IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 2148/2025

Assets Reconstruction Company (India) Limited, office at 416/B, DM Tower N. R. Janjeerwala Square, New Palacia, Indore, M.P.-452001.

....Appellant

Versus

1. Chaudhary Hospital (Proprietorship Firm) L.S. 829, 832 Gurunanakpura Baghdilkusha Ward No. 42 Raisen road District- Bhopal, Madhya Pradesh and House No. 35K Gram- Pemat Tehsil Raisen, District-Raisen, Madhya Pradesh.
2. Jamna Prasad Chaudhary, son of Biharilal Chaudhary, aged about 62yrs, resident of L.S. 829, 832 Gurunanakpura Baghdilkusha Ward No. 42 Raisen road District- Bhopal Madhya Pradesh and House No. 35K Gram- Pemat Tehsil- Raisen, District- Raisen, Madhya Pradesh.
3. Dr. Durga Chaudhary, wife of Jamna Prasad Chaudhary, aged about 52yrs, resident of L.S. 829, 832 Gurunanakpura Baghdilkusha Ward No. 42 Raisen road District- Bhopal Madhya Pradesh and House No. 35K Gram- Pemat Tehsil- Raisen, District- Raisen, Madhya Pradesh.
4. Vinay Chandra Chaudhary, son of Biharilal Chaudhary, aged about 65yrs, resident of L.S. 829, 832 Gurunanakpura Baghdilkusha Ward No. 42 Raisen road District- Bhopal Madhya Pradesh and House No. 35K Gram- Pemat Tehsil- Raisen, District- Raisen, Madhya Pradesh.
5. Saroj Chaudhary, wife of Vinay Chaudhary, aged about 57yrs, resident of L.S. 829, 832 Gurunanakpura Baghdilkusha, ward no.42 Raisen road District-Bhopal Madhya Pradesh and House No. 35K Gram- Pemat Tehsil- Raisen, District- Raisen, Madhya Pradesh.
6. Vanshilal Patel, son of Biharilal Patel, aged about 69yrs, resident of H-8 Gali no.2, Ibrahimpura District- Bhopal, Madhya Pradesh.
7. Savita Patel, wife of Khemchand Patel, aged about 50yrs, resident of H-8 Gali no.2, Ibrahimpura District- Bhopal, Madhya Pradesh.

8. Kashi Patel, wife of Gangaram Patel, aged about 74yrs, resident of H-8 Gali no.2, Ibrahimpura District- Bhopal, Madhya Pradesh.
9. Murli Patel, wife of Vanshilal Patel, aged about 60yrs, resident of H-8 Gali no.2, Ibrahimpura District- Bhopal, Madhya Pradesh.
10. Krishna Patel, wife of Saligram Patel, aged about 55yrs, resident of H-8 Gali no.2, Ibrahimpura District- Bhopal, Madhya Pradesh.
11. Chaturbhuj Patel, son of Biharilal Patel, aged about 80yrs, resident of Gram- Pemat Tehsil- Raisen, District- Raisen, Madhya Pradesh.
12. Kashi Patel, wife of Chaturbhuj Patel, aged about 70yrs, resident of Gram- Pemat Tehsil- Raisen, District- Raisen, Madhya Pradesh.
13. Devkaran Patel, son of Biharilal Patel, aged about 70yrs, resident of opposite Krishi Upaj Mandi District- Raisen, Madhya Pradesh.
14. Yashoda Patel, wife of Devkaran Patel, aged about 62yrs, resident of opposite Krishi Upaj Mandi District- Raisen, Madhya Pradesh.
15. Shaligram Patel, son of Biharilal Patel, aged about 63yrs, resident of Gram- Pemat Tehsil- Raisen, District- Raisen, Madhya Pradesh.
16. Khemchand Patel, son of Biharilal Patel, aged about 58yrs, resident of Gram- Peymat Tehsil- Raisen, District- Raisen, Madhya Pradesh.
17. Rambai Patel, aged about 65yrs, resident of Gram- Peymat Tehsil- Raisen, District- Raisen, Madhya Pradesh.
18. Rakesh Chaudhary, son of Late Laljiram Patel, aged about 45yrs, resident of H-8 Gali no.2, Ibrahimpura District- Bhopal, Madhya Pradesh.
19. Madhu Gaur, daughter of Late Laljiram Patel, resident of L.S. 829, 832 Gurunanakpura Baghdilkusha Ward No. 42 Raisen road District-Bhopal Madhya Pradesh and House No. 35K Gram- Peymat Tehsil-Raisen, District- Raisen Madhya Pradesh.
20. Mithlesh Chaudhary, son of Late Laljiram Patel, resident of L.S. 829, 832 Gurunanakpura Baghdilkusha Ward No. 42 Raisen road District-Bhopal Madhya Pradesh and

House No. 35K Gram- Peymat Tehsil-Raisen, District-Raisen Madhya Pradesh.

21. Bandhan Bank (earlier GRUH Finance Limited) through its authorized officer Bhopal, Branch 119-121 First floor Akansha Complex Press Zone-1, MP Nagar District-Bhopal, Madhya Pradesh.
22. District Magistrate/Collector District- Bhopal, Madhya Pradesh.
23. Tehsildar Govindpura Circle District- Bhopal, Madhya Pradesh.
24. Mexmon Heights LLP, C-26, Lawrence Road, Ind Area, Keshavpuram, Delhi, Pin code-110035

....Respondents

Advocates who appeared in this case

For the appellant	Shri S. K. Pandey along with Shri Rajesh Kumar Srivastava, Advocate
For the respondent nos. 1 to 20,	Shri Maneesh Mehrotra, Advocate
For the respondent no. 21,	Shri Prashant Kumar Pandey, Advocate
For the respondent nos. 22 to 24,	None

JUDGMENT

Date of Pronouncement : 29.07.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The present appeal has been filed under section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") against the judgment and order dated 19.09.2025 passed by the DRT, Jabalpur, whereby the securitization application No. 53/2020 filed by the respondents-borrowers has been allowed.

2. Brief facts of the matters are that the respondent No. 1 was granted a credit facility of Rs. 5.0 crores by one Gruh Finance Ltd. through its partners respondent Nos. 2 to 5, to which respondents Nos. 2 to 20 stood as guarantors and

created equitable mortgage over their property in question by depositing original title deed with the FI. Since the borrowers did not adhere to the terms of loan agreement, therefore, account was classified as NPA on 31.05.2018 and demand notice dated 25.09.2019 was issued under section 13(2) of the SARFAESI Act. Against the said notice, the respondents-borrower submitted an objection to Gruh Finance Ltd, but in the meantime, the said finance company was merged with the respondent No. 21-Bandhan Bank, therefore, the said representation was decided by it vide reply dated 25.11.2019. Since the respondents-borrowers has not deposited any amount against the said demand, therefore, the symbolic possession of the property in question was taken by the Bank by issuing possession notice dated 20.12.2019 under section 13(4) of the said Act. The said notice was dispatched on 26.12.2019 and published in the newspapers on 25.12.2019. Thereafter, an order dated 28.02.2020 was obtained by the appellant from the District Magistrate under section 14 of the SARFAESI Act for taking physical possession of the property in question. Pursuant to the said order, the Tehsildar has taken the possession of the property in question and handed over the same to the respondent no. 21-Bandhan Bank on 23.11.2021 and 29.12.2021 and inventory of the articles lying in the premises was prepared.

3. It appears that after taking physical possession of the property in question, the sale notice was issued on 04.02.2022, which was published in the newspapers on 03.02.2022 scheduling the auction of the property in question on 18.03.2022.

4. The respondents-Borrowers challenged the auction sale notice dated 03.02.2022 by way of S.A. No. 195/2022,

which was dismissed as withdrawn vide order dated 21.03.2022 on the ground of non-receipt of bid.

5. It transpires that thereafter, the respondent no. 21-Bandhan Bank assigned the debt to the appellant through assignment agreement dated 29.12.2023. Thereafter the appellant issued sale notice dated 12.07.2024 again scheduling the auction sale of the property in question on 30.07.2024, but no bid was received, therefore, the appellant issued another sale notice dated 11.09.2024 scheduling the auction of the property in question on 30.09.2024 and the same was published in the newspaper on 11.09.2024 itself.

6. The respondents-Borrowers by way of S.A. No. 53/2022 and amendment application challenged the demand notice dated 25.09.2019, possession notice dated 20.12.2019, D.M. order dated 28.02.2020, sale notice dated 11.09.2024 and auction dated 30.09.2024, which has been allowed by the Tribunal below vide order impugned and entire proceedings of the Bank has been quashed and the appellant was restrained to initiate fresh proceedings. Being aggrieved by the said order, the present appeal has been filed by the appellant.

7. Learned counsel for the appellant-FI submitted that since the respondent-borrower made continuous default in making repayment of the loan, therefore, fresh Demand Notice dated 25.9.2019 was issued by the erstwhile Financial Institution namely GRUH Finance Limited, which was duly served upon the respondents-borrowers.

8. It was further contended that the respondents-borrowers have submitted an objection to the said demand notice to the erstwhile GRUH Finance Limited, but meanwhile, since the GRUH Finance Limited has been merged with Bandhan

Bank Limited and as such the Bandhan Bank Limited has decided the representation of the respondents-borrowers vide letter dated 25.11.2019 and served on the borrower No. 3.

9. Learned counsel further submitted that the Possession Notice dated 20.12.2019 under section-13(4) of SARFAESI Act, 2002 was issued and served upon the respondents-borrowers and the same was pasted on the conspicuous part of the property and also published in two widely circulated newspapers of the locality, where the mortgaged property is situated. It was further contended that in the meantime, the respondent-Bandhan Bank obtained an order dated 28.02.2020 from the District Magistrate, Bhopal under section 14 of the SARFAESI Act for taking physical possession of the mortgaged property.

10. Learned counsel further submitted that pursuant to the aforesaid order, the Tehsildar has taken the possession of the property in question and handed over the possession of the mortgaged property to the respondent-Bandhan Bank on 23.11.2021 and 29.12.2021.

11. It was further contended that after taking physical possession of property, the respondent-Bank issued sale notice dated 03.02.2022, which was duly published in newspaper fixing sale of the property on 18.03.2022.

12. Learned counsel further submitted that the borrowers challenged the sale notice dated 03.02.2022 by filing S.A. No. 195/2022, which was dismissed vide order dated 21.03.2022 on the ground of non receipt of any bid. It was further contended that thereafter, the loan was assigned by the respondent-Bank to the appellant. It was further contended that after assignment, the appellant issued sale notice dated 12.07.2024 for auctioning the property on

30.07.2024, but the said sale could not materialized for want of bid, therefore, another sale notice dated 11.09.2024 was issued scheduling the auction of the property in question on 30.09.2024 and the same was served, affixed and published in the newspapers and referred to annexure No. 16 to the appeal, which is copy of postal receipt and publication. It was further contended that the borrowers challenged the demand notice, possession notice, DMs order, sale notice and auction sale by filing the S.A. No. 53/2022 and amendment applications, but the Tribunal below has erred in considering and deciding the demand notice and possession notice, as the same was confirmed at the time when the earlier S.A. filed by the respondent-borrower was dismissed as withdrawn without taking any liberty to challenge the same again in the present S.A. It was therefore prayed that the order impugned may be set-aside and the appeal filed by the appellant may be allowed.

13. Learned counsel for the respondents-borrowers submitted that no demand notice was ever served upon the respondents in view of the facts that the seal and signature is forged and fabricated documents, and admittedly, the demand notice was never served upon the residential addresses of the respondent and admittedly, all of respondents are not residing at the hospital premises, so there is no question of service upon all the respondents at the alleged addresses of the Hospital. It was further contended that the submission of representation by anyone of the respondents will not amount to service of demand notice on all the respondents and the burden lies upon the secured creditor to proof the service of demand notice on all the borrowers/guarantors/mortgagors in the present case and the secured creditor has failed to prove due service of

demand notice upon all the borrower/guarantor/mortgagor, so the entire proceedings initiated by the secured creditor are illegal and void-ab-initio.

14. It was also contended that after the alleged demand notice, the respondent-Bandhan Bank took symbolic possession and the possession notice dated 20.12.2019 was alleged to have been issued upon the respondents. It was further contended that the postal receipts filed along with appeal reveals that the possession notice dated 20.12.2019 was dispatched to the respondents at the address of respondent no. 1 and the same was never issued to the respondents on their residential addresses, so the proceedings pertaining to possession notice dated 20.12.2019 are illegal and void-ab-initio.

15. It was further contended that since the proceedings pertaining to service of demand dated 25.09.2019 and possession notice dated 20.12.2019 are illegal, so the order dated 28.02.2020 obtained u/s 14 in pursuance thereof is illegal and the same cannot be executed.

16. Learned counsel further submitted that the appellant has highly undervalued the secured asset without taking into consideration the circle rate, which is fixed by the revenue authority. It was further contended that the respondent no.1 was running with 300 beds and 7 operation theaters. It was further contended that the respondents had filed the valuation report of approved valuer dated 23.05.2024 along with S.A., which shows valuation of the secured asset to the tune of 24.84 crore, but contrary to it, the appellant got the property valued at Rs. 8.33 crores and as such the property has been sold at its throw away price. It was therefore prayed that the appeal may be dismissed with heavy costs.

17. Heard the learned counsels for the parties and perused the material available on record.

18. Admittedly, the respondents-borrowers had challenged the sale notice dated 03.02.2022 by filing S.A. No. 195/2022, which was dismissed as withdrawn by the Tribunal below vide order dated 21.03.2022 on the ground that no bid was received by the Bank against the said sale notice. Thus the respondents-borrowers have waived their right to challenge the said notices again in the present S.A., which was filed against the fresh sale notice dated 11.09.2024. Thus the Tribunal below has erred in considering and deciding the legality and illegality of the said notice issued by the Bank in the present S.A., hence, the order impugned to this extent is not sustainable.

19. Further, the order of the District Magistrate has been set aside on the ground that the same was obtained on the basis of defective demand notice, but the same is held to be a valid notice in the preceding paragraph of this judgment, therefore, order impugned setting aside the order of the District Magistrate is also not sustainable and is liable to be set aside.

20. So far as the valuation of the property in question is concerned, the appellant obtained the valuation report from its approved valuer on 03.06.2024, copy of which is placed at page No. 242 to 245 of the paper book. As per the said report, the market value of the property in question is Rs. 8,37,60,000/-, realizable value Rs. 7,11,96,000/- and distress value Rs. 6,28,20,000/-, thus the appellant before proceeding for sale has got the property valued from its approved valuer, according to which the reserve price was fixed. If the borrowers had any grievance against the value of the property in question, they ought to have produced a

perspective buyer before the appellant, who could offer better price of the property in question, but the borrowers did not do so, therefore, they have no right to dispute the value of the property. Hence the Tribunal below has wrongly held that the property has been sold at throw away price on basis of the valuation report submitted by the borrowers.

21. With regard to sale notice, it is to be seen that the appellant issued sale notice on 11.09.2024 under Rule 8(6) of the Rules, 2002 with the reserve price of Rs. 8.33 crores scheduling the auction on 30.09.2024, which was dispatched to the borrowers on the same day, but the said sale notice was published in the newspapers on 11.09.2024 itself, which is not feasible and possible, because it is well known to the public that the newspapers are printed after mid-night of the date, meaning thereby the said notice was given to the press a day before issuing the same, which curtails the right of the borrowers to redeem the property. As such there is clear violation of section 13(8) of the SARFAESI Act read with Rule 8(6) of the Rules, 2002. Thus the order impugned to this extent does not call for any interference by this Tribunal.

22. In view of the discussions as recorded above, the order impugned to the extent of setting aside of demand notice, possession notice, order of the District Magistrate is set aside and rest of the same shall remain intact. Accordingly, the appeal filed by the appellant is disposed off with no order as to costs.

23. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-drt portal.

CHAIRPERSON

VN Giri,PS