IN THE DEBT RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 7th Day of July, 2026

PRESENT: HON'BLE MR. JUSTICE G. Chandrasekharan CHAIRPERSON

RA(SA) 2/2022

(Arising out of SA 44/2020 on the file of DRT-III, Chennai)

Between

The Authorised Officer,
State Bank of India,
SME Centre, Ambattur (15629)
No. 86A & B, 2nd Main Road,
Ambattur Industrial Estate,
Ambattur,
Chennai 600 058. ....Appellant

And

1. Mr. K. Murugesa Pillai,
   Proprietor,
   M/s. Kishore Engineering,
   No. 95/1 Surya Gandhi Colony,
   Anna Nagar, West Extension,
   Chennai 600 037.

2. Mr. K. Ramesh Babu,
   S/o Krishnamoorthy,
   No.4/36 Mugappair West,
   Nolambur, Chennai 600 037.
   (Impleaded as per Order in
   IA 350/2022) .....Respondents

Counsel for appellants	:	M/s. S Vaidyanathan
Counsel for respondents	:	M/s. O. Ravi – R1 M/s. V. Sundarraman – R2

ORDER

Aggrieved against the order passed by the learned Presiding Officer, DRT-III, Chennai in SA 44/2020 on 25.02.2022, this appeal is filed.

2. The first respondent in this appeal, as an applicant filed SA 44/2020 to declare that the Section 13(4) sale notice dated 24.01.2020 is barred by limitation as it does not comply with the requirement of 30 days notice and therefore it is illegal, non-est and void and liable to be set aside along with consequential prayer.

3. Learned Presiding Officer, after going through the records, recorded the submissions of parties and then allowed the securitization application without independently considering the grounds raised by the respondent and the applicant before the Tribunal. As against this order, the appellant filed this appeal.

4. Learned counsel for the appellant submitted that the sale notice dated 24.01.2020 is not the first sale notice, but, it is a second sale notice. There is no requirement for giving 30 days

time when the second sale notice is issued. The requirement for giving 30 days time apply only to the first sale notice. He drew the attention of this Tribunal to the first sale notice dated 22.05.2019 and the second sale notice dated 24.01.2020 and also the proof of service of second sale notice by production of a copy of the acknowledgement card, affixure and paper publication. Despite production of these documents before the Tribunal, the learned Presiding Officer has not considered these documents and wrongly allowed the securitization application. Therefore, this appeal. Thus, he prayed for setting aside the order of the learned Presiding Officer, DRT-III, Chennai and for allowing of this appeal.

5. Learned counsel for the first respondent submitted that the sale notice was issued giving 30 days time as required under Rule 8(6) and 9 (1) of the Rules. First respondent paid a sum of Rs.34,22,814/- towards loan account and therefore, there is no requirement for initiation of SARFAESI proceedings. OA 25/2019 filed by the appellant for recovery of the amount, was dismissed for non-prosecution. The learned Presiding Officer rightly allowed the securitization application.

6. Learned counsel for the second respondent/ auction purchaser adopted the submission of the learned counsel for the appellant. It is further submitted that after the sale, sale

certificate was registered in favour of the second respondent, physical possession of the property was also taken.

7. Learned counsel for the appellant replying to the submissions of the first respondent, submitted that since the debt due was recovered by sale of the property, there was no steps taken for restoring the OA 25/2019, which was dismissed for default.

8. Considered the rival submissions and perused the records.

9. The securitization application has been filed on the following grounds:

(i) CA 10115/2016 is pending on the file of the Hon'ble Supreme Court of India to decide as to whether Art. 62 is applicable to "suits" or Art.137 is applicable to "applications" is applicable and

(ii) SARFAESI Act does not deal with the enforcement of mortgage but to deal with the enforcement of security interest upon financial assets;

(iii) Once date is crystallized on 05.05.2019, it could not be recrystallized again. That is the maximum amount to be recovered within a period of 3 years from the date of default on 31.01.2015;

(iv) 13(4) sale notice dated 24.01.2020 posted on 27.01.2020 received on 28.1.2020 is in violation of mandatory requirement of 30 days notice; and

(v) Several grounds are taken repeatedly with regard to non-compliance of Rule 8(6) and Rule 9(1) giving 30 days time for the sale of the property.

10. The documents produced by the learned counsel for the appellant shows that the first sale notice dated 22.05.2019 was issued giving clear 30 days of notice for the sale of the property on 08.07.2019 and that sale attempt was failed. Impugned sale notice dated 24.01.2020 was issued fixing the sale on 26.01.2020. Proviso to Rule 9 (1) of the Security Interest (Enforcement) Rules 2002, requires only 15 days notice to the borrower prior to sale. For better understanding Rule 9 (1) if extracted hereunder:

"9. Time of sale, issue of sale certificate and delivery of possession, etc.

(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

PROVIDED FURTHER that if sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale."

11. In this case, the second sale notice dated 24.01.2020 was issued fixing the sale on 26.2.2020 beyond the period of 30 days. The acknowledgement card also shows that the sale notice was served on 26.01.2020. Sale was held 15 days after the service of sale notice. Therefore, this Tribunal is of the view that the impugned sale notice dated 24.01.2020 was served, affixed and published as per the requirement of the SARFAESI Act and Rules made thereunder. Thus, it is proved from the submissions of the learned counsel for the appellant and the documents produced that the impugned sale notice was properly issued, served, affixed and published.

12. It is relevant to refer to certain paragraphs of the impugned order.

" Paragraph 3 to 6 reads as follows:-

3. Whereas respondent bank through their Advocate had filed their counter and typed set of documents evidencing their actions. Parties have exchanged their copies between them.

4. On perusal of the counter and typed set of documents furnished on behalf of respondent bank, it is their case that the present impugned sale notice is a second sale notice and therefore 15 days time is sufficient as per the Act and that there need not be 30 days notice as is being canvassed by the applicant and therefore there is no violation of Rule 8(6). Representative counsel appearing for counsel on record for respondent bank has also submitted that the earlier sale notice was included in the typed set of documents which confirms that the impugned sale notice was a second sale notice and not the first sale notice. It is also submitted that respondent bank has followed the

procedure as warranted under law and also has concluded sale in favour of the highest auction bidder and received the entire auction bid amount towards the purchase price for the mortgaged property.

5. Whereas Ld. Counsel for applicant had submitted that the earlier notice dated 22.05.2019 has not been acted upon as there was no paper publication that was caused pursuant to the said sale notice and therefore there is violation of Rule 9(1) of the Act, owing to which the said sale notice has become null and void in the eyes of law, consequent upon which the present sale notice, would only be the first sale notice, for which the respondent bank has not followed the procedure as warranted under law. Ld. Counsel further has pointed out that the intimation dated 07.11.2020 dual amount sent to the applicant on 12.04.2021, on which date the to collect residual amount sent to the applicant on 12.04.2021 on which date the said instrument / Demand Draft bearing No.33603 dated 07.11.2020 with a validity of three months has expired and has not been revalidated, concludes the wrongful actions of the respondent bank in saying that the balance amount has been given to the applicant herein when infact nothing could be done with the said expired demand draft.

6. In the circumstances, as respondent could not establish its vires while concluding the sale in the impugned sale notice, present SA is liable to be allowed. "

13. Reading of the aforesaid order shows that the learned Presiding Officer recorded the submissions of the appellant/respondent in para-4 and submissions of the first respondent/applicant in paragraph-5. Then in paragraph-6 recorded that "in the circumstances, as respondent/appellant herein could not establish its vires while concluding the sale in the impugned sale notice, present SA is liable to be allowed." This order shows that the total non-application of mind by the learned

Presiding Officer, DRT-III, Chennai and non-appreciation of the case of rival parties.

14. The Hon'ble Supreme Court of India in **M/s. Kranti Associates Pvt. Ltd. And another – Vs. – Sh. Masood Ahmed Khan & Others in SLP (Civil) No.20428/2007,** on the need to assign reasons in support of decision after considering various decisions on this point, summaries as follows:-

" 51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially. b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency. k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism. 1. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

15. As already stated, the reasons for the decisions to allow the securitization application is consequentially absent in the impugned order.

16. Despite the sale of the property, the auction purchaser was not impleaded before the Tribunal. Sale was also not challenged. Therefore, this Tribunal is of the view that the order of the learned Presiding Officer in SA 44/2020 has necessarily to be set aside and accordingly set aside. Thence, SA 44/2020 filed challenging the sale notice is dismissed.

17. In the result, the order dated 25.02.2022 passed by the learned Presiding Officer, DRT-III, Chennai, in SA 44/2020 is set aside and the appeal is allowed. Parties shall bear their own costs. Pending IAs, if any, shall stand closed.

Sd/-
[Justice G. Chandrasekharan]
CHAIRPERSON