BEFORE THE DEBTS RECOVERY TRIBUNAL, CUTTACK
PRESENT: -SHRI JITENDRA PRASAD SINGH
PRESIDING OFFICER.
S.A. No.67 OF 2023

DATE OF DELIVERY OF ORDER: 15.04.2026

Rajiv@Rajeev Shukla,
S/o. R.K. Shukla, At-Plot No.15,
Sabitri Sadan, Satyanagar,
P.S-Kharbelnagar, Bhubaneswar,
Dist: Khurda,
At present residing At-Flat No.201,
Ananda Tulip Garden, Bajrang Vihar, Patia,
Bhubaneswar-750240, Dist-Khurda.
…. Applicant

-Versus-

1. Authorised Officer,
Odisa Gramya Bank,
At Gandamunda,
P.O.-Khandagiri,
Bhubaneswar-751030,
Dist- Khurda

2. Branch Manager,
Odisha Gramya Bank,
At/P.O.Rasulgarh,
Bhubaneswar, Dist-Khurda.
… Respondents

Counsel for the Applicant: Shri B. P. B. Bahali

For the Respondent No.1:- None

Counsel for the Respondent No.2:- Shri S. K. Swain

JUDGEMENT

1. This is an application under Section 17 (1) of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 filed by the applicant for setting aside the e-auction sale notice dated 09.03.2023 as published in Odia daily " The Sambad" and the

"Statesman" dated 10.03.2023 under Annexue-7 series and consequential and connected action taken under the SARFAESI Act and for other reliefs.

2. The brief facts of the case of applicants is that the applicant in the instant application challenges the e-auction sale notice dated 09.03.2023 as published in Odia daily "The Sambad" and "The Statesman" dated 10.03.2023, inviting the bid from the intending buyers in respect of the schedule property.

The applicant along with his wife, jointly took a Cash Credit loan keeping their residential flat as equitable mortgage stood recorded in the name of the petitioner's wife vide loan agreement/account No.010914001000006 for an amount of limit of Rs.12,00,000/- which was not fully disbursed in favour of the applicant but the Respondents bank goes on deducting the monthly EMI every month from the said loan account. The applicant after receipt of the very small part of the loan amount goes on paying the installment dues regularly. The applicant has not been informed about the repayment details of the loan dues and so also about the outstanding dues by the Respondents Banks and kept in dark for long time for which the applicant who has not withdrawn the substantial part of the loan sanctioned amount remained with an impression that they have no outstanding dues are pending to be paid in the said loan account. While the matter stood thus, the Respondent No.1 issued the Section 13(4) SARFAESI Act, 2002 notice taking over the symbolic possession the mortgage property of the applicant without issuing Section 13(2) SARFAESI Act, 2002 notice to the applicant and demanded for payment of exorbitant and illegal amount. The applicant went to the office of the Respondents bank authorities and as per the discussion and settlement it was determined and agreed by the Respondents Bank that the applicant will pay an amount of Rs.8,50,000/- within three months for full and final

settlement of their loan dues along with an application for OTS and deposit of 10% of the said settlement amount. Accordingly, the applicant deposited Rs.85,000/- on 31.08.2018 and made an application for OTS to the Respondent No.1, which was duly received by them.

The petitioner and his wife co-borrower being aggrieved by the illegal, arbitrary and discriminatory actions of the Respondents in the matter of issuance of notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 approached the Hon'ble High Court in W.P.(C) No. 3375 of 2019 and the Hon'ble High Court at the initial stage of hearing granted interim protection to the Applicant. During the pendency of the aforesaid writ application, the Respondents issued Lok Adalat notice dated 18.12.2020 where they have shown outstanding as Rs.8,91,558/- and in pursuance to which the applicant made application and issued legal notice for acceptance of the OTS amount of Rs.8,50,000/- as agreed by both the parties. While the matter stood thus the Respondents bank in reply to the legal notice of the Applicant in their reply dated 06.03.2021 without any basis refused the OTS proposal of the applicant and demanded exorbitant amount of Rs.11,73,413/- as OTS amount. After the Counter and rejoinder filed by the parties in the aforesaid writ application the Hon'ble High Court vide its order dated 28.02.2023 pleased to disposed of the writ application recording the contentions of the parties and granting liberty to the applicant to pursue his remedy before the appropriate forum. While the matter stood thus, the Respondent No.1 issued e-auction sale notice dated 09.03.2023 as published in Odia daily "The Sambad" and "The Statesman" dated 10.03.2023 in contrary to the statutory provisions of law demanding exorbitant outstanding dues of Rs.17,49,438/- as on 02.03.2023.The Respondents initially granted the financial facility of Cash Credit loan to

the applicant but without the consent of the applicant or the co-borrower in a very capricious manner the Respondent bank converted the loan account to an LAP (Loan against Property) account. The applicant challenging such perfunctory actions on the part of the Respondents bank filed a complaint case before the learned J.M.F.C (CITY), Cuttack bearing I.C.C. No. 277 of 2019 in which the learned Court below after perusal of the complaint, initial statement of the complainant and after recording the statement of witnesses and going through the documents filed by the complainants and finding a prima facie case against the Opp. Parties bank concerned officials and some others took cognizance under Section 120-B/409/420/500/501/502 I.P.C. and issued summons to the accused persons.

The impugned notice is defective for non-compliance of other statutory provisions, as mandated under the SARFAESI Act and corresponding Rules. The applicant are never been served any Section 13(2) SARFAESI Act, 2002 notice and as such the entire SARFAESI Act, 2002 proceeding initiated by the Respondents bank are vitiated on the ground of non-adherence to the mandatory provision of the said SARFAESI Act. There is a complete and clear violation of Rule-8 in its entirety, by the respondents. Firstly the so called possession on has been done in deviation to the requirement to the Rule 8(1) & 8(2) of the Security Interest (Enforcement) Rule, 2002. Admittedly there is no possession notice under prescribed Appendix -IV of the Rules through publication in newspaper as per Sub-rule-2 of Rule-8.There is also a clear violation of sub Rule 5 of Rule 8 by not obtaining proper valuation in respect of the Schedule property.

It is submitted that the respondents are precluded from taking resort to the provision of the SARFAESI Act to exercise the right of enforcement of securities under Chapter-III of the Act unless it satisfies that the Security

Interest created in favour of the Secured Creditor by the borrower is registered with the Central Registry. In absence of such satisfaction the respondents are debarred from proceeding further under the provisions of Section 13 of the SARFAESI Act read with Rule 8 & 9 of Security Interest Enforcement Rules. The impugned notice under Annexure-7 Series as well as the so-called possession notice U/s.13(4) of the Act is issued/published in clear violation of Rule 8(6) of the Security Interest (Enforcement) Rules and thus the impugned notice of e-auction sale is barred U/r. 9(1) of the Security Interest (Enforcement) Rules.

Applicant relied on the following decisions in support of his contentions:-

(i) (2010) 10 SCC 640 (Between Punjab & Sind Bank & Others Vrs. Allied Beverages Company Pvt. Ltd. & Ors.

(ii) AIR 2018 SC 3063 (Between ITC Limited Vrs. Blue Coast Hotels Ltd. And Ors.

(iii) 2009(II) OLR 201 (Between Swastik Agency and Ors. Vrs. State Bank of India, Main Branch & Ors.

3. Notices were issued to the Respondents No.1 and 2. On receipt of the notice the Respondent No.2 appeared and filed counter. Respondent No.1 neither appeared nor filed counter.

4. Respondent No.2 filed counter and contended that Notice U/s.13(2) of the SARFAESI Act, 2002 has been issued through Regd. Post on 01.02.2018.. Thereafter, Possession Notice U/s.13(4) of the said Act has been issued on 11.10.2019 which has been duly received by the borrowers. While acknowledging Notice issued U/s.13(4) of the Act, the Applicant-Borrowers had not raised any objection regarding non-receipt of 13(2) Notice, but they are raising this issue at the time of filling of this SA which is not tenable.

The Defendant bank in order to recover its dues, which is public money, has proceeded strictly in accordance with the provisions of SARFAESI Act, 2002 & hence, the question of any transgression, illegal & violation of statutory provisions does not arise at all. Since the flat has been mortgaged to the Defendant bank by creating security interest thereon, the Defendant Bank has got absolute right to proceed against the secured assets for realization of its dues as the account has turned to NPA & despite repeated follow up the borrowers did not clear up their dues. Hence, the question of violation of Rule8(1) & Rule 8(2) does not arise and hence denied emphatically. There is no violation of Sub-Rule 5 of rule 8 for a fresh valuation of the property has been done before proceeding for auction. The Security Interest credited over the immovable property has been registered with CERSAI on 07.03.2015.

5. Heard learned Counsel for the applicant at length and perused the records.

6. On the perusal of the pleadings, the following issues arise for consideration.

(i) Whether the Respondent No.1 and 2 has violated Rule 8(1) & 2 of the Security Interest (Enforcement) Rules, 2002?

(ii) Whether the applicant has been served notice under Section 13(2) of SARFAESI Act?

(iii) Whether the Respondent No.1 and 2 has violated Rule 8(5) of the Security Interest (Enforcement) Rules, 2002?

(iv) Whether the Respondent No.1 and 2 has registered the security interest under 26-D of CERSAI Act?

(v) Whether the Respondent No.1 and 2 has violated Rule 8(6) & 9(1) of the Security Interest (Enforcement) Rules, 2002?

(vi) Whether the applicant is entitled to the reliefs as claimed?

7. **Issue No.(i)**:- Whether the Respondent No.1 and 2 has violated Rule 8(1) & 2 of the Security Interest (Enforcement) Rules, 2002?

The contention of the applicant is that firstly the so called possession has been done in deviation to the requirement to the Rule 8(1) & 8(2) of the Security Interest (Enforcement) Rule, 2002. Admittedly there is no possession notice under prescribed Appendix -IV of the Rules through publication in newspaper as per Sub-rule-2 of Rule-8.

The contention of the Respondent Bank is that that Notice U/s.13(2) of the SARFAESI Act, 2002 has been issued through Regd. Post on 01.02.2018. Thereafter, Possession Notice U/s.13(4) of the said Act has been issued on 11.10.2019 which has been duly received by the borrowers.

Rule 8(1) speaks as follows:-

"Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix-IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property."

From the perusal of Annexure-B-1 series to the counter filed by the Respondent Bank it is seen that the Respondent Bank has annexed possession notice which is as per Appendix-IV and publication of possession notice in two leading Newspaper one in English Language and another in vernacular language. But the Respondent Bank has failed to prove that the said possession notice has been affixed on the outer door or at such conspicuous place of the property and delivered to the applicant. As such it is held that the Respondent Bank has violated Rule 8(1) & (2) of the Security Interest (Enforcement) Rules, 2002. As such the contention of the applicant in this regard holds good. Accordingly Issue No.(i) is answered.

8. **Issue No.(ii)** Whether the applicant has been served notice under Section 13(2) of SARFAESI Act?

The contention of the applicant is that the applicant had never been served any Section 13(2) SARFAESI Act, 2002 notice and as such the

entire SARFAESI Act, 2002 proceeding initiated by the Respondent Bank are vitiated on the ground of non-adherence to the mandatory provision of the said SARFAESI Act.

The contention of the Respondent Bank is that the notice U/s. 13(2) of the SARFAESI Act, 2002 has been issued through registered post on 01.02.2018. On receipt of the demand notice dated 18.09.2017 from the defendant bank recalling the entire dues, Mr. Rajeev Shukla one of the applicant borrowers filed one consumer complaint against the defendant bank which is still pending for adjudication.

From the perusal of Annexure-D/1 series of the counter filed by the Respondent Bank wherein notice under Section 13(2) and postal receipts are also filed but no tracking report has been filed to show that the notices under Section 13(2) has been served. As such the contention of the Respondent Bank that the notices under Section 13(2) of SARFAESI Act are served holds no good. Accordingly Issue No.(ii) is answered.

9. **Issue No.(iii)**:- Whether the Respondent No.1 and 2 has violated Rule 8(5) of the Security Interest (Enforcement) Rules, 2002?

The contention of the applicant is that there is also a clear violation of sub-Rule 5 of Rule 8 by not obtaining proper valuation in respect of the schedule property.

The contention of the Respondent Bank is that there is no violation of Sub-Rule 5 of Rule 8 for a fresh valuation of the property has been done before proceeding for auction. In support of its contention Respondent Bank has filed valuation report.

From the perusal of Annexure-A/1 filed by the Respondent Bank to its counter shows that Fair market value of the property is Rs.66,80,000/-, realizable value is Rs.60,15,000/-, distress sale value is Rs.54,15,000/- and book value is Rs.53,07,000/-. Applicant has not filed valuation report to

prove its contention. As such the contention of the applicant that the Respondent Bank has violated Rule 8(5) holds no good. Accordingly issue No.(iii) is answered.

10. **Issue No.(iv)**:- Whether the Respondent No.1 and 2 has registered the security interest under 26-D of CERSAI Act?

The contention of the applicant is that the respondents are precluded from taking resort to the provision of the SARFAESI Act to exercise the right of enforcement of securities under Chapter-III of the Act unless it satisfies that the Security Interest created in favour of the Secured Creditor by the borrower is registered with the Central Registry. In absence of such satisfaction the respondents are debarred from proceeding further under the provisions of Section 13 of the SARFAESI Act read with Rule 8 & 9 of Security Interest Enforcement Rules.

The contention of the Respondent Bank is that the security interest created over the immovable property has been registered with CERSAI on 07.03.2015.

From the perusal of Annexure-G/1 of the Counter of the Respondent Bank it is seen the security interest has been registered under CERSAI on 07/03/2015. As such the contention of the applicant that the security interest created in favour of the secured creditor by the borrower is no registered with the Central Registry holds no good. Accordingly Issue No.(iv) is answered.

11. **Issue No.(v)**:-Whether the Respondent No.1 and 2 has violated Rule 8(6) & 9(1) of the Security Interest (Enforcement) Rules, 2002?

The contention of the applicant is that the impugned notice under Annexure-7 Series as well as the so-called possession notice U/s.13(4) of the Act is issued/published in clear violation of Rule 8(6) of the Security Interest (Enforcement) Rules and thus the impugned notice of

e-auction sale is barred U/r. 9(1) of the Security Interest (Enforcement) Rules.

The contention of the Respondent Bank is that the authorized officer of the Defendant Bank issued E-auction sale notice dated 09.03.2023 fixing the date of E-auction sale on 12.04.2023 for recovery of its dues which is public money. The defendant bank in order to recover is dues, which is public money, has proceeded strictly in accordance with the provisions of SARFAESI Act, 2002 and hence the question of any transgression, illegal and violation of statutory provisions does not arise at all.

From the perusal of the record it is seen that the applicant in his SA Book under Annexure-7 series has annexed E-auction sale notice published in vernacular language and English Newspaper and also filed notice under Rule 8(6) dated 07.03.2023. Respondent Bank has not filed any proof regarding service of notice under Rule 8(6) giving clear 30 days period from the date of service till date of sale. AS such the contention of the applicant that there is violation of Rule 8(6) and 9(1) of the Security Interest (Enforcement) Rules, 2002 holds good. Accordingly issue No.(v) is answered.

12. **Issue No.(vi)**:-Whether the applicant is entitled to the reliefs as claimed?

After availing the credit facilities from the bank, the applicant did not adhere to the terms and conditions of the sanction and did not clear the amount despite several correspondences and request from the bank for which the said loan accounts of the applicant became NPA. Thereafter the Respondent Bank had initiated the actions against the applicant under the provisions of the SARFAESI Act by issuing notice under Section 13(2) and thereafter 13(4) of the said Act and thereafter published the E-auction sale notice.

In view of the aforesaid facts and circumstances of the case and the issues already answered in the preceding paragraphs and the decisions relied on by the applicant, this Tribunal is of the view that the Respondent Bank has failed to prove that notice under Section 13(2) has been served so also notice under Rule 8(6) has been served on the applicant. Hence possession notice under Section 13(4) and so also sale notice dated 09.03.2023 are hereby quashed. **Accordingly Issue No.(v) is answered.**

O R D E R

In the result, S.A. No.67 of 2023 filed by the applicant is hereby allowed and possession notice under Section 13(4) and so also sale notice dated 09.03.2023 are hereby quashed. Registry is directed to return the DDs of Rs.17.50 lakhs deposited by the applicant in this Tribunal to the applicant within 30 days from the date of this order.

Since the main SA is disposed of, hence all the IAs, pending, if any, stands disposed of and interim order, if any, stands vacated.

Let a copy of this order be supplied to the parties forthwith as per rules.

Let the file of SA No.67 of 2023 be consigned to the record room.

This order is dictated and corrected by me and pronounced in the open Court under my signature, this the 15th day of April, 2026.

(Jitendra Prasad Singh)
Presiding Officer.