IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: **SRI.SOVAN KUMAR DASH**
PRESIDING OFFICER

Dated this the 20th day of April,2026

Securitization Application No.57/2026

Between
Prasad Mathew, Aged 66 years,
S/o K.E. Mathew, Kuttikkat House,
Kadapra P.O., Kumbanad,
Pathanamthitta - 689 547. …Applicant

And

1. State Bank of India,
Represented by the authorized officer,
SME Branch, Ravisree Arcade, Ramanchira,
Thiruvalla, Pathanamthitta District- 689 101.

2. The Authorized officer,
State Bank of India, SME Branch
Ravisree Arcade, Ramanchira,
Thiruvalla, Pathanamthitta District-689 101.

3. State Bank of India,
Stressed Assets Recovery Branch,
Represented by the Authorized Officer
1st floor, Administrative Office Building,
LMS Compound, West Gate,
Vikas Bhavan P.O.,
Thiruvananthapuram District-695 033.

4. The Authorized officer,
Stressed Assets Recovery Branch,
Represented by the Authorized Officer,
1st floor, Administrative Office Building,
LMS Compound, West Gate,
Vikas Bhavan P.O.,

Thiruvananthapuram District 695 033. …Defendants

This Securitization Application having been heard on 10.03.2026 in the presence of Advocate Riyas M.B for the applicant and Advocate K.P Sujesh Kumar for the defendant and stood over to this day for consideration, the Tribunal delivered the following:

F I N A L O R D E R

This SA is filed by the applicant under S.17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') praying declare that entire securitization proceeding as illegal.

Brief facts of the case:

2.1. The applicant, an A class PWD contractor, availed certain credit facilities for smooth functioning and operation of his business. The overdraft facility availed by the applicant was extended from time to time and lastly it was extended to 18,00,00,000/- (Rupees Eighteen Crores Only) by creating security interest over the subject matter property described in the SA.

2.2 It is claimed by the applicant that due to flood in the year 2019, his business was affected. So also, due to introduction

of GST, he faced difficulty in repaying the loan. However, he managed to reduce the limit of Over Draft facility for Rupees 18 Crores to Rupees 13 Crores. The applicant approached the defendant bank to reduce the over charge and penal interest but, the defendant did not consider the same and issued a demand notice u/s 13(2) of the SARFAESI Act on 25.04.2025 by classifying the loan as NPA on 24.04.2025 calling the applicant to discharge the outstanding of Rs.7,20,37,788.50 within the statutory period of 60 days. In absence of non-repayment within statutory period, possession notice u/s 13(4) of the SARFAESI Act was issued on 11.07.2025 in taking symbolical possession of the secured asset. The applicant submitted a representation dated 25.07.2025 before the 3rd defendant stating his willingness to pay the overdue amount and requested to give him an opportunity to resolve the issue. On receipt of the same the defendant issued a communication granting time up to 31.08.2025 to pay the loan. Thereafter the applicant approached the defendant to give more time for repayment but, the same was not considered by the defendant.

2.3 The defendant filed MC No. 470/2025 before the Chief Judicial Magistrate, Pathanamthitta u/s 14 of the SARFAESI Act to

take physical possession of the secured asset with the help of an advocate commissioner. It is claimed by the applicant that the statutory mandate in compliance of Sec.14 of SARFAESI Act is not duly complied and the Chief Judicial Magistrate passed an illegal order without application of mind. Hence, SA is filed to declare that entire securitization proceeding as illegal with further relief to set aside the entire measure taken by the defendant.

3. The defendant filed written statement in denying the averments in the SA and claimed, *interalia*, that all the statutory measures are duly complied in the securitization proceeding. After giving sufficient opportunity to the applicant to redeem the loan, he didn't take any interest to redeem the same. Hence, the proceeding u/s 14 of the SARFAESI Act was initiated before the Chief Judicial Magistrate as per the statutory provisions to take physical possession of the secured asset. In absence of proof of material illegality in the securitization proceeding including the proceeding before the Chief Judicial Magistrate, the SA, being devoid of any merit, may be dismissed.

4. From the respective case of the applicant and the defendants, the following points emerge for adjudication in this case:

(i) Whether the securitization proceeding initiated by the defendant no.1 suffers from any illegality or irregularity?

(ii) Whether the applicant is entitled to get any relief in this SA?

FINDINGS:

Point Nos.(i) & (ii): -

5. In the SA the applicant has admitted about availing of various loan facilities from the defendant bank by creating security interest over the subject matter property. Due to default in repayment the defendant initiated Securitization proceeding after classifying the loan as NPA and issued Demand Notice u/s 13(2) of the SARFAESI Act on dated 24.05.2025 calling the applicant to discharge the liability of Rs. 7,20,37,788.50 within the statutory period of 60 days.

6. The applicant claims in the SA that the calculation of the interest, capitalizing of interest on interest and also charging of penal interest in the loan account are illegal and erroneous. Admittedly after receipt of the Demand Notice no objection or representation was raised by the applicant in disputing the claim amount. For the first time in the SA, the applicant has raised

excess charge of interest in the loan account. After issuance of possession notice the applicant submitted representation for settlement of the accounts. The defendant has also given reply to the representation submitted by the applicant permitting him for resolution of the loan before 31.08.2025. Again, the applicant submitted another representation on 27.08.2025 asking the defendant to reconsider over charging of interest and penal interest to which defendant issued a reply on 30.08.2025 denying the claim and asked the defendant to pay the amount. But no step was taken by the applicant to settle the claim. In the 1st representation, the applicant has not raised any dispute regarding erroneous calculation of the interest in the loan account nor any material is placed in this proceeding by the applicant to prove that the calculation of interest in the loan account is erroneous. In absence of the same there is no valid ground to accept the contention of the learned counsel for the applicant.

6. In a judgment of Hon'ble High Court of Kerala reported in *2022 (3) KLT 645* in the case titled ***AGP City Gas Private Limited v. M/s.Lynx Properties & Developers & others,*** it was held as follows:-

> *"22……The demand of a higher quantum through the demand notice cannot by itself invalidate the notice in the circumstances of this case since the mistake in the quantum was not brought to the notice of the secured creditor. Even if a higher amount was demanded in the notice under Section 13(2) of the Act, that by itself will not erode the sanctity of the notice, unless the secured creditor refused to correct the mistake, even after bringing it to the notice of the secured creditor. Had the borrower or the guarantor objected to the demand notice, necessarily the bank would have got an opportunity to correct the quantum in the reply to their objections. Having failed to even object to the notice under Section 13(2), respondents 1 and 2 cannot now turn around and question the validity of the notice issued under section 13(2) of the Act, merely on the ground that a higher quantum is demanded."*

The representation submitted by the applicant after issuance of possession notice cannot be treated as objection u/s 13(3-A) of the SARFAESI Act to the Demand Notice dated 25.04.2025 marked as annexture A3. After issuance of the possession notice the applicant submitted various representations which were duly replied by the defendant. As already submitted earlier no material is placed by the applicant showing calculation of interest as erroneous. In view of the ratio laid down by the Hon'ble High Court of Kerala as stated earlier the applicant, having not raised any dispute to the Demand Notice, is legally not entitled to claim demand of the defendant is erroneous and excessive. Even the claim of the bank is excessive the same cannot be a ground to

held that the Securitisation proceeding is illegal. Hence, contentions raised by the applicant during course of the argument is not sustainable.

8. The Debts Recovery Tribunal is constituted to adjudicate dispute between the secured creditor and the borrower and to ascertain whether the measures taken by the defendant in the Securitization proceeding are in accordance with the law. If it is found that all the statutory provisions are not duly complied, the Debts Recovery Tribunal has power to interdict in the Securitization proceeding. But the Debts Recovery Tribunal has no jurisdiction to decide in dispute about the charging of interest in the loan account and the claim amount.

9. In a Full Bench judgement of the Hon'ble Madras High Court in the case of ***M/s.Lakshmi Shankar Mills (P) Ltd. & others vs. The Authorised Officer/Chief Manager, Indian Bank & others*** *[judgement dated 15.04.2008 in W.P.Nos.37148 & 37534/2007]*, at paragraph 21 it is held as follows:

> *"21. ……. However, we hasten to add that while considering the question of validity of the action of the bank, it is not necessary for the Tribunal to adjudicate the exact amount due to the secured creditors. In other words, the purpose of an application under Section 17 is not the determination of the quantum of claim*

per se as the Tribunal is concerned with the issue of the validity of the measures taken by the banks/financial institutions under Section 13(4). In our opinion, the judgment of the Division Bench in Mison Leathers Ltd., lays down the law correctly and does not require any reconsideration."

In view of the ratio the contention raised by the learned counsel for the applicant has no force and the same is not accepted.

10. During argument learned counsel for the applicant submitted that the first proviso to Sec 14(1) of the SARFAESI Act is not duly complied by the applicant. In absence of the same the order passed by the Chief Judicial Magistrate is not sustainable. The learned counsel for the applicant would contend that that amount due as on the date of application is not stated by the authorized officer in the affidavit which vitiates the entire securitization proceeding. On the other hand, learned counsel for the defendant contended that in the affidavit filed by the authorized officer, the details of the loan availed by the applicant and the amount due as on 24.04.2025 is stated. There is no illegality in such proceeding. Hence, the SA having no merit, may be dismissed.

11. On careful consideration of the submissions of both sides it is found from the affidavit filed before the Chief Judicial

Magistrate by the authorized officer in M.C No. 470/2025 that the total outstanding as on 24.04.2025 amounting to Rs.7,20,37,788.50/- is stated in paragraph 27. But the total amount due as on the date of filing of the application is not stated, which amounts to clear violation of the clause (1) of the proviso to Sec (14) of the SARFAESI Act. The authorized officer could have stated amount due on the swearing of the affidavit or on the date of filing of the application. Due to non-compliance of the statutory requirement, it vitiates the order passed by the learned Chief Judicial Magistrate. Hence, the defendant cannot proceed to take possession of the secured asset based upon such erroneous order passed by the Chief Judicial Magistrate. The applicant is entitled for limited relief in setting aside the proceeding u/s 14 of the SARFAESI Act. The defendant may proceed afresh u/s 14 of the SARFAESI Act after complying the statutory requirements. In the event of challenge to such proceeding in future, the applicant shall be debarred to raise any question for which the matter is already adjudicated in this proceeding. The points framed are answered accordingly.

Hence it is ordered: -

ORDER

12. In view of the foregoing reasons and with the above observation, the SA is allowed in part and the proceedings u/s 14 of the SARFAESI Act is hereby set aside, but in the circumstances without costs.

(Dictated to my steno, corrected and pronounced by me in the open Tribunal on this the 20th day of April, 2026)

[SOVAN KUMAR DASH]
PRESIDING OFFICER

Documents on the part of the applicant

Annexures	Date	Particulars of documents
Annexure-A1	11.03.2025	True copy of the Representation preferred by the applicant before the Manager of the defendant bank.
Annexure-A2	04.04.2025	True copy of the demand notice No. SBI/18114/18521766 issued by the 1st defendant with English translation.
Annexure-A3	25.04.2025	True copy of the demand notice issued by the defendant bank under Sec.13(2) of the SARFAESI Act,2002.
Annexure-A4	08.07.2025	True copy of the notice No. SARB/TVM/SAL/MS/042/2025-26 issued by 1st defendant bank.
Annexure-A5	11.07.2025	True copy of the possession Notice. No AGM/SARB/TVM/SAL/MS/1082/2025-26 under Section 13(4) of SARFAESI Act read with Rule 8(1) of Security interest (Enforcement) Rules.
Annexure-A6	25.07.2025	True copy of the representation preferred by the applicant before the defendant bank.
Annexure-A7	31.07.2025	True copy of the communication No SARB/TVM/SAL/MS/1250/2025-26 issued by the defendant bank.
Annexure-A8	16.08.2025	True copy of the representation submitted by the applicant before the 1st defendant.
Annexure-A9	27.08.2025	True copy of the representation preferred by the applicant before the 3rd defendant.
Annexure-A10	30.08.2025	True copy of the communication No. SARB/TVM/SAL/MS/1496/2025-26 issued by the 3rd defendant.
Annexure-A11	11.09.2025	True copy of the advocate notice issued on behalf of the 3rd defendant.

Annexure-A12	..	True copy of the petition in M.C.No. 470/2025 filed before the Hon'ble Chief Judicial Magistrate Court, Pathanamthitta.
Annexure-A13	06.11.2025	True copy of the order issued by the Learned Chief Judicial Magistrate Court, Pathanamthita in M.C No.470/2025.
Annexure-A14	18.12.2025	True copy of the notice issued by the Advocate commissioner along with the envelop.
Annexure-A15	25.10.2025	True copy of the Judgment issued by the Hon'ble High Court of Kerala in WP(C) No. 15195/2024.

Documents on the part of the defendant -Nil

PRESIDING OFFICER

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KERALA AT ERNAKULAM

PRESENT: **SRI.SOVAN KUMAR DASH**
PRESIDING OFFICER

Dated this the 20th day of April,2026

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