Presented on : 30.12.2022
Registered on : 02.01.2023
Decided on : 15.04.2026
Duration : Y M D
03-03-13

IN THE DEBTS RECOVERY TRIBUNAL
AT AURANGABAD

SECURITISATION APPLICATION NO.01 OF 2023

Shamit Educational Trust,
A Trust registered under the
Maharashtra Public Trusts Act, 1950,
Having office at Gut No.45,
Nakshatrawadi, Aurangabad through
Its Authorized Trustee Kiran Haribhau
Chavan ..**Applicant**

Versus

1. The Malkapur Urban Co-op Bank Ltd.,
   H.O. : Dhanshree, Buldana Road,
   Malkapur, Dist. Buldana (M.S.) – 443 101,
   Branch at Jawahar Colony, Aurangabad

2. The Authorised Officer,
   H.O. : Dhanshree, Buldana Road,
   Malkapur, Dist. Buldana (M.S.) – 443 101,
   Branch at Jawahar Colony, Aurangabad

3. M/s Sunder Siddhi,
   Through its partner
   a) Suyog Suresh Runwal
   b) Suresh Banchhand Runwal

c) Sadhana Suresh Runwal,
Shop No.7, Sunder Jeet Complex,
Dashmesh Nagar, Aurangabad

4. M/s Sunder Sports Planet,
Through its Partners
a) Suyog Suresh Runwal
b) Suresh Banchhand Runwal
c) Sadhana Suresh Runwal,
Shop No.7, Sunder Jeet Complex,
Dashmesh Nagar, Aurangabad

5. Tejindarshing Jaysing Gulati,
Age : 60 years, Occu. Business,
R/o Plot No.90, Jyoti Nagar,
Aurangabad

6. Milind Kaashinath Wagh,
Age : 61 years, Occu. Business,
R/o Plot No.171, Tilak Nagar,
Aurangabad

7. Prakaash Motilal Runwal Jain,
Age : 57 years, Occu. Business,
R/o B-3, Nirman Co-operative Society,
Sahakar Nagar, Aurangabad ….**Defendants**

APPEARANCE :

Applicant : Mr. S.V. Adwant, Advocate
Defendant Nos.1 and 2 : Mr. Sandeep B. Gorde, Advocate
Defendant Nos.3 to 7 : None

CORAM: DR. J.R. CHAUHAN, PRESIDING OFFICER

JUDGMENT

(Pronounced on : 15.04.2026)

1. This Securitisation Appllication (S.A.) under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") has been filed by the applicant against the defendants for the following reliefs:

"*(i) The order passed by the DM, Aurangabad on 3.10.2022, in Securitization Application No.387/2022 taken up under section 14 of the SARFAESI Act, be quashed and set aside;*

(ii) The notice dated 28.11.2022 issued by the Upper Tahasildar, Aurangabad, with respect to the property of the applicant, directing the Naib Tahsildar and Mandal Adhikari, Nakshatrawadi, to take possession of the property of the applicant on 3.1.2023, be quashed and set aside;

(iii) It be held and declared that the defendant Nos.1 & 2 have no right, authority and power to take measures under section 13(4) and 14 of the Act of 2002 for taking possession of the leasehold assets of the applicant trust;

(iv) The defendant Nos.1 and 2 be directed not to transgress the statutory and contractual right of the applicant over the leasehold property of the applicant;

(v) Cost of the application be awarded; and

(vi) Any other equitable relief, to which the applicant is found to be entitled in the circumstances of the case, be granted."

2. The brief facts of this case are that the applicant is an Educational Trust, registered under the Maharashtra Public Trusts Act, 1950 with the office of the Charity Commissioner, Aurangabad. The applicant Trust is running a school by the name Shamit School over a part of land of Gut No.45, Nakshatrawadi, Aurangabad. The school of the applicant Trust is affiliated to CBSE, Delhi and there are 220 students taking education in Playgroup to 10th standard. There are 33 teaching and non-teaching staff in the school and the school is providing education to needy students under the provisions of Right to Education Act, 2009.

3. It is further averred that the applicant Trust has taken land admeasuring 8096 sq.mtrs, forming part of land Gut No.45 of

Nakshatrawadi, Aurangabad from landlord – M/s Sunder Siddhi on lease in the year 2012 for a period of 33 years. It is specifically stated that when new terms of lease were agreed and accepted by the parties to the lease, the Lease Deed was registered on 27th June, 2016 at Sr. No.2363/2016 before the Sub-Registrar, Aurangabad for a period of 33 years. The possession of the applicant over leasehold property is continuous since year 2012 i.e. much prior to registered Lease Deed. Further school building is also constructed over it and applicant has developed the remaining land for pro viding amenities to the students.

4. It is further stated that the defendant No.1 professes that M/s Sunder Sports Planet – a partnership firm, has availed loan facility from the defendants/bank for its business purpose in the year 2019 and as security towards the repayment of the said loan, the landlord – owner of the applicant created the security interest of the defendant No.1 over the land leased out to the applicant and the school building standing thereon and the land beneath it, by

executing a registered Mortgage Deed dated 29.03.2019, without the information, consent and concurrence of the applicant Trust. The landlord has orally informed the applicant Trust on 13.12.2022 that Additional Tahasildar, Aurangabad has issued notice dated 28.11.2022, under which he is about to take the possession of the land and the school building on 03.01.2023, which is professed to be mortgaged with the defendant No.1 bank in the year 2019 for loan facility availed by M/s Sunder Sports Planet. After receiving the information from the landlord, the applicant Trust has applied for and got the copy of Securitisation Application No.387/2022 filed by the defendant No.1 and also sought necessary information and documents from landlord, which were received on 15.12.2022 by the applicant Trust and thereafter, the applicant decided to take remedial measures against the action sought to be taken by the Additional Tahasildar, Aurangabad on 03.01.2023, for preserving and protecting its statutory rights with respect to the leasehold property. The District Magistrate (DM), Aurangabad has failed in

his duty to scan and scrutinize the documents, adhere to the statutory mandate and follow the principles of natural justice and was carried away by the version of the defendant Nos.1 and 2 and passed a thoroughly unorthodox order on 03.10.2022, by giving ceremonial send off to the provisions of law. While undertaking such an enquiry, it was expected of the DM, Aurangabad to display judicious approach in considering the relevant factual position asserted by the defendant No.1 and from examining the factual correctness of the assertions made in the affidavit filed by the applicant, but the DM, Aurangabad has miserably failed to perform his statutory duty by neglecting to consider the affidavit filed by the Authorized Officer of defendant No.1. It appears that the defendant Nos.1 and 2 professed to have taken the symbolic possession of the leasehold property of the applicant on 07.08.2021, whereas no notice was issued and served upon the applicant Trust and further no opportunity of hearing was afforded to the applicant Trust. The possession notice dated 28.11.2022 issued by the Upper

Tahsildar, Aurangabad, directing the Naib-Tahsildar and Circle Officer to take possession of the property of the applicant on 03.01.2023 is illegal. There is sub-delegation of power, which is illegal. The impugned measures and the action alleged to have been taken thereunder suffer from the vice of arbitrariness and the proceeding under Section 14 of the SARFAESI Act before the DM, Aurangabad suffers from grave legal infirmities . The order passed by the DM dated 03.10.2022 and the possession notice dated 28.11.2022, issued by the Upper Tahsildar, Aurangabad, are illegal and liable to be set aside, on the ground that action of defendant Nos.1 and 2 is illegal, arbitrary and contrary to the principles of natural justice. Defendant Nos.1 and 2 have not served the applicant with the possession notice, nor have they affixed it at a conspicuous place of the school premises. The defendants have no right to take possession of the leasehold property of the applicant. Defendant No.1 was in knowledge of the fact that the school is being run by the applicant Trust in the leasehold property under a registered

Lease Deed and the defendants have failed to state the factual aspect in the application filed under Section 14 of the SARFAEI Act before the DM, Aurangabad. The impugned notice issued by the Upper Tahsildar is illegal and further the applicant is not privy to the loan transaction between defendant No.1 and M/s Sunder Sports Planet and M/s Sunder Siddhi. The applicant has claimed right over the leasehold property under the SARFAESI Act and prayed for allowing the Securitisation Application for the reliefs set out in opening para of this judgment along with heavy costs.

5. The defendant Nos.1 and 2 have filed written statement/say at Exhibti-7 and contested the S.A. on the grounds that the contents of the S.A. are totally incorrect, illegal, contrary to documents and more particularly, it is an unique example of systematic fraud played with the bank by defendant Nos.3 and 4 while availing the loan facility from the answering defendant bank. The borrowers i.e. defendant Nos.3 and 4, sister concern partnership firm of which the partners, namely, Suyog Suresh Runwal and Suresh Banechand

Runwal are also trustees of applicant Shamit Education Trust of which property is mortgaged. The borrowers as well as applicant trustees are beneficiary of the loan facilities availed by them. The applicant is before the Tribunal assailing action of bank against the borrowers property i.e. defendant Nos.3 and 4. It does not lie in the mouth of applicant saying tht the order passed by the learned DM was not within the knowledge considering the status of the applicant and borrowers and its partners. In fact, it was the duty of the applicant to mention the interse relation between the applicant Trust and borrowers defendant Nos.3 and 4 and its partners. This is suppression of material aspect from this Tribunal. The registration f Lease Deed dated 27.06.2016 by defendant No.3 is foreign to the bank. The execution of lease deed by borrower defendant No.3 in favour of applicant is for the first time noticed by the bank, when this S.A. was filed. At the time of execution of Mortgage Deed by borrower in favour of bank, the execution of lease deed executed in 2016 was not brought to the notice of bank, nor the said fact was

noticed in search report. This is suppression of material document from financial institution by the borrower at the time of availing loan facility as the borrower deceived the bank and siphoned the amount. Though the rights are created in favour of the applicant trustee/authorised person of the trust Suresh Benachand Runwal ought to have brought this aspect to the notice of the bank, so that the bank would be saved from fraudulent act of the applicant and borrowers defendant Nos.3 and 4. The fraud is played with the bank by borrowers by hiding the vital document of lease from bank at the time of execution of Mortgage Deed on 29.03.2019 i.e. after execution of lease deed in 2016. In the recital of security document, the mortgagors have stated that the mortgaged properties are free and they had not created any third party rights, interest etc. It was mentioned in Clause "H" of the document that mortgagor shall not without prior consent of the Mortgagee bank, obtain, let out or permit the use on lease, leave and licence basis the said properties. This act of the borrowers prima facie proves the

intention of the borrowers to siphon the money by making false and incorrect statements. The defendant Nos.3 and 4 in collusion with the applicant had preplanned to deceive the bank. The defendant Nos.3 and 4 (borrowers) were well aware of the order passed by the DM, but no steps were taken by borrowers before any Court or Tribunal. On the other hand, the borrowers had intimated the applicant to take steps to challenge the action of bank. There is no procedural irregularity at the hands of the secured creditor and the bank has initiated recovery proceedings following the mandatory procedure contemplated in the Special Statute. The litigant approaching court with unclean hands and suppression of material facts is not entitled for any equitable relief. In fact, the Tahsildar and Naib Tahsildar are the key officers in revenue administration and exercise powers of Assistant Collector and both are having same powers and functions. Hence, contention regarding delegation of powers is not correct. The defendant bank denied all

other allegations of the applicant and dismissal of the S.A. with heavy costs was prayed for.

6. The applicant has produced on record following documents as per list of documents (Exhibit-4)

Sr. No.	Description of document	Exhibit
1	Copy of Certificate of Registration of Applicant Trust under Maharashtra Public Trust Act.	A
2	Copy of CBSE Affiliation Certificate	B
3	Copy of Lease Deed bearing No.2363/2016	C
4	Copy of notice dated 28.11.2022 issued by the Additional Tahsildar	D
5	Copy of application filed by defendant No.1 under Section 14 of Securitisation Act along with order passed by District Magistrate on 03.10.2022	E

7. The defendant No.1 bank has produced on record a copy of the Mortgage Deed executed by defendant Nos.3 and 4 in favour of bank on 29.03.2019 as Exhibit-R-1.

8. I have heard the learned counsel for the parties and gone through the material on record thoroughly. My findings along with reasons are as under.

9. The learned counsel for the applicant argued that the licence of defendant No.1 bank was cancelled on 05.07.2023 and defendant no.1 now is not a financial institution or bank and for that, he referred to Section 2(c) defining "bank", Section 2(d) "banking company", Section 2 (l) "financial asset", Section 2 (j) "default", Section 2(m) "financial institution" Section 2 (z) "securitisation", Section 2 (zd) "secured creditor" and Section 2 (ze) "secured debt" of the SARFAESI Act. The learned counsel for the applicant also made a reference to Section 2 (g) of the Recovery of Debts and Bankruptcy Act, 1993, which defines "debt". Learned counsel further submitted that the licence of defendant No.1 was cancelled when defendant No.1 committed material illegalities in its operation and failed to comply with the provisions of the Banking Regulation Act, 1949 and hence, defendant No.1 does not come

within the definition of the "bank" or "financial institution" and cannot proceed further against the applicant Trust.

10. The learned counsel for the defendant bank argued that the liquidator has been appointed in this case and the liquidator can proceed further to act for secured loan to recover the funds. It was further submitted that after cancellation of the banking licence, the liquidator is appointed by the Commissioner for Cooperation and Registrar of Cooperative Societies to wind up the bank's affairs and the bank ceases to carry on banking business, but the liquidator appointed can take recourse of legal framework by invoking the provisions of SARFAESI Act and other legal remedies available in law for its recovery. It is further submitted that the applicant and borrowers, in collusion with a motive to defraud the bank, created lease deed dated 27.06.2016 and it was well within the knowledge of the applicant and borrowers, but this fact was not disclosed at the time of raising loan from the defendant bank and in this manner, the applicant and borrowers have concealed the material fact from

the bank. It was further submitted that there is no any ambiguity in the procedure adopted by the liquidator seeking its dues under the SARFAESI Act and the lease deed dated 27.06.2016 is a fabricated document and has no effect on the recovery proceeding conducted by the bank as per provisions of the SARFAESI Act and the Securitisation Application is liable to be dismissed.

11. Before proceeding further, it is necessary to make reference to the parties of Lease Deed dated 27.06.2016 (Exh-C)and Mortgage Deed dated 29.03.2019 (Exh-R-1), which are as under.

Parties to Lease Deed dated 27.06.2016 :

(i) M/s Sunder Siddhi,
PAN No.ABHFS8419H
A registered partnership firm,
Having its registered office at
Office No.7, Sunderjeet Complex,
Dashmesh Nagar, Aurangabad,
Through its Authorised Partner,
Shri Runwal Suresh Banechand,
(for brevity, hereinafter referred to as "the lessors")
AND

(ii) Shamit Educational Trust,
PAN NO. aalts3306C
A registered trust, having its
Office at Gut No.45, Nakshatrawadi,

Tq. and Dist. Aurangabad, through
its Authorised Trustee
Mr. Runwal Suyog Suresh
(for brevity, hereinafter referred to as "the lessee")

(iii) M/s Sunder Heritage,
PAN No.ABHFS8422l,
A registered partnership firm,
Having its registered office at
Gat No.45, Nakshatrawadi,
Tq. and Dist. Aurangabad,
through its Authorized Partner
Mr. Runwal Suresh Bancchand,

(iv) M/s Sunder Villa,
PAN No. ABHPS8421KI,
A registered partnership firm,
Having its registered office at
Gat No.45, Nakshatrawadi,
Tq. and Dist. Aurangabad,
through its Authorized Partner
Mr. Runwal Suresh Bancchand,

(v) M/s Sunder Sports Planet,
PAN No.ABHFS8420J,
A registered partnership firm,
Having its registered office at
Gat No.45, Nakshatrawadi,
Tq. and Dist. Aurangabad,
through its Authorized Partner
Mr. Runwal Suresh Bancchand
(for brevity, hereinafter referred to
as "Consenting Parties)

Parties to Mortgage Deed dated 29.03.2019 :

(i) M/s Sunder Siddhi,

A registered partnership firm,
having its registered office at
Shamit Octozone, Gut No.45,
Nakshatrawadi, Aurangabad,
through its partners

A) **Mr. Suyog Suresh Runwal**,
Age : 39 years, Occu. Business,
R/o Plot No.32, "Soham",
Jyoti Nagar, Aurangabad

B) **Mr. Suresh s/o Bancchand Runwal**,
Age : 65 years, Occu. Business,
Partner of M/s Sunder Sports Planet,
R/o Plot No.32, "Soham", Jyoti Nagar,
Aurangabad

(ii) **Mr. Suresh s/o Bancchand Runwal**,
Age : 65 years, Occu. Business,
R/o Plot No.32, "Soham", Jyoti Nagar,
Aurangabad

(iii) **Mr. Tejendersingh Jaysingh Gulati**,
Age : 64 years, Occu. Business,
R/o Plot No.90, "Gurbani", Jyoti Nagar,
Aurangabad

(hereinafter referred to as "The Mortgagor No.1", "The Mortgagor No.2", and "The Mortgagor No.3")

AND

The Malkapur Urban Coop Bank Ltd.,
Malkapur, having its Head office at Malkapur
And one of its Branches is at Jawahar Colony,
Aurangabad, through its Branch Manager of
Malkapur Urban cooperative Bank Ltd., Malkapur

(hereinafter referred to as "The Mortgagee")

12. In the present Securitisation Application, the applicant Trust is seeking protection of the mortgage property in view of Section 17(4-A)(i) of the SARFAESI Act that this mortgaged secured asset was under tenancy or leasehold rights of the applicant Trust.

13. If the above referred parties of the documents i.e. Lease Deed and Mortgage Deed, are appreciated, M/s Sunder Siddhi, a registered partnership firm, through its Authorized Partner Runwal Suresh Banechand, leased the suit property in favour of Shamit Educational Trust through its authorized trustee Runwal Suyog Suresh. Record shows that Runwal Suyog Suresh is the authorized trustee of M/s Shamit Educational Trust, Runwal Suresh Banechand is partner of M/s Sunder Villa and Runwal Suresh Banechand is also partner of M/s Sunder Sports Planet, as per Lease Deed (Exhibit-C) in the list of documents (Exhibit-4).

14. As per Mortgage Deed dated 29.03.2019 (Exhibit-R-1), M/s Sunder Siddhi through its partner, namely, Suyog Suresh Runwal ,

Suresh Banechand Runwal and Suresh Banechand Runwal in individual capacity and one Tejendersingh Jaysingh Gulati mortgaged the suit property in favour of defendant No.1 bank. This Mortgage Deed reflects that Suyog Suresh Runwal and Suresh Banechand Runwal, registered partners of M/s Sunder Siddhi as partners whereas Suresh Banechand Runwal as an individual and one Tejendersingh Jaysingh Gulati mortgaged the suit property in favour of defendant No.1 bank. The Lease Deed has been executed in favour of Shamit Educational Trust through its authorized trustee Runwal Suyog Suresh by M/s Sunder Siddhi, a registered partnership firm through its authorized partner Runwal Suresh Banechand. It is apparent on the face of record that the Trust created vide Lease Deed dated 27.06.2016 is a family Trust. More so, this Trust was created by the family members with a premeditated plan to raise loan from defendant No.1 bank, concealing the execution of Lease Deed dated 27.06.2016. Hence, a person, who seeks equity of this Tribunal, must do equity. It was

necessary for the applicant Trust's authorized trustee Runwal Suyog Suresh to disclose that the suit property is already leased out to the Trust, but in the Mortgage Deed dated 29.03.2019, this fact was totally concealed from the defendant No.1 bank and obtained loan of Rs.Nine Crores and hence, the borrowers as well as applicant defrauded the bank.

15. In the present case, the demand notice under Section 13(2) of the SARFAESI Act was issued on 20.01.2020 and symbolic possession of the secured asset was taken on 07.01.2021. The defendant bank obtained the order from the District Magistrate on 03.10.2022. The demand notice was issued to them and symbolic possession of the secured assets was taken by the bank prior to cancellation of licence. After cancellation of the licence of defendant No.1, the defendant No.1 bank is prohibited from doing banking business viz. accepting deposits and lending, but there was no impediment or ambiguity in the procedure adopted by the Liquidator seeking recovery of his dues under the SARFAESI Act.

Admittedly, the Liquidator is appointed in the present case by the Commissioner for Cooperation and Registrar of Cooperative Societies to wind up the bank's affairs. In these circumstances, the bank ceases to carry on banking business, but the Liquidator can take recourse of legal framework by invoking the provisions of SARFAEASI Act and other legal remedies available in law for its recovery of public funds. Therefore, the defendant No.1 or the Liquidator is competent to proceed further for recovery of the loans being the public funds, but the bank cannot do banking business, meaning thereby that the bank cannot accept deposits and is prohibited from further lending. The borrowers cannot simply stop repayment because bank licence is cancelled as the debt obligation remains, which is transferred to the Liquidator. Therefore, defendant No.1 bank through the liquidator is the competent to undertake the provisions of the SARFAESI Act for the recover of the loan amount.

16. In Clause 8 of the Mortgage Deed dated 29.03.2019 (Exh-R1), the mortgagor claimed as absolute owner in possession over the suit property and they have not created any third party right or interest or encumbrances to the suit property. For further elaboration, the reference of Clauses 8 and 9 (D) of the Mortgage Deed (Exh-R-1) is necessary in order to reflect apparent concealment of factum of lease from the defendant No.1 bank at the time of raising loan, which are as under :

> *"8. The Mortgagors hereby state and declare that the said properties mentioned in Schedule "B" and Schedule "C" are absolutely owned and possessed by them respectively and that except the already created charge/mortgage of the Mortgagee Bank over the same, they have not created any other third party's righs, interests, encumbrances, mortgages in or to the said properties and further the Mortgagors declare that the said properties are free from any charge/s, and encumbrances in or over it.*
>
> 9. Further the Mortgagors hereby covenants with the Mortgagee bank as follows:-
>
> *[A] to [C]* *****

D] That the Mortgagors shall not as long as the principal loan amount is outstanding, create any encumbrances nor shall charge the said properties and/or any part thereof or construction thereupon, without the prior written consent of the Mortgagee Bank."

17. Therefore, the claim of the applicant on the ground of tenancy or leasehold rights is not sustainable as they have concealed the material fact from the bank and further with premeditated plan, they have concealed this fact only with an intention to defraud the defendant bank. More so, the alleged trust was a family trust.

18. In the given facts and circumstances of this case, borrowers – defendant Nos.3 and 4 have not challenged the proceedings initiated by the bank for recovery of the loan amount, hence the claim of the applicant Trust falls flat and the proceedings initiated by the bank under SARFAESI Act are legal and valid and the defendant No.1 bank is competent to proceed further against the secured asset as per law.

19. Having regard to the foregoing reasons and my findings as above, the Securitisation Application is liable to be dismissed.

20. In the result, I pass the following order:

ORDER

(A) The Securitisation Application No.01 of 2023 is hereby dismissed with no order as to costs.

(B) The defendant bank is at liberty to proceed further against the borrowers pertaining to secured assets as per law.

(C) The interlocutory applications, if any pending, stand disposed of in terms of this order/judgment.

(D) File be consigned to the Record Room.

(E) Copy of this judgment and order be uploaded on the website.

(Dr. J.R. Chauhan),
PRESIDING OFFICER,
DEBTS RECOVERY TRIBUNAL,
AURANGABAD

Aurangabad

Date : 15.04.2026