BEFORE THE DEBTS RECOVERY TRIBUNAL, CUTTACK

PRESENT:- SHRI JITENDRA PRASAD SINGH

PRESIDING OFFICER

S.A. No.77 OF 2024

DATE OF DELIVERY OF ORDER:17.04.2026

Smt. Banashree Mohapatra,
W/o. Dilip Kishore Mohapatra,
Aged about 56 years,
At- Bidanasi, Kannhasahi,
PS- Bidanasi, Dist- Cuttack-753014
…..Applicant

-VERSUS-

1. Authorized Officer, State Bank of India,
Stressed Assets Recovery Branch, Cuttack,
Madhupatna, Dist- Cuttack-753010

2. The District Magistrate-cum-Collector, Cuttack
At/PO-Chandni Chowk, Dist-Cuttack-753002.

3. Deputy Commissioner of Police, Cuttack,
At- Cantonment Road, Cuttack-753001

4. Inspector-in-Charge, Bidanasi Police Station,
Bidanasi, Dist.-Cuttack-753014

5. Durjaya Kumar Nath, aged about 44 years,
S/o. Sri Sarbeswar Nath, At-Kadala,
P.O- Nimabahali, Dist. Dhenkanal-759121.

… Respondents.

Counsel for the Applicant:- Shri Tuna Sahu

Counsel for the Respondent No.1:- Shri Subrat Mishra

Counsel for the Respondents No.2 to 5:- None.

JUDGEMENT

1. This is an Application under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, filed by the applicants for quashing the order dated 03.07.2024 and 06.03.2024 under Annexure-1 series and any

consequential action and further to set aside the auction sale conducted as well as quash the sale certificate dated 08.07.2019 and for other reliefs.

2. The brief facts of the applicant case is that the husband of the present Applicant has applied for credit facilities from the defendant bank for establishment and running of the rice Mill unit, by the name and style- M/s. Maa Bhagabati Rice Industries Pvt. Ltd. In order to secure the loan advances, upon being convinced by her husband, the present applicant, though a housewife, has created Equitable Mortgage of the sole residential property situated at – situated at Mouza- Cuttack Town, Unit No.3 Bidanasi (No.3) Tahasil/Dist.-Cuttack, Plot No.78/1654, Khata No.35-D1, Area-Ac 0080.5 dec.

Initially, the loan a/c was running properly and interest was being served properly and the unit was also functioning in a smoothful manner. But, in the year 2023, the Applicant's Husband, namely Dilip Kumar Mohapatra, met with a severe accident as a result of which he has suffered severe spinal Cord Injury and trauma leading to paralysis of the entire body and at present is bed ridden completely. As the husband of the applicant has looking after the day-to-day functioning of the rice mill unit and also managing the funds, the applicant was completely unaware regarding the status of the loan a/c's, hence the loan a/c's were classified as NPA. But the present applicant is unaware regarding the date of classification the loan a/c's as NPA, as the bank never issued any letter/notice regarding classification of the loan a/c as NPA.

All of a sudden in the month of June, 2024, when an unknown individual visited the mortgaged property, wherein the Respondent is residing along with paralyzed husband and family, and started taking photographs. Upon being enquired by the applicant, the said individual stated that the physical possession of the property is about to be taken over and informed about passing of such Order

dated 06.03.2024.In such circumstances, the Applicant on dated 24.06.2024 applied for the Certified Copy of the order dated 06.03.2024 along with all the supporting documents/annexures relied upon/filed by the bank to obtain such Order dated 06.03.2024. Thereafter the Applicant received the certified copy of the Order as well as all the documents on the very same day, i.e. 24.06.2024. Thereafter the Applicant has contacted the undersigned advocate and supplied all the documents. Upon perusal of the said Order dated 06.03.2024 as well as the supporting documents relied upon by the Authorized Officer of the Bank, it becomes crystal clear that, there are multiple serious illegalities and irregularities committed by the Authorized Officer of the bank, and the Said Order has been obtained by the Authorized Officer by playing fraud upon the court of the District Magistrate, Cuttack and as such the present Applicant being aggrieved and a layman with no knowledge of the law, has filed the recall petition before the Learned District Magistrate, Cuttack for recall of the Order dated 06.03.2024 with certain grounds.

The learned District Magistrate, Cuttack upon filing of such Recall Petition in a hasty manner without hearing the party, and the learned District Magistrate, without going through the contents stated in the recall petition as well as without perusing the documents annexed in the Recall Petition, has rejected the Recall petition vide Order dated 03.07.2024 on the mere flimsy ground that the present Applicant has neither appeared nor raised any objections while passing of the order dated 06.03.2024.

The Applicant being aggrieved with the order dated 03.07.2024 as well as the Order dated 06.03.2024 is filing this present SARFAESI Application.

After declaration of the loan a/c as NPA, it is duty caste upon the Authorized officer to issue the notice U/s.13 (2) of the SARFAESI Act, 2002, indicating in the said notice the detail of the

Loan a/c, bifurcation of the Outstanding dues, as well as the said notice must mandatorily indicate the details regarding the security interest, i.e. the mortgaged property.

In the instant case, the Notice U/s. 13(2) in not is format specified in the Statute as well as the said notice is void in the eyes of law, as because the details of the mortgaged property is completely incorrect and the bank has interpolated the Plot No. in the said notice, i.e. in the petition "part-II of the Demand Notice dated 30.03.2015, in the table, the Plot No. has been interpolated as Plot No. 78/1654 in place of 76/1654.

It is further specified that, as mandatorily required by the statute, the Notice U/s. 13(2) dated 30.03.2015, has also been served upon the present respondent, being the mortgagor in the loan a/c. The same Notice has been relied upon by the bank in this present misc. case. Upon comparison of both the notices, it becomes evident that the Authorized officer of the bank has interpolated the documents and relied upon the same to obtain a favourable order and has not at all acted in good faith as well as filed false facts on affidavit. While the Authorized Officer has filed the petition for taking physical possession of the property and therein has relied upon the notices issued under SARFAESI Act, it becomes the bounden duty of the Authorized Officer to file the Service proof of the said notices as well. But, in the instant case, in very surprising that, the bank has not filed any single service proof of the mandatory notices issued under SARFAESI Act, but, surprisingly, this Hon'ble Court has been satisfied without verifying the service proof and as such the Order dated 06.03.2024 has to be recalled.

Consequent upon Notice U/s.13(2) of the SARFAESI Act, 2002, the Authorized Officer has to issue the possession notice U/s.13(4) of the SARFAESI Act, 2002 and the same has to be served upon the borrower/mortgagor/guarantor, as well as pasted in most

conspicuous place and also published in the newspaper mandatorily as per the Rule-8 of the Security Interest (Enforcement) Rules, 2002.

In this instant case, the bank has never served any Notice U/s.13 (4) to the Applicant and violated the mandatory statutory provisions, Section 13(4) of SARFAESI Act, 2002.

In the Possession Notice dated 02.07.2015, the property details in respect of the Property belonging to the present respondent, the Plot No. is indicated as 78/1654, which appears to have been tampered/interpolated. On the other hand, the paper publication of the possession notice on dated 09.07.2015 is indicating the same plot no. as 76/154. It becomes evident that the Authorized Officer has interpolated documents with the intention to mislead and to play fraud upon this Hon'ble Court, which also attracts for criminal action against the Authorized officer, as the same cannot be construed as having been committed in good faith.

Furthermore, in the paper publication of the Possession Notice issued U/s.13 (4) of the SARFAESI Act, 2002, it has been published that, it is the statutory 30 days sale notice. Apart from this, the Possession Notice dated 02.07.2015 is also not in the format specified under Appendix-IV of the Security Interest (enforcement) Rules, 2002.

As such the said Possession Notice and its paper publication ought to have been examined and verified by this Hon'ble Court before passing the Order dated 06.03.2024, which it appears has not been done in this instant case. Hence the Order dated 06.03.2024 and order dated 03.07.2024 is required to be set-aside in the best interest of justice.
As already stated above, the present Applicant has no knowledge regarding the status of the loan a/c and status of the mortgaged property. As such the applicant vide letter dated 26.06.2024 has

requested the bank specifically to inform regarding the status of the loan a/c as well as the status of the mortgaged property. The bank has received the letter but surprisingly even after passing of almost 15 days the bank has not yet replied to the same. It is very confusing what the bank wants to conceal by not providing such information.

It is quite surprising that, before filing this present SARFAESI Application, when the Applicant has given the representation dated 20.6.2024 to the bank to enquire regarding the status of the mortgaged property, then the bank remained completely silent, but when the matter was heard for the first time, all of a sudden the counsel for the Defendant Bank supplied the copy of the Sale Certificate dated 08.07.2019 to the Counsel for the Applicant.

Upon perusal of the Sale Certificate dated 08.07.2019 it is found that the property was sold for Rs.74,44,000/- but neither the date of Auction Sale has been mentioned nor the date of payment of the entire bid amount is indicated. Apart from that, it is found that the Sale Certificate clearly indicates that the Authorized Officer handed over delivery and possession of Scheduled property to the Auction purchaser.

Under the aforesaid facts and circumstances, it is herein established that the Authorized Officer of the bank has played fraud and mischief upon the court of the learned District Magistrate-cum-Collector, Cuttack with the intention for obtaining the order for taking the Physical Possession of the property and to deprive the present Applicant of the right to redeem the property as provided U/s. 13(8) of the statute, i.e. SARFAESI Act & Rules, 2002.

3. Notices were issued to the Respondents No.1 to 5 to show cause as to why the relief prayed for by the applicant be not granted. After receiving the notice, the Respondent No.1 appeared and filed their counter affidavit. Respondent No.4 on receipt of the notice appeared

and filed counter affidavit. Respondent No.5 neither appeared nor filed counter.

4. The Respondent No.1 filed counter affidavit contending that the applicant is the Director of one M/s. Bhagabati Rice Industries Pvt. Ltd. which is a Private Limited Company and has initiated the present proceedings before this Hon'ble Tribunal challenging the legality and validity of the action of the opposite party bank, i.e. State bank of India in, initiating action under the SARFAESI Act, 2002 for seeking physical possession of the mortgaged and auctioned property belonging to the applicant which was sold for an amount of Rs.74.44 lakhs by issuance of Sale Certificate dated 08.07.2019 which is barred by limitation having been challenged in 2024 after four years of issuance and having not been filed with the Securitization Application, such prayer at clause 6 (bb) is liable to be dismissed as the applicant was aware of such sale in 2022 as it was pleaded in paragraph no.18 in W.P.(C) No.15826/22 filed in High Court of Orissa by the M/s. Bhagabati rice Industries pvt Ltd. and the petitioner is now its Director and her husband was the then Director and was aware of such auction sale and no condonation of delay petition has been filed to challenge sale certificate dated 08.07.2019 after such long unexplained delay. On receipt of section 13(2) notice dated 30.03.2015 as pleaded in W.P.(C) No.15826/22 filed in High Court of Orissa, no reply under section 13(3)(A) was filed objecting to the inadvertent mistake in description of plot no of Banashree Mohapatra. Hence, she has deemed to have waived the plea which cannot be raised as an afterthought after such a long time. The Supreme Court of India has held that such mere regularity will not vitiated the actions under the SARFAESI Act as the total dues is more than Rs.8 crores. It is humbly submitted that the sale notice dated 15.05.2019 with paper publication in English and Oriya newspapers are annexed as Annexure Z/2 series in the Objection dated 21.08.2024 and may be read as part of this reply affidavit. It is

further humbly submitted that the order dated 06.03.2024 and 03.07.2024 suffer from no illegalities as they have been passed as per law and the order dated 03.07.2024 has been passed correctly as no power of recall under section 14 is available to the authority. Hence the SA application is devoid of merit and liable to be dismissed.

The applicant is the Director of one M/s. Bhagabati Rice Industries Pvt. Ltd. which is a Private Limited Company and has initiated another proceedings under section 17(1) of the SARFAESI Act, 2002 before this Hon'ble Tribunal challenging the legality and validity of the action of the Opposite Party bank, i.e. State Bank of India in initiating action under the SARFAESI Act, declare the auction sale and sale certificate dated 08.07.2019 as contrary to law and void and also to quash order dated 06.03.2024 and 03.07.2024.

The present applicant as well as the other guarantor and mortgagor were issued notices by post under section 13(2) dated 30.03.2015 annexed in the Securitization Application for non-payment of huge dues and also received them. The present applicant as well as the other guarantor and mortgagors were issued notices by post under 13(4) dated 02.07.2015 and with paper publication in English newspaper, New Indian Express dated 09.07.2015 and Oriya newspaper dated 08.07.2015 and on non-payment of huge bank's dues, e-auction sale notice dated 11.05.2022 was published which did not materialize and was cancelled due to lack of any bidder. The petitioner's previous writ petition bearing no. W.P.(C) No. 12713 of 2022 which was dismissed by order dated 24.06.2022 as the auction pursuant to sale notice dated 11.05.2022 had failed due to lack of any bidders.

However, the said M/s. Bhagabati Rice Industries Pvt. Ltd. was offered for settlement of its loan accounts under SBI OTS Scheme 2018,2019,2020 as per letters dated 10.08.2018, 21.08.2019, 17.10.2020 and the said company petitioner was to give its

application for OTS along with deposit of 5% of ledger amount. However, the said company never availed the various offers for settlement of his loan accounts as per the said schemes within the cut off date. However, the said company in the meantime approached the Bank for settlement of his aforestated loan by compromise vide letter dated 24.06.2022 making an offer of Rs.1.15 crores which was rejected by the bank vide letter dated 27.06.2022 as the offer amount was too low in comparison with the total dues of Rs.8.81 crores. However, the opposite party Bank had by letter dated 02.07.2022 informed the petitioner that the total dues in his accounts were Rs.8,82,63,044 as on 02.07.2022 so that the petitioner would come up with a realistic and sincere offer to settle his accounts by compromise. Thereafter, the said company/Borrower approached the Bank for settlement of his aforestated loan by compromise vide letter dated 21.07.2022 making an offer of Rs.1.40 crores which was rejected by the bank vide letter dated 30.07.2022 as the offer amount was too low in comparison with the total dues of Rs.8.81 crores. The petitioner filed a writ petition bearing number W.P.(C) No. 15826 of 2022 in the Hon'ble High Court of Orissa which was disposed of by order dated 15.02.2023 rejecting on merit the prayer for consideration of OTS by Bank. In the mean time, the mortgage property of Banashree Mohapatra was put to sale and sale notice dated 19.01.2019 was sent to Banashree Mohapatra but which failed. Thereafter the defendant No.1 again issued sale notice dated 15.05.2019 to Banashree Mohapatra and sent notice to her and other mortgagors/loanee/guarantors fixing the date of sale to 15.06.2019. The e-auction notice was also published in English newspaper New Indian Express dated 24.05.2019 and Oriya newspaper dated Dharitri dated 24.05.2019. The sale was confirmed in favour of one Durjaya Kumar Nath for an amount of Rs.74.44 lakhs and Sale certificate dated 08.07.2019 was issued in his favour which is being sought to be challenged after five years of issuance of Sale certificate which is

barred by law and no cogent explanation has been given in the amendment petition for such belated challenge to the sale certificate other then vague grounds of ignorance which cannot be sustained once e-auction notice is published in two newspapers. Hence the amendment petition is barred by law without sufficient cause explaining the delay in filing it and is to be dismissed as being without merit and barred by limitation. The total dues of Bhagabati Rice Industries Pvt. Ltd. as on 09.07.2024 is Rs.8,22,13,454.99.

Pursuant to order dated 06.03.2024 in Misc. Case No. 8/21 of the Collector and District Magistrate, Cuttack in a proceeding under section 14 of the SARFAESI Act, 2002 as per its section 14 petition/affidavit filed as per the requirement of Section 14, the bank has obtained order dated 06.03.2024 for taking physical possession of the mortgaged property put to sale and purchased by the successful auction purchaser as per Sale Certificate dated 08.07.2019. The petitioner was noticed and after hearing the parties, the order dated 06.03.2024 was passed as per law.

Pursuant to order dated 03.07.2022 in Misc. Case No. 8/21 of the Collector and District Magistrate, Cuttack in a proceeding under section 14 of the SARFAESI Act, 2002 as per its section 14 petition/affidavit filed as per the requirement of section 14, the bank has obtained physical possession of the mortgaged and hypothecated property put to sale and purchased by the successful auction purchase, Durjaya Kumar Nath on 08.07.2019 as is evident from sale certificate dated 08.07.2018 of Authorized Officer of SBI, SARB, Cuttack and taken possession of entire property except one room and one bathroom vide Panchnama dated 28.08.2024. The challenge to the sale certificate dated 08.07.2019 is barred by limitation and no condonation of delay petition has been filed explaining the inordinate delay to challenge in view of issuance of sale notices by newspapers

and awareness of sale of Banashree Mohapatra's property pleaded in W.P.(C) No.15826/22.

There is no power under section 14 of the SARFAESI Act, 2002 for the Collector to recall its order and he has correctly dismissed it by order dated 03.07.2024. The applicant's husband was the Director of Bhagabati Rice Industries Pvt Ltd. and it along with her were issued notices under section 13(2) dated 30.03.2015 which is admitted in W.P.(C) No.15826/22 filed by her husband as Director of Bhagabati Rice Industries Pvt Ltd. Therefore such a plea of lack of knowledge or ignorance is not available to her in facts and law.

For the first time the applicant came to know that the mortgaged property of Banashree Mahapatra an order under section 14 has been passed as she was noticed in the Misc. Case No. 8/21 and filed the notice in W.P.(C) No.15826/22 in the High Court of Orissa. There is no power under section 14 of the SARFAESI Act, 2002 for the Collector to recall its order and he has correctly dismissed it by order dated 03.07.2024.

The petitioner and Bhagabati Rice Industries Pvt. Ltd received notice under section 13(2) date 30.03.2015 and never raised any objection under section 13(3)(A) as per law within the stipulated period and have now deemed to have waived such objection by long delay and their conduct. No service proof is required to be filed before authority exercising power under section 14 especially in the backdrop of the petitioner having admitted to having received it as pleaded and filed in W.P.(C) No.15826/22.

Section 13(4) notice dated 02.07.2015 was served upon the applicant with paper publication within 7 days in English in English newspaper, Indian Express dated 09.07.2015 and in Oriya in Oriya newspaper dated 08.07.2015. It is denied that there was any interpolation or deliberate tampering by the Authorized Officer as

alleged with intention to mislead or cause fraud. As the sale certificate dated 08.07.29 and order dated 06.03.2024 have given correct details, no prejudice is caused to the petitioner who having failed to close the loan accounts in multiple OTS schemes cannot turn around and seek any relief. It is denied that the possession notice is not in format as per Security Interest (enforcement) rules, 2002.

In view of the averments stated in the preceding paragraphs the letter dated 02.06.2024 is false and misleading as the husband of the petitioner filed a series of cases in High Court of Orissa and was well aware of all the proceedings initiated by the bank in view of W.P.(C) No. 15826/22 filed by her husband on behalf of Bhagabati Rice Industries Pvt Ltd as its Director to which position he is holding now and a wife is unaware of multiple proceedings initiated by her husband is unbelievable.

She was aware that her property has been sold as she had received sale notice dated 15.05.2019 and was aware of sale due to paper publication in English and Oriya newspaper as stated in documents filed in support thereof in Objection dated 21.08.2024 where the sale notices 15.05.2019 and the paper publication in English and Oriya newspaper are annexed. The property was sold as per the then valuation report and no valuation report of that period has been filed by applicant to show that the property was sold at low price and challenge to sale certificate issued in 2019 being challenged in 2024 is barred by limitation and right to redemption is lost due to the judgment of the Supreme Court in Bafna Motors case.

Grounds taken in the SA petition of challenge therein to the sale held and completed in 2019 and order dated 06.03.2024 and 03.07.2024 are fruitless in nature and are denied as false and incorrect in facts and law and are barred by limitation and the applicant has not explained the inordinate delay and laches in filing SA application to challenge a sale to which was sold on 10.06.2019 and Sale certificate

was issued in on 08.07.2019. In view of the sale of the mortgaged immovable property of the petitioner by which the right of redemption has been lost forever of the said property.

Respondent Bank filed CITATIONS in support of its case Challenge on wrong description of property

1. Varimadugu Obi Reddy V B Sreenivasulu

(2023)2SCC 168 paragraph no 38 and 39

Power of Collector and District magistrate to recall his order

2. Vinayak Industries, Chattisgarh V Central Bank of India, Mumbai flag B AIR Online 2019 Chh984

Whether payment of entire auction dues will release mortgaged property which was sold even if when dues payable exceed such price

3. Bank of Baroda V Karwa Trading company

(2022)5SCC 168 paragraph no 8-13

Whether OTS can be granted as a matter of right

4. State Bank of India V Arvindra Electronics

(2023) I SCC 540

Nature of Power of District Magistrate under section 14

5. RD Jain and Co V Capital First Ltd and ors

(2023) I SCC 675

Condonation of delay-approach of courts-sufficient cause

6. Baswaraj and anr V Special Land Acquisition Officer

(2013) 14 SCC 81

7. Connected matter DY 997/22 dismissed vide order dt. 15.01.2025.

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

(i) Whether the Respondent Bank has violated Rule 8(1), 8(2) and 8(2A) of the Security Interest(Enforcement) Rules, 2002?

(ii) Whether the Respondent Bank has taken proper valuation of the property before putting the property into auction sale?

(iii) Whether the bank has violated Rule 8(6) & 8(7) of the Security Enforcement Rules 2002?

(iv) Whether the order dated 03.07.2024 and 06.03.2024 under Annexure-1 series passed by the learned Collector under Section 14 of the Act is illegal?

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

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

The contention of the applicant is that consequent upon Notice U/s.13(2) of the SARFAESI Act, 2002, the Authorized Officer has to issue the possession notice U/s.13(4) of the SARFAESI Act, 2002 and the same has to be served upon the borrower/mortgagor/guarantor, as well as pasted in most conspicuous place and also published in the newspaper mandatorily as per the Rule-8 of the Security Interest (Enforcement) Rules, 2002. In this instant case, the bank has never served any Notice U/s.13 (4) to the Applicant and violated the mandatory statutory provisions, Section 13(4) of SARFAESI Act, 2002. In the Possession Notice dated 02.07.2015, the property details in respect of the Property belonging to the present respondent, the Plot No. is indicated as 78/1654, which appears to have been tampered/interpolated. On the other hand, the paper publication of the possession notice on dated 09.07.2015 is indicating the same plot no. as 76/1654. It becomes evident that the Authorized Officer has interpolated documents with the intention to mislead and to play fraud upon this Hon'ble Court, which also attracts for criminal action

against the Authorized officer, as the same cannot be construed as having been committed in good faith. Apart from this, the Possession Notice dated 02.07.2015 is also not in the format specified under Appendix-IV of the Security Interest (enforcement) Rules, 2002.

The contention of the Respondent Bank is that Section 13(4) notice dated 02.07.2015 was served upon the applicant with paper publication within 7 days in English in English newspaper, Indian Express dated 09.07.2015 and in Oriya in Oriya newspaper dated 08.07.2015. It is denied that there was any interpolation or deliberate tampering by the Authorized Officer as alleged with intention to mislead or cause fraud. As the sale certificate dated 08.07.29 and order dated 06.03.2024 have given correct details, no prejudice is caused to the petitioner who having failed to close the loan accounts in multiple OTS schemes cannot turn around and seek any relief. It is denied that the possession notice is not in format as per Security Interest (enforcement) rules, 2002.

From the perusal of the record it is seen that the Respondent has not filed any proof regarding service of notice under Section 13(4) to the borrower and the guarantor. Further more the Respondent Bank has not whispered anything regarding affixation of the possession notice on the conspicuous part of the schedule property. It is evident that the Respondent Bank has also not sent the notices through electronic mode violating Rule 8(2-A). From the perusal of the possession notice published wherein it is mentioned that the Plot No. is 76/1654. In the demand notice under Section 13(2) dated 30/03/2015 filed by the Respondent Bank in his counter Plot No. is mentioned as 76/1654. Applicant filed two demand notices under Section 13(2) in one it is mentioned as Plot No.76/1654 and in another 13(2) notice it is mentioned as Plot No.78/1654 vide Annexure-4 series to the SA application. In comparison of both the notices of the same date it is evident that the plot No. has been interpolated. It is also

evident that the Respondent Bank has also not issued any demand notice later on making correction in the Plot No. As such demand notices under Section 13(2) is defective one. It is also evident that in the notice under Section 13(4) which published it shows that the Plot No. is 76/1654 and no corrigendum is also issued. As such notice under Section 13(4) is also defective one.

In view of the aforesaid facts and circumstances and the discussion made above, this Tribunal is of the view the bank issued demand notice mentioning wrong plot No. so also in possession notice. As such Respondent Bak notices issued under Section 13(2) and 13(4) are defective one and the Respondent Bank has also violated Rule 8(1) and 8(2-A) of the Security Interest (Enforcement) Rules, 2002. Accordingly issue No.(i) is answered.

8. **Issue No.(ii):-** Whether the Respondent Bank has taken proper valuation of the property before putting the property into auction sale?

The contention of the applicant is that the property has been sold out by the Authorised Officer to a single bidder who is the close relative of he Authorised Officer and the Authorised Officer with the intention to grab the property has prepared such faulty valuation report on the basis of which the reserve price was fixed at an extremely lower price.

The contention of the Respondent Bank is that the property was sold as per the then valuation report and no valuation report of that period has been filed by the applicant to show that the property was sold at low price.

From the perusal of the record it is seen that the Respondent Bank though has stated in its counter that the property has been sold as per the then valuation report but evidence in that regard has not been filed to disprove the contention of the applicant. Hence the contention

of the applicant that the property has not been valued properly holds good. Accordingly issue No.(ii) is answered.

9. **Issue No.(iii):-** Whether the bank has violated Rule 8(6) and 8(7) of the Security Enforcement Rules 2002?

The contention of the applicant is that if the property is auctioned by the bank, it is the bounden duty of the authorised officer to issue the individual 30 days sale notice to the borrower/mortgagor/guarantor as per the SARFAESI Rule, 2002, but in the instant case, no notice has been served prior to conducting the auction sale. Hence, if any, auction sale is conducted without the issuance of the auction sale notice under Rule 8(6) of the SARFAESI Rules, 2002, the same may kindly be quashed by this Tribunal..

The contention of the Respondent Bank is that in the meantime, the mortgaged property of Banashree Mohapatra was put to sale and sale notice dated 19.01.2019 weas sent to Banashree Mohapatra but which failed. Thereafter the defendant No.1 against issued sale notice dated 15.05.2019 to Bansahree Mohapatra and sent notice to her and other mortgagors/loanee/guarantors fixing the date of sale to 15/06/2019. The e-auction notice was also published in English Newspaper, i.e. New Indian Express dated 24/05/2019 and Oriya Newspaper dated Dharitri dated 24/05/2019.

Rule-8(6) of SARFAESI Rules, 2002 stipulates that:- The Authorized Officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under Sub- rule (5) " Provided that if the sale of such secured assets is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the form given in Appendix IV-A to be published in two leading newspaper including one in vernacular language having wide circulation in the locality".

Rule 8(7) of SARFAESI Rules, 2002 stipulates that:- Every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the details terms and conditions of the sale, on the web site of the secured creditor.

From the perusal of the record it is seen that the Respondent Bank has not file any proof with regard to service of notice under Rule 8(6) prior to auction sale. Further more the Respondent Bank also failed to prove that the sale notice has been affixed on the conspicuous part of the schedule property as per Rule 8(7) of the Security Interest (Enforcement) Rules, 2002. Hence the contention of the Respondent Bank that the sale notice has been served on the applicant as per Rule 8(6) and the sale notice has been affixed on the conspicuous part of the property as per Rule 8(7) of the Security Interest(Enforcement), Rules, 2002 holds no good. Accordingly issue No.(iii) is answered.

10. **Issue No.(iv):-** Whether the order dated 03.07.2024 and 06.03.2024 under Annexure-1 series passed by the learned Collector under Section 14 of the Act is illegal?

The contention of the applicant is that all of a sudden in the month of June, 2024, when an unknown individual visited the mortgaged property, wherein the Respondent is residing along with paralyzed husband and family, and started taking photographs. Upon being enquired by the applicant, the said individual stated that the physical possession of the property is about to be taken over and informed about passing of such Order dated 06.03.2024, the Applicant on dated 24.06.2024 applied for the Certified Copy of the order dated 06.03.2024 along with all the supporting documents/annexures relied upon/filed by the bank to obtain such Order dated 06.03.2024. Thereafter the Applicant received the certified copy of the Order as well as all the documents on the very same day, i.e. 24.06.2024. Upon perusal of the said Order dated

06.03.2024 as well as the supporting documents relied upon by the Authorized Officer of the Bank, it becomes crystal clear that, there are multiple serious illegalities and irregularities committed by the Authorized Officer of the bank, and the Said Order has been obtained by the Authorized Officer by playing fraud upon the court of the District Magistrate, Cuttack and as such the present Applicant being aggrieved and a layman with no knowledge of the law, has filed the recall petition before the Learned District Magistrate, Cuttack for recall of the Order dated 06.03.2024 with certain grounds.

The learned District Magistrate, Cuttack upon filing of such Recall Petition in a hasty manner without hearing the party, and the learned District Magistrate, without going through the contents stated in the recall petition as well as without perusing the documents annexed in the Recall Petition, has rejected the Recall petition vide Order dated 03.07.2024 on the mere flimsy ground that the present Applicant has neither appeared nor raised any objections while passing of the order dated 06.03.2024.

The contention of the Respondent bank is that Pursuant to order dated 06.03.2024 in Misc. Case No. 8/21 of the Collector and District Magistrate, Cuttack in proceeding under section 14 of the SARFAESI Act, 2002 as per its section 14 petition/affidavit filed as per the requirement of Section 14, the bank has obtained order dated 06.03.2024 for taking physical possession of the mortgaged property put to sale and purchased by the successful auction purchaser as per Sale Certificate dated 08.07.2019. The petitioner was noticed and after hearing the parties, the order dated 06.03.2024 was passed as per law.

Pursuant to order dated 03.07.2022 in Misc. Case No. 8/21 of the Collector and District Magistrate, Cuttack in a proceeding under section 14 of the SARFAESI Act, 2002 as per its section 14 petition/affidavit filed as per the requirement of section 14, the bank

has obtained physical possession of the mortgaged and hypothecated property put to sale and purchased by the successful auction purchase, Durjaya Kumar Nath on 08.07.2019 as is evident from sale certificate dated 08.07.2018 of Authorized Officer of SBI, SARB, Cuttack and taken possession of entire property except one room and one bathroom vide Panchnama dated 28.08.2024.

From the perusal of the record it is evident that in the notice under Section 13(2) and 13(4) and paper publication of the possession notice plot No. is mentioned as 76/1654. But the learned Collector without going through the documents filed has passed the order dated 06.03.2024 mechanically mentioning Plot No.78/1654on the basis of the affidavit filed by the Respondent Bank without going through the notice under Section 13(2) and 13(4). Learned Collector should have considered the recall petition filed by the applicant. But the learned Collector also rejected the recall petition without considering the same on the ground that the Respondents/applicants had neither raised any objection nor raised these points/defect.

In view of the aforesaid facts and circumstances of the case and the discussion made above, this Tribunal is of the view that the learned Collector has passed the order only on the basis of the affidavit filed by the Respondent Bank and has not gone through the documents available on record. As such, order dated 06/03/2024 and 03.07.2024 are hereby set aside. Accordingly issue No.(iv) is answered.

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

From the perusal of the record it is seen that after availing the credit facilities from the bank, the applicants 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 action against the applicant under the provisions of the SARFAESI Act. But the Respondent Bank failed to prove that 30 days notice under Rule 8(6) has been served on the applicant and the sale notice has been affixed on the conspicuous part of the property as per Rule 8(7) of the Security Interest(Enforcement), Rules, 2002. Respondent Bank also failed to prove compliance of Rule 8(1) and 8(2-A) of the Security Interest(Enforcement), Rules, 2002. It is also proved that the notices under Section 13(2) and 13(4) are also defective one as the plot No. mentioned in the notices are wrong and the applicant also failed to issue any corrigendum in this regard. Respondent Bank also failed to prove that while fixing reserve price valuation has been made properly.

Decisions relied on by the Respondent Bank is not applicable to the facts of this case.

In view of the aforesaid discussion made above, and the issues already answered in the preceding paragraphs and considering the facts and circumstances of the case and the material available on record, this Tribunal is of the view that the Respondent Bank failed to prove its defence and the applicant established its case against the Respondent Bank. Therefore, the instant SA bearing SA No.77/2024 is allowed and the notices under Section 13(2) dated 30/03/2015 and possession notice under Section 13(4) dated 02.07.2015 and so also sale notice dated 15.05.2019 and sale certificate dated 08.07.2019 having Plot No.78/1654 beyond 13(2) & 13(4) notices being violative of the provisions enshrined in the SARFAESI Act are hereby quashed. Order dated 06.03.2024 passed by the learned Collector and District Magistrate, Cuttack in Bank Misc. case No.08/2021 are also hereby set aside. Accordingly Issue No.(v) is answered.

O R D E R

In the result, S.A. No.77 of 2024 is allowed declaring the notices under Section 13(2) dated 30/03/2015 and possession notice under Section 13(4) dated 02.07.2015 and so also sale notice dated 15.05.2019 and sale certificate dated 08.07.2019 being violative of the provisions enshrined in the SARFAESI Act are hereby quashed. Order dated 06.03.2024 passed by the learned Collector and District Magistrate, Cuttack in Bank Misc. case No.08/2021 are also hereby set aside. Respondent Bank is at liberty to take fresh steps as per law. Respondent Bank is further directed to refund the amount deposited by the auction purchaser along with interest @12% p.a. simple from the date of deposit till the date of payment within 30 days from the date of this order. Registry is directed to return the DDs of Rs.74.44 lakhs deposited by the Applicant within 30 days from the date of this order to the applicant.

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.77 of 2024 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 17th day of April, 2026.

(Jitendra Prasad Singh)
Presiding Officer.