IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 17th of July, 2026

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

R.A (SA): 45/2022
AND
R.A (SA): 31/2023
(SA 199/2020 on the file of DRT-II, Chennai)

R.A (SA): 45/2022

Between

1. K. Dasarah
S/o. Kannupaiyan
Door No. 2/110, Mittahalli Pudur
Mittahalli Post, Kaveripattinam
Krishnagiri 635 112

2. K. Murali
S/o. Krishnaiya Chetty
Door No. 2/110, Mittahalli Pudur
Mittahalli Post, Kaveripattinam
Krishnagiri 635 112

3. N. Prabakaran
S/o. M. Natarajan
Door No. 259/2, Salem Main Road
Krishnagiri 635 001

4. K.S. Ragavendran
S/o. K.K. Srinivasan
Door No. 259/2, Salem Main Road
Krishnagiri 635 001

5. N. Dhanikachalam
S/o. D. Nagarajan
Door No. 3/568-10, Jakkappan Nagar
8th Cross, Krishnagiri 635 001

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6. K.K. Srinivasan
S/o. K.R. Krishnaiya Chetty
Door No. 44, F2, Basheer Mohammed Layout
Krishnagiri 635 001

7. N. Dinesh Kumar
S/o. T. Nagarajan
Door No. 73, Gnanammal Colony
Jagadevi 635 203

8. G.N. Ramanathan
No. 1/517, Senthil Nagar
Agasipalli, Krishnagiri 635 001

...Appellants

And

1. Axis Bank Limited
Rep. by its Authorised Officer
Southern Recovery Cell, 1st Floor
Javahar Towers, New No. 3, Old No. 2
Club House Road, Anna Salai, Chennai 600 002

2. M/s. Manam Agri Impex
Rep. by its Proprietor, R.P. Mohan
Thandarai Village, Bennangur Post
Hosur, Denkanikotta Taluk
Krishnagiri District 635 107

3.M/s. Manam Agro Concentrate
Rep. by its Proprietrix, Gunawathee Mohan
Thandarai Village, Bennangur Post
Hosur, Denkanikotta Taluk
Krishnagiri District 635 107

4. M/s. Manam Fruit Products Pvt. Ltd.
Rep. by its Managing Director, Gunawathee Mohan
Regd. Office:
Thandarai Village, Bennangur Post
Hosur (Via), Denkanikotta
Krishnagiri 635 001

5. Gunawathee Mohan
Thandarai Village, Bennangur Post
Hosur, Denkanikotta Taluk
Krishnagiri District 635 107

6. R.P. Mohan
Thandarai Village, Bennangur Post
Hosur, Denkanikotta Taluk
Krishnagiri District 635 107

7. M. Anandraj
Thandarai Village, Bennangur Post
Hosur, Denkanikotta Taluk
Krishnagiri District 635 107

…Respondents

R.A (SA): 31/2023

Between

M/s. Axis Bank Limited,
Rep. by its Authorised Officer, Mr. C. SURESH PAI
Formerly Southern Recovery Cell
Now STRUCTURED ASSETS GROUP,
1st Floor, Javahar Towers, New No. 3, Old No. 2,
Club House Road, Anna Salai, Chennai – 600 002.

…Appellant

And

1. M/s. Manam Agri Impex,
Rep. by its Proprietor, Mr. R.P. Mohan,
Thandarai Village, Bennagur Post,
Hosur, Denkanikotta Taluk,
Krishnagiri District – 635 107.

2. M/s. Manam Agro Concentrate,
Rep. by its Proprietrix Smt. Gunawathee Mohan,
Thandarai Village, Bennagur Post,
Hosur, Denkanikotta Taluk,
Krishnagiri District – 635 107.

3. M/s. Manam Fruit Products Pvt Ltd.,
Rep. by its Managing Director,
Smt. Gunawathee Mohan,
Regd. Office: Thandarai Village,
Bennagur Post, Hosur Via Denkanikotta,
Krishnagiri – 635 001.

4. Smt. Gunawathee Mohan,
Thandarai Village, Bennagur Post,
Hosur, Denkanikotta Taluk,
Krishnagiri District – 635 107.

5. R.P. Mohan,
Thandarai Village, Bennagur Post,
Hosur, Denkanikotta Taluk,
Krishnagiri District – 635 107.

6. M. Anandraj,
Thandarai Village, Bennagur Post,
Hosur, Denkanikotta Taluk,
Krishnagiri District – 635 107.

7. K. Dasarah,
S/o. Kannupaiyan,
Door No. 2/110, MittahalliPudur,
Mittahalli Post, Kaveripattinam,
Krishnagiri – 635 112.

8. K. Murali,
S/o. Krishnaiya Chetty,
Door No. 2/110, MittahalliPudur,
Mittahalli Post, Kaveripattinam,
Krishnagiri – 635 112.

9. Prabakaran,
S/o. M. Natarajan,
Door No. 259/2, Salem Main Road,
Krishnagiri – 635 001.

10. K.S. Ragavendran,
S/o. K.K. Srinivasan,
Door No. 259/2, Salem Main Road,
Krishnagiri – 635 001.

11. N. Dhanikachalam,
S/o. D. Nagarajan,
Door No. 3/568-10, Jaggappan Nagar,
8th Cross, Krishnagiri – 635 001.

12. K.K. Srinivasan,
S/o. K.R. Krishnaiya Chetty,
Door No. 44, F2, Basheer Mohammed Lane,
Krishnagiri – 635 001.

13. N. Dinesh Kumar,
S/o. T. Nagarajan,
Door No.73, Gnanamal Colony,
Jagadevi – 635 203.

14. G.N. Ramanathan,
No.1/517, Senthil Nagar, Agaspalli,
Krishnagiri – 635 001.

.... Respondents

Counsel for Bank	:	*M/s. V. P. Krishnamoorthy*
Counsel for Auction Purchasers	:	*M/s. S. Manuraj*
Counsel for Borrowers/Guarantors	:	*M/s. G. Desingu*

COMMON ORDER

1. Respondents 1 to 6 in RA (SA) 31/2023 and Respondents 2 to 7 in RA (SA) 45/2022, filed SA 199/2020 to set aside the Sale Notice dated 09.12.2020 scheduling the e-auction sale on 30.12.2020, and consequently, to set aside the sale held in favour of Respondents 2 and 3 in respect of item No.3, Respondents 4 and 5 in respect of item No.5, Respondents 6, 7 and 8 in respect of item No. 4 and

Respondent No.9 in respect of item No.7, described in the Schedule to the Securitization Application.

2. The grounds taken by the Applicants in the Securitization Application are that, except item No.6, all the other properties are agricultural lands. Item Nos. 1 to 5 and 7 are being periodically cultivated. Therefore, these properties are exempted from SARFAESI proceedings under Section 31(i) of the SARFAESI Act, 2002. The total amount claimed in the Sale Notice is Rs.14,63,42,846.23p, whereas the total reserve price fixed for all the properties is Rs.19,54,00,000/-. The sale of the items 1 to 5 would have been sufficient to recover the dues. It is not required to sell all the properties, and therefore, the sale is against the Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 (Hereinafter called SIE Rules, 2002). The Sale Notice dated 09.12.2020 was served on the Applicants only on 17.12.2020. There was no clear 15 days' time prior to the date of sale, and thus, there is violation of the *proviso* to Rule 9 of SIE Rules, 2002. The Sale Notice was not affixed on the secured asset. Rule 8(5) of SIE Rules, requires

valuation of the property prior to sale by approved valuer. However, this was not done, and no valuation has been taken by the Respondent Bank.

2.1. This case of the Applicants before the Tribunal was denied by the Respondent Bank by filing a counter, contending that the measures under SARFAESI Act for the sale of the property were taken after observing the necessary legal requirements under the SARFAESI Act, 2002.

2.2 The Learned Presiding Officer, on going through the material produced and submissions made by the Counsel appearing for the parties, held that the Applicants' claim that the lands are agricultural lands was not correct and rejected the contention of Applicants. However, the Learned Presiding Officer found that there was no clear 15 days' notice had been given prior to the date of sale, and that it was in violation of the *proviso* to Rule 9(1) of the SIE Rules, 2002. Thus, the Securitisation Application was allowed to the extent with regard to the challenge to the Sale Notice dated 09.12.2020 and sale conducted on 30.12.2020. Against this finding and aggrieved by the order, the Axis Bank filed the Appeal in RA (SA) 31/2023 and the Auction Purchasers filed the Appeal No.45/2022.

3. For the sake of convenience and better understanding, the parties are hereinafter referred to as the Bank, the Borrowers/Guarantors and the Auction Purchasers.

4. M/s. Manam Agri Impex is a proprietary concern. One Mr. R. P. Mohan, the 5th Applicant, is its Proprietor. Applicants 3 to 6 are the guarantors. The 2nd Applicant, M/s. Manam Agro Concentrate, is a proprietrix concern engaged in the manufacture of aseptic pulp barrels, in the premises of 3rd Applicant. The 3rd Applicant, M/s. Manam Fruit Products Pvt. Ltd., is engaged in the business of manufacturing canning pulp, of which the 4th Applicant is the Managing Director and Applicants 5 and 6 are its Directors. Applicants 3, 4, 5 and 6 are its guarantors. It is not in dispute that the Applicants availed Cash Credit and Term Loan families of Rs.6 Crores

from Canara Bank, Hosur Branch, from the inception of 3rd Applicant Company in 1986. The loans were taken over by the Axis Bank in 2013. Axis Bank sanctioned Cash Credit limit of Rs.10 Lakhs under the MSE Power Scheme. The 2nd Applicant was sanctioned Cash Credit limit of Rs.370 Lakhs and the 3rd Applicant was sanctioned Cash Credit limit of Rs.500 Lakhs, aggregating to Rs.8.80 Crores. Since the Applicants committed default, the account was classified as a Non-Performing Asset (NPA) and the Demand Notice was issued, followed by the Possession Notice and Sale Notice.

5. As already stated, the Securitisation Application was allowed on the ground that there was no clear 15 days' notice, and thus, the Sale Notice and sale held were set aside. Assailing the order passed by the Learned Presiding Officer, Learned Counsel for the Bank submitted that earlier three attempts to sell the secured asset had ended into failure. It was only in the fourth attempt, the sale ended into success. The Borrowers/Guarantors had not taken any effort to repay the loan amount and redeem the property. After the sale was

over, the Sale Certificate was issued and registered, and Patta was granted to the Auction Purchasers. Merely because there was no clear 15 days' of notice, the sale cannot be set aside, especially, when the Borrowers/Guarantors had not shown any interest in redeeming the property. In support of his submission, he relied on the decision of the Hon'ble Supreme Court in **Celir LLP Vs. Mr. Sumati Prasad Bafna & Ors.,** reported in *Contempt Petition (C) Nos. 158-159/2024 in Civil Appeal Nos. 5542-5543/2023*, wherein it is held that, when it is not brought out that the sale was the resultant of any collusion or fraud either at the behest of the Bank or the successful Auction Purchaser, merely because there is no 15 days gap between the notice of sale and the notice of auction, the sale cannot be set aside, unless the Borrower shows any prejudice was caused or that it prevented from effectively exercising its rights due to such procedural infirmity.

5.1 It is further submitted by the Learned Counsel for the Bank that the right of redemption is lost once the Sale Notice is published, whereas in the case before hand, the sale was held and Sale Certificate was registered. The Securitisation Application was filed only after conclusion of the sale. The Sale Notice dated 09.12.2020 was sent to the Borrowers/Guarantors by registered post on 10.12.2020. There is no dispute with regard to the last known address of the Borrowers/Guarantors. The Sale Notice was published in the newspapers on 14.12.2020. The Borrowers/Guarantors evaded service of the Sale Notice till 19.12.2020, though intimation had been delivered to them on 16.12.2020. The Borrowers/Guarantors filed Securitisation Application with tainted hands to ensure that the Bank's legitimate recovery measures were scuttled.

6. In addition, the Learned Counsel for the Auctions Purchasers submitted that, the publication of the Sale Notice in *The New Indian Express* was effected on 14.12.2020, and thus, 15 days' clear notice was given to the Borrowers/Guarantors. The Borrowers/Guarantors evaded receipt of the Sale Notice, as evidenced by the endorsement made on the postal covers *"intimation- 16.12.2020"* and the

tracking report stating "*not delivered-addressee absent*" and subsequently, "*item delivered and confirmed*". The Borrowers/Guarantors have conveniently and selectively filed only three postal tracking reports and have not produced the other tracking reports. When a registered post is sent to the correct address by affixing the requisite stamp, there is a legal presumption of due service of notice. The Auction Purchasers have invested a huge amount in buying the property. The Borrowers/Guarantors had several opportunities to repay the loan amount and redeem the property. Having failed to do so, cannot challenge the Sale Notice and sale on the ground of lack of 15 days' clear notice. Thus, the Leaned Counsel appearing for the Bank and the Auction Purchasers prayed for setting aside the order of the Learned Presiding Officer, DRT-II, Chennai, and for allowing these Appeals.

7. Learned Counsel for Respondents /Borrowers / Guarantors submitted that the Borrowers/Guarantors had taken two main grounds: (i) the lands are agricultural lands, and therefore, exempted under Section 31(i) of the SARFAESI

Act from proceedings under SARFAESI Act, 2002; and (ii) there was violation of Rules 8(6) and 9(1) of the SIE Rules, 2002, in issuance of the Sale Notice, apart from the grounds valuation of the secured asset, excessive execution and non-affixture of Sale Notice. The Learned Presiding Officer had not considered the grounds relating to non-affixture of the Sale Notice, valuation and excessive execution. The Borrowers/Guarantors produced evidence to show that the lands are agricultural lands by producing revenue records. Without properly considering the revenue records, the Learned Presiding Officer rejected the case of the Borrowers/Guarantors that the lands are agricultural lands. However, the Applicants have now produced additional documents to reiterate their claim that the lands are agricultural lands, and therefore, the Securitisation Application should have been allowed on the ground that the lands are agricultural lands also. Though the Borrowers/Guarantors have not filed any separate Appeal/Cross Appeal against the finding recorded by the Learned Presiding Officer negativing the claim that the lands are agricultural lands, Borrowers/Guarantors can agitate this issue even in this Appeal.

8. Refuting this submission, Leaned Counsel for the Bank submitted that there are absolutely no pleadings with regard to valuation and excessive execution. The Learned Presiding Officer has also not considered this ground. The order passed in Writ Petition in WP No. 3730/2016 shows that the lands are not the agricultural lands. Section 27 of the General Clauses Act presumes that the service shall be deemed to be effected when the notice is sent to the correct address with proper stamp. The claim that the lands are agricultural lands was not taken in the writ proceedings. Out of seven properties, four properties were sold for Rs.6.40 Crores. The Borrowers/Guarantors have not pleaded any fraud or collusion between the Bank and the Auction Purchasers. Mere production of revenue records would not establish that the lands are agricultural lands unless it is supported by evidence showing that agricultural operations were/are being carried out from the date of creation of mortgage till now.

9. Considered the rival submissions and perused the records.

10. We have seen that the Securitisation Application has been filed by the Borrowers/Guarantors on the grounds: i) Except item No.6, all other properties offered as security are agricultural lands, ii) that the sale of the items 1 to 5 would have been sufficient to recover the dues of Rs.14,63,42,846.23p, and it is not necessary to bring all the properties for sale, iii) that there is no clear 15 days' of notice between the date of service of notice and the date of sale, iv) the Authorised Officer failed to affix the Sale Notice on the secure asset, and v) that the Bank has not obtained a valuation prior to the date of sale notice. On these grounds, the Learned Presiding Officer rejected the ground that the lands are the agricultural lands. However, the Learned Presiding Officer found in favour of the Borrowers/Guarantors that there was no clear 15 days' notice between the date of service of the Sale Notice and date of sale and on this ground, allowed the

Securitisation Application. Though the plea of non-affixture of the Sale Notice is taken along with the plea that the Bank has not taken any valuation prior to sale of the property and excessive execution, these grounds had not been considered by the Learned Presiding Officer.

11. The Borrowers/Guarantors have not filed any Appeal against the finding of the Learned Presiding Officer that the lands are not the agricultural lands. However, Learned Counsel for the Borrowers/Guarantors submitted that though the Appeal/Cross Appeal has not been filed, in the Appeal filed by the Appellants, the Borrowers/Guarantors can take up the plea that the finding of the Learned Presiding Officer that the lands are not the agricultural lands, is not correct. In support of which submission, he pressed into service the decision in **Ravinder Kumar Sharma Vs. State of Assam and Ors.**, reported in *(1999) 7 SCC 435*, wherein the Hon'ble Supreme Court opined that "the Respondent/Defendant in an Appeal can, without filing cross-objections attack an adverse finding upon which a decree in part has been passed against the

Respondent, for the purpose of sustaining the decree to the extent the lower court had dismissed the suit against the Respondent/Defendant.”.

12. Learned Counsel for the Borrowers/Guarantors also relied on the decision of the Hon’ble High Court of Madras in **Suresh Kumar Kankariya Vs. K. Jigibai @ Pushpammal** reported in *2022 (3) CTC 501,* for the same proposition. It is held in this decision as follows:

> *“24. It is clear from the above judgments that the necessity to file a cross-appeal or a cross-objection will arise only when the impugned decree is partly in favour and partly against the respondent. Where the decree is entirely in favour of the respondent, though there is a finding against the respondent, he need not file a cross-appeal or a cross-objection and the adverse findings can be challenged in the appeal filed by the other party and the Court is entitled to decide the same. Even after the amendment that was brought in the year 1976 and an explanation was added to Order XLI Rule 22 of CPC and a right was created for filing a cross-objection against an adverse finding, the same is mandatory only where the decree is partly in favour and partly against the respondent.*

25. When the above ratio is applied to the facts of the present case, it can be seen that the decree passed by the Lower Appellate Court was entirely in favour of the respondent and hence the respondent is entitled to question the adverse findings on the issue of Order II Rule 2 CPC rendered by the Lower Appellate Court, in the Second Appeal filed by the plaintiff.

26. In view of the above conclusion, there is no requirement for this Court to go into the scope of Order XLI Rule 33 of CPC to analyse if this provision can be invoked in the absence of a cross-objection filed by the respondent against adverse findings rendered by the Lower Appellate Court. Hence, there is no necessity to answer the additional substantial question of law framed by this Court."

13. The decision of Hon'ble Supreme Court in **Prabhakar Gones Prabhu Navelkar (dead) through LRs and Ors. Vs. Saradchandra Suria Prabhu Navelkar**, reported in *(2020) 20 SCC 465*, is relied on for understanding as to a situation where the Respondent has to file an Appeal or cross- objection against that part of the decree which is against him. The relevant observations are extracted below:

"32…………There may be three situations:

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to *any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the Explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent."*

In para 60, it is observed as follows:-

"60. We have already referred to the law laid down by this Court in regard to Order 41 Rule 22 of the Code of Civil Procedure. In an appeal if the respondent does not want any change in the decree of the lower court, it is not necessary for him to file an appeal or cross-objection to merely support the decree already passed without any variation in the decree but by challenging the correctness

of the findings in the judgment. The appellants are correct in contending that if a challenge is made to a decree by a respondent then necessarily the respondent must file either an appeal or a cross-objection. In this case however, the suit filed by the appellants stood dismissed by the first appellate court. The two appeals which were carried by the appellant before the High Court were dismissed. Resultantly, the decree of the first appellate court dismissing the suit came to be confirmed. Before this Court the respondents are not seeking to challenge the decree. They do not wish any variation of the decree. They seek to have the decree confirmed. They support the decree entirely. The decree is one dismissing the suit. They are only seeking to support the said decree by challenging one of the findings, namely, the finding relating to title. For doing the same, it is not necessary for them to file an appeal or cross-objection as by having the finding overturned in regard to title they are not seeking to have a different decree passed in any manner. Hence, we reject the contention of the appellants that it is not open to the respondents to contest the finding on title without filing cross-objection."

14. The Learned Counsel for the Bank and the Auction Purchasers submitted that, without filing an Appeal and

Cross- objection, the Borrowers/Guarantors cannot canvass the finding rendered against the Borrowers/Guarantors.

15. From the aforesaid decisions, it can be gathered that the Respondents, without filing cross-objection, can attack an adverse finding for the purpose of sustaining a decree, in an Appeal filed by the Appellant. Where the decree is entirely in favour of the Respondent, though there is a finding against the Respondent, he need not file a Cross-Appeal or a Cross-Objection, and the adverse finding can be challenged in the Appeal filed by the other party, and the Court is entitled to decide the same. Therefore, this Tribunal permits the Borrowers/Guarantors to canvass against the finding recorded by the Learned Presiding Officer that the lands are not agricultural lands.

16. The Learned Counsel for the Borrowers/Guarantors relied on the title documents and copies of the revenue records issued by the Village Administrative Officer to show that the lands are agricultural lands and crops have been cultivated.

The Application for receiving the additional documents have been filed in both the Appeals for reception of the documents namely revenue records like Adangal extracts and photographs taken, to strengthen the case that the lands are agricultural lands and crops are being cultivated and those Applications are allowed.

16.1 May be that land is assessed to the land revenue as agricultural land under the State Revenue Law is certainly a relevant fact, but it is not conclusive proof of the use of land for agricultural purpose. In **Indian Bank and Anr. Vs. V.K. Pappireddiyar and Anr.,** reported in *2018 SCR 611*, it was held that the classification of land in the revenue records as agricultural is not dispositive or conclusive of the question whether the SARFAESI Act does or does not apply. Whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was put on the date of the creation of the security interest and the purpose for which it was set apart. The question as to whether the land is agricultural has to be determined on the basis of the totality of the facts and circumstances including the nature and character of the land, the use to which it was put and the purpose and intent of the parties on the date on which the security interest was created.

17. In **K. Sreedhar Vs. M/s Raus Constructions Pvt. Ltd. and Ors.** reported in *2023 1 S.C.R. 57*, it was held that only in a case where the secured property is actually put to use as agricultural land and solely on the basis of the revenue records, the lands cannot be treated as agricultural land. The burden is on the borrower to prove that the secured properties are agricultural lands and actually being used as agricultural lands and/or agricultural activities are going on.

18. In **I.T.C. Limited Vs. Blue Coast Hotels Ltd., & Ors.,** reported in *2018 5 SCR 516*, it is held that, at the time of creating mortgage, entire property was intended to be covered. Thus, it was found, having record to the character of the land and the purpose for which it is set apart, the land in question is not an agricultural land and that condition and intended user has to be seen for the purpose of exemption.

19. What is important is the use to which the land was put to use on the date of creation of the security interest and continued use of land for agriculture purpose, has to be satisfied for claiming exemption under the provisions of the SARFAESI Act, 2002. It is the duty of the Borrowers/Guarantors to establish that the lands are agricultural lands and agricultural operations are being carried out from the date of creation of mortgage and continued till date.

20. From the title documents and the revenue records, it can be seen that certain trees like Mango trees and certain crops seems to have been cultivated. All the copies of the Adangal extracts produced by the Borrowers/Guarantors have been issued by the Village Administrative Officer and they are not countersigned by the Revenue Inspector and Tahsildar to confirm the authenticity of the Andangal extracts given by the Village Administrative Officer. Therefore, on the basis of the revenue records alone, it cannot be determined with certainty that the lands are agricultural lands and that agricultural

operations are being carried out from the date of mortgage and continued till now.

21. The Photographs taken on 28.05.2025, subsequent to the filing of these Appeals, would also show that there is no systematic agricultural operations are going on over the entire extent of the lands. Some coconut trees, may be paddy crop, and wild bushes are seen in some of the parcels of land Rocks are also visible. The Borrowers/Guarantors have not produced any other document to show what is the amount spent on the cultivation of the crops? what is the income generated from produce, etc. In the said circumstances, this Tribunal is of the view that the documents produced by the Applicants before the Tribunal and now before the Appellate Tribunal, are insufficient to give a conclusive finding that the lands are agricultural lands and that agricultural operations had been carried out and now being carried on, for getting exemption under Section 31(i) of the SARFAESI Act, 2002. Therefore, this Tribunal finds that there is no need to interfere with the finding of the Learned Presiding Officer, rejecting the

claim of the Applicants/Borrowers that the lands are not the agricultural lands.

22. The impugned Sale Notice dated 09.12.2020, scheduling the sale on 30.12.2020 issued to the Borrowers/Guarantors, admittedly was not served on the Borrowers/Guarantors prior to 15 days of sale. The track consignment records produced in respect of three Applicants show that the Sale Notice was delivered only on 19.12.2020 to two Applicants, and for one Applicant i.e. M/s. Manam Agri Impex, it was delivered on 17.12.2020. The delivery was attempted on 16.12.2020, but the addressee was absent, and therefore, delivery could not be effected. Neither the Borrowers/Guarantors nor the Bank produced proof of delivery of the Sale Notice in respect of other Applicants.

22.1 The case of the Bank and Auction Purchasers is that the Borrowers/Guarantors had deliberately evaded receipt of the Sale Notice. The Sale Notice was sent through the registered post on 10.12.2020 to the correct address by affixing the requisite postal stamps. Therefore, the Sale Notice deemed to have been served on the addressees. When the addressee deliberately avoided receipt of the Sale Notice, they cannot now take a plea that there is no clear 15 days' notice between the date of service of Sale Notice and date of sale.

22.2 There is no doubt that out of three track delivery reports produced, two show that items delivered was confirmed only on 19.12.2020 meaning thereby the Sale Notice was served on 19.12.2020. The Sale Notice to M/s. Manam Agri Impex was attempted to be served on 16.12.2020, and since the addressee was absent, it was delivered on 17.12.2020. Even taking 16.12.2020 as the date of service of the Sale Notice, still, there is no clear 15 days' notice from the date of service of the Sale Notice and the date of sale.

23. In this connection, the Learned Counsel for the Borrowers/Guarantors pressed into service the following decisions on the need for compliance of the mandatory requirements under Rules 8(5), 8(6), and 9(1) of SIE Rules, 2002, relating to valuation, service of Sale Notice by post, affixture and publication.

I The decision in **Vasu P. Shetty Vs. Hotel Vandana Palace and Ors.**, reported in *(2014) 5 SCC 660*, is relied for the proposition that there cannot be waiver of mandatory requirement under Rules 8 and 9 of SIE Rules, 2002 in issuing notice under Rules 8 and 9 of the SIE Rules, 2002.

II. The decision in **M. Rajendran & Ors. Vs. KPK Oils and Proteins India Pvt. Ltd. & Ors.**, reported in *(Neutral Citation) 2025 INSC 1134*, is relied for the proposition that;

"….the objects that is sought to be achieved by the time period stipulated in Rules 8(6) and 9(1) will be fulfilled if both the notices are issued simultaneously as long as the period of 30 days is adhered to. All that is required is that 30 days gap between the date when the notice of sale is served, affixed and published, whichever is later, as the case may be, till the date of actual sale.

24. Learned Counsel for the Borrowers/Guarantors also relied on the decision in **Ram Kishun and Ors. Vs. State of Uttar Pradesh and Ors.,** reported in *(2012) 11SCC 511*, for the

proposition that, no doubt, public money should be recovered and recovery should be made expeditiously. But, it does not mean that the financial institutions are concerned with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions. There is a legal obligation on the part of the authority to see that property is sold in such a manner that it may fetch the best price. In case proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyers may not come forward treating the property as not worth purchase by them, as a moneyed person or a big businessman may not like to involve himself in small transactions.

25. As already stated, the Learned Counsel for the Bank relied on the decision of the Hon'ble Supreme Court in **Celir LLP Vs. Mr. Sumati Prasad Bafna & Ors.,** reported in *Contempt Petition (C) Nos. 158-159/2024 in Civil Appeal Nos.*

5542-5543/2023, for the proposition that the mere lack of clear 15 days' notice will not affect the sale unless the Borrower establishes collusion or fraud at the behest of the Bank or successful Auction Purchaser, and that any prejudice has been caused on account of the lack of clear 15 days' notice.

26. From the decisions cited by the Learned Counsel for Borrowers/Guarantors, there is no doubt that the settled proposition of law is that, when Banks and Financial Institutions are empowered to take physical possession and sell the secured asset, they are expected to comply with the mandatory requirements for taking possession and sale of the secure asset. Therefore, the need to give clear 30 days' Sale Notice in the case of the first sale and clear 15 days' Sale Notice in the case of a subsequent sale, on failure of the first sale, is absolutely necessary, and it is mandatory.

27. In **Celir LLP Vs. Mr. Sumati Prasad Bafna** case, the facts are totally different. There, the borrowers filed SA 46/2022 assailing Section 13(2) Demand Notice dated 07.06.2021 and

Possession Notice dated 04.02.2022 issued under Section 13(4) of the SARFAESI Act, 2002. When the SA was pending, the Bank published the Sale Notice in terms of Rule 8(6) of SIE Rules, 2002 on 25.03.2022 scheduling the sale on 29.04.2022. Between April, 2022 and June 2023, the Bank attempted eight auctions, but all of them failed. Ninth Sale Notice was issued on 14.06.2023 fixing the sale on 30.06.2023. It was specifically stated in the Sale Notice that the sale is subject to outcome of the SA 46/2022. When the Contempt Petitioner before the Hon'ble Supreme Court was declared as the highest bidder, sale was confirmed in his favour. He paid the balance 25%. The Borrower filed IA 2339/2023 in SA 46/2022 to redeem the mortgage created over the secured asset by paying total outstanding of Rs.123.83 Crores in lieu of the LRD term loan. The Application was pending disposal, the Borrowers filed Writ Petition in WP No.9523/23 against the Demand Notice, Possession Notice and sale of the secured asset. Meanwhile, the Contempt Petitioner deposited the balance sale consideration on 27.07.2023. The Borrower has not challenged the legality or propriety of the 9th auction in the

Writ Petition. They expressed their willingness to pay total sum of Rs.129 Crores for redeeming the mortgage. The Bank also expressed its willingness to receive the money before Hon'ble High Court. The Contempt Petitioner filed an Application for impleading the Petitioner in the Writ Petition. The Hon'ble High Court allowed the Writ Petition and permitted the Borrower to redeem the mortgage of the secured asset subject to payment of Rs.25 Crores on the same day and the balance of Rs.104 Crores on for before 31.08.2023. Aggrieved against this order, the Contempt Petitioner filed SLP No. 19523-19524/2023 (later numbered as Civil Appeal Nos.5542-5543/2023) before Hon'ble Supreme Court of India. On 28.08.2023, the Bank issued No Due Certificate to the Borrower and a Release Deed was executed for discharge of the mortgage over the secured asset, upon which the original title deeds and related documents were returned to the Borrower. On the same date, the Borrower entered into an Agreement of Assignment of Leasehold Rights with a 3rd party namely M/s. Greenscape IT Park LLP, i.e. the subsequent transferee. The Hon'ble Supreme Court vide its final judgement and order dated 21.09.2023 in Civil Appeal Nos.5542-5543/2023 held that the Hon'ble High Court erred in permitting the Borrower to redeem the mortgage after publication of the sale/auction under Rule 9 sub-Rule(1) of the SIE Rules. Accordingly, the order of Hon'ble High Court was set aside. On the Petitioner's willingness to make good the difference between the total outstanding dues and the bid amount, directed the Petitioner to pay an additional sum of Rs.23.95 Crores to the Bank within a week, upon which the Bank was to issue sale certificate to the Petitioner. The Bank was further directed to refund the entire amount paid by the Borrower towards the redemption of the mortgage. The Borrower preferred a Review against the final order on 21.09.2023. On payment of Rs.23.95 Crores by the Petitioner on 27.09.2023, Sale Certificate was issued to the Petitioner by the Bank. The Bank addressed a letter to the Borrower requesting for the cancellation of the Release Deed dated 28.08.2023 and for returning the original title documents in order to refund the amount paid towards redemption of the mortgage. Petitioner sent several reminders to the Bank to handover the physical possession of the secured asset along with the original title deeds. Several correspondences took place between the Petitioner and the Bank for handing over possession and title documents. Petitioner issued a Legal Notice dated 29.12.2023 to all the Respondents to handover the physical possession of secured asset along with its original title documents, cancelling the Release Deed dated 28.08.2023, etc. Nothing happened. The subsequent transferee filed a Civil Suit No.5/2024 against the Petitioner. Though the Bank obtained order under Section 14 of the SARFAESI Act, it could not take physical possession of the secured asset. In these circumstances, the Petitioner filed the Contempt Application. While disposing the Contempt Petition, the Hon'ble Supreme Court found that the Borrower and the subsequent transferee, especially, the Borrower made several attempts to prevent the effective implementation of the judgement of the Hon'ble Supreme Court dated 21.09.2023 thereby thwart the attempt of the Bank to handover the physical possession of the secured asset and the original documents to the Petitioner. In the said background, the Hon'ble Supreme Court found that aside from the lack of any

15-days gap between the notice of sale and the notice of auction, no other illegality has been imputed to the aforesaid auction proceedings.

28. The facts of this case are totally different. Here, the sale was challenged on the grounds aforesaid. Immediately after the sale, there was no proceedings before Hon'ble High Court or Hon'ble Supreme Court that we had seen in **Celir LLP** case. In **Celir LLP** case, the Borrowers attempt to redeem the property after the publication of the Sale Notice, was found not in accordance with law by the Hon'ble Supreme Court, and therefore, the sale held in favour of the Auction Purchaser was upheld. Even thereafter, the Borrower created encumbrances by entered into an Agreement of Assignment of Leasehold Rights with the subsequent transferee, thereby thwarting the attempt of the Bank in taking physical possession of the secured asset along the title document. That is not the case here. The facts situations are totally different. Therefore, the observation made *"aside from the lack of any 15-days gap between the notice of sale and the notice of auction, no other*

illegality has been imputed to the aforesaid auction proceedings”, cannot be applied to the facts of this case.

29. As already stated, the Borrowers/Guarantors have also taken three other grounds for challenging the sale, that is, i) The affixture of the Sale Notice on the secured asset is not proved, ii) The valuation was not obtained prior to the sale and iii) Excessive execution. It is not known that whether proof of affixture of the Sale Notice on the secured asset was produced before the Tribunal. It is not produced before this Appellate Tribunal. Apparently the sale of item Nos. 1 to 5 would have been sufficient to realize the debt due. Still, the Bank issued Sale Notice for the sale of all the secured properties. These grounds have not been addressed by the Learned Presiding Officer.

30. It is a settled proposition of law that a clear 30/15 days’ notice is mandatory between the date of service of the Sale Notice and the date of sale. That is apparently absent in this case. Therefore, this Tribunal finds that the order passed by

the Learned Presiding Officer, DRT-II, Chennai, in setting aside the Sale Notice dated 09.12.2020 and the sale conducted on 30.12.2020 for lack of clear 15 days' notice between the date of service of the Sale Notice and date of sale, is correct. It does not call for any interference from this Tribunal.

31. In this view of the matter, the Appeals in R.A (SA): 45/2022 and R.A (SA): 31/2023 are dismissed. The parties shall bear their own costs. All pending IAs, if any, stand closed.

[Dictated to Athistamani, PS, transcribed by her, corrected and signed by me in open court this 17th of July, 2026]

[*Justice* G. Chandrasekharan]
CHAIRPERSON