aside the sale conducted by the Bank with a direction to take back the possession and deliver the same to the Borrower.

6. Feeling aggrieved by the impugned judgment Bank as well as the Appellant preferred separate appeals.

7. I have heard the Learned Counsel for Bank as well as the Appellant. None appeared for the Borrower.

8. Learned Counsel for Appellant Bank would submit that Bank followed the procedure prescribed under the law. All the notices were duly issued and served. No plea of non-service of Notice under Section 13 (2) of the Act was taken by the Securitisation Applicant in the S.A. Securitisation Applicant has also not complied the interim order dated 21.3.2012 hence he is not entitled for any relief.

9. Learned Counsel for the Auction Purchaser adopted the same submission made by the Learned Counsel for the

Bank. Learned Counsel for Auction Purchaser would submit that Learned DRT, while cancelling the sale, has not passed any direction for refund of the amount deposited by the Auction Purchaser.

10. As far as the merits of the matter are concerned, law is very well settled that the action, under the SARFAESI Act, begins with the issuance of a Notice under Section 13 (2) of the Act. It is incumbent upon the Secured Creditor to issue the notice in accordance with law. They should also serve the same upon the Borrower. When the action of the Secured Creditor is under challenge, even if it is accepted for the sake of argument, no plea of non-service of Notice, under Section 13 (2) of the Act, was taken, even then, Secured Creditor was bound to bring on record all the relevant documents regarding compliance of the specific provisions of the Act, including the service of Notice under Section 13 (2) of the Act.

11. In the present case, there is nothing on record to prove that the Notice under Section 13 (2) was served upon the Borrowers. Non-service of the Notice under Section 13 (2) of the Act vitiates the whole action under the SARFAESI Act. On this count we do not find any illegality in the impugned order passed by the Learned DRT.

12. Possession-cum-Sale Notice was published in one Telugu newspaper, i.e., Amar Jyothi. Rule 8 (1) and 8 (2) of Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules') provides that the Authorised

Officer shall deliver a Possession Notice to the Borrower and shall also affix the same in a conspicuous part of the secured assets and the same should also be published in two leading newspapers one in vernacular language and the other in English. Compliance of this Rule is mandatory. But there is nothing on record to prove that the Notices were served upon the Borrower and were affixed on the secured assets. As per the pleadings of the Bank, it was only published in Telugu Andhra Jyothi newspaper. There is nothing on record to prove that it was also published in English newspaper. Accordingly, findings, recorded by the Learned DRT, does not warrant any interference. Learned DRT has rightly arrived at a conclusion that there are violation of the Rules and the provisions of the SARFAESI Act, 2002 and has correctly set aside the sale conducted by the Bank. Directions were issued by the Learned DRT regarding re-delivery of possession in accordance with law. However, since the sale is set aside for violation of the mandatory provisions of the Act and Rules and there is no fault of the Auction Purchaser in cancelling the sale, Auction Purchaser is entitled for refund of the amount deposited by him with interest.

Accordingly, the appeal filed by the Bank is liable to be dismissed and the appeal filed by the Auction Purchaser is liable to be partly allowed.

O R D E R

Appeal No. 110 of 2024 (Indian Bank -vs- A. Lakshmi Narasimha Rao) is dismissed.

Appeal No. 85 of 2024 (M. Sridhar Raj -vs- Indian Bank) is partly allowed to the extent that the order passed by the Learned DRT is confirmed with the modification that the Appellant/Auction Purchaser would be entitled for refund of the deposited amount with interest at the rate of 7% from the date of deposit till the date of actual payment.

Bank should make payment within thirty days.

Bank shall take over possession from the Auction Purchaser and re-deliver the same to the Borrower after making payment to the Auction Purchaser as per the order.

File be consigned to Record room.

Copy of the order be retained in the records of Appeal No. 110 of 2024 (Indian Bank -vs- A. Lakshmi Narasimha Rao).

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

Order pronounced in open Court.

(Anil Kumar Srivastava,J)  
Chairperson

Dated: 2<sup>nd</sup> July, 2026  
22/23/ac