IN THE DEBTS RECOVERY TRIBUNAL AT COIMBATORE

DATED THIS 04th DAY OF APRIL, 2026

PRESENT: SRI N. SOMASUNDAAR, B.A., B.L.
PRESIDING OFFICER

SA NO.785 of 2022

Between

Ms.R. Swathi Rathna,
D/o. R. Mohankumar,
34A, Kongalamman Kovil Nagar,
Nandhavanakadu,
Ariyakoundanpatti Post,
Rasipuram,
Namakkal District. ..... Applicant

And

1. Mr.R. Mohankumar,
Proprietor, M/s.Pradeepraja Agencies,
D.No.52/B1 Pillayar Koil Street,
(Elumalaiyan Petrol Bunk),
Tiruchengode Road,
Namakkal – 637 001.

2. Ms.M. Kavitha,
W/o. Mohankumar,
D.No.52/B1 Pillayar Koil Street,
(Elumalaiyan Petrol Bunk),
Tiruchengode Road,
Namakkal – 637 001.

3. The Authorised Officer,
M/s. Canara Bank,
Thathathiripuram Branch,
1/18 Pudhanchanthai Road,
Pudhuchathram Via,
Namakkal – 637 018.

4. Mr.K.Thiyagarajan,
S/o.Kali Gounder,
No.93 Colony Singipuram,
Vazhapady,
Salem – 636 115. ..... Respondents

(Amended as per order dated 12.12.2022 in IA No.4343/2022).

This Securitization Application (for short - "SA") having been heard on various dates in the presence of Ld. Counsel Ms.Indhupriya appearing for the Applicant, Ld. Counsel Mr.S.Rengasamy appearing for the Respondents 1 & 2, Ld. Counsel Ms.Swetha representing Adv.Mr.D.Senthilkumar appearing for the 3rd Respondent Bank and Ld. Counsel Mr.R.Balaji appearing for the 4th Respondent (Auction Purchaser) and stood over to this day for consideration, the Tribunal upon considering the pleadings, evidence and submissions of the parties hereto proceeds to pass the following:

O R D E R

This SA is filed seeking to declare the e-auction held on 25.04.2022 pursuant to sale notice dated 05.04.2022 to be invalid in law and to declare all proceedings initiated by Respondent Bank including steps taken under section 14 of SARFAESI Act by way of order dated 06.08.2022 of Ld. CJM, Namakkal to be invalid and notices issued to be void in all aspects and for further orders incidental thereto.

2. The factual matrix leading to filing of this SA as averred therein are these:

2.1 The Applicant is the joint owner of the SA schedule Item No.1 property which was offered as security by her father for availing financial assistance from the Respondent Bank in the nature of letter of credit limit of Rs.40.00 Lakhs for his proprietary concern M/s.Pradeepraja Agencies engaged in the business of Poultry raw material trading. Consequent upon declaration of said loan account as NPA, the Demand Notice dated 15.03.2021 (*may be a mistake for 09.03.2021*), Possession Notice dated 15.09.2021 and Sale

Notice dated 05.04.2022 came to be issued to the Applicant's father. The Sale certificate came to be issued on 27.04.2022 and order dated 06.08.2022 was obtained from Ld. CJM, Namakkal in Crl.M.P.No.929/2022 under section 14 of SARFAESI Act.

2.2 Under the grounds of appeal, the Applicant would urge as illegality the Respondent Bank's acceptance as security the property in which the Applicant is a joint owner without even the Respondents 1 & 2 having any such rights to encumber the Applicant's property as is evincible from the loan sanction application and sanction order where nothing seems to be mentioned in what interest the minors property is encumbered and what would be the amount to be spent for the minors despite causing the Applicant's father to sign on behalf of the two minors. The other grounds include the Demand Notice dated 09.03.2021 being bereft of the date of categorization of loan account as NPA; the time limit for settling the loan; and the relevant provision under which it came to be issued. The categorical assertion of the Applicant would be that the Demand Notice not sent under the SARFAESI Act, is invalid and illegal in all aspects and despite the Applicant attaining the age of majority from December 2016, no notices under Section 13 (2) and 13(4) of the Act have been issued and served on her, vitiating the entire SARFAESI proceedings.

2.3 Ms.Indhupriya, Ld. Counsel for the Applicant during the course of her arguments took this Tribunal through the Demand Notice dated 09.03.2021, Possession Notice dated 15.09.2021, Sale Notice dated 05.04.2022, Sale Certificate dated 27.04.2022, Section 14 petition and order dated 06.08.2022 of Ld. CJM, Namakkal in Crl.M.P.No.929/2022 and pointedly argued that although in the description of property of the secured asset (SA schedule Item No.1 property) it is specifically stated to be the property owned by Mr.R.Mohan Kumar, Ms.K.Kavitha and two minor children including the Applicant, no statutory notice in terms of section 13(2) and section 13(4) read with Rule 8 (1), Rule 8(6) and Rule 9(1) have been issued to the Applicant who is a co-owner/co-sharer to SA Schedule Item No.1 property to the evident knowledge of the Respondent Bank. Ld. Counsel took

this Tribunal also through the Birth Certificate and Aadhar card of the Applicant to drive home her point that the Applicant has attained the age of majority on 24.12.2016 much prior in point of time to the 3rd Respondent Bank's issuance of the Demand Notice dated 09.03.2021 which was not at all a statutory notice under section 13(2) of the Act, it having been issued by a Branch in-charge and not 'Authorized Officer' of the Bank. It is urged to appreciate that the sale held on 25.04.2022 without serving notice for sale on the Applicant is a nullity and the order dated 06.08.2022 of Ld. CJM, Namakkal in C.M.P.No.929/2022 got passed without arraying the Applicant and her brother who are co-owners/ co-sharers in SA schedule Item No.1 property as party respondents therein is equally illegal, invalid and unenforceable. For the above reasons and other reasons alluded in the SA, Ld. Counsel for the Applicant would plead to set-aside the entire SARFAESIA measures and actions right from Demand Notice dated 09.03.2021, awarding costs of this litigation.

3. Mr.S.Rengasamy, Ld. Counsel for the Respondents 1 & 2 urged to consider that the 1st Respondent has challenged the symbolic Possession Notice dated 15.09.2021 in SA 716/2021 and the illegal auction Sale Notice dated 05.04.2022 fixing an e-auction sale on 25.04.2022 in SA 407/2022. Ld. Counsel would further submit that in compliance of the conditional orders of this Tribunal, the 1st Respondent had deposited Rs.6.04 Lakhs on 19.07.2022, Rs.13.25 Lakhs on 27.12.2022, Rs.11.00 Lakhs on 11.01.2023, Rs.19.90 Lakhs on 01.02.2023 and Rs.6.10 Lakhs on 02.02.2023 making in whole Rs.56.29 Lakhs towards redemption of the secured asset. Ld. Counsel pleaded to consider and appreciate the illegality looming large in each of the measures and actions proceeded with by the 3rd Respondent Bank in total disregard to the provisions of the SARFAESI Act and Rules. Ld. Counsel pleaded for a direction as against 3rd Respondent Bank for appropriation of said sum of monies kept in their suspense accounts on the relevant dates on which it was so deposited, to permit the concerned borrowers to redeem the mortgage eventually and obtain release of title deeds.

4. Ms.Swetha, Ld. Counsel for the 3rd Respondent Bank would submit that statutory notices whether it be under section 13(2) or 13(4) came to be issued to the concerned borrowers namely M/s. Pradeepraja Agencies and Respondents 1 & 2 as the law obligates the secured creditor to cause such notice only to such borrowers who had availed the loan and entered into a security agreement with the bank. Ld. Counsel pleaded to consider that the Applicant is in know of things as to the 3rd Respondent Bank's issuance of such statutory notices through her parents who had availed the same for the proprietary concern of the 1st Respondent, father of the Applicant thereby meaning that the 'financial assistance' so availed was for his family legal necessities including the beneficial interest of the applicant and her brother who were then minors. Ld. Counsel submitted that the Applicant who was aware of the entire SARFAESIA proceedings have not challenged it in time and the 1st Respondent deposited the conditional amounts only after the issuance of sale certificate dated 27.04.2022 by which time the right of redemption stood lost in terms of amended section 13(8). Ld. Counsel pleaded to consider that the respondent bank has not committed any illegality and the sale certificate issued in favour of the 4th Respondent having attained finality, it is only obligated to assume physical possession of secured asset and hand it over to the 4th Respondent in pursuance of the impugned order of Ld. CJM Court, it having been obtained only in accordance with law.

5. Mr.R.Balaji, Ld. Counsel for the 4th Respondent did submit that his client as the Auction Purchaser despite shelled out his hard earned money to the tune of Rs.52.25 lakhs is made to wait since 27.04.2022 by the Applicant and the other Respondents without any lawful excuse, reason or rhyme when in terms of amended section 13(8) of SARFAESI Act read with Rule 9(2) , Rule 9(9) and Rule 9(10) of the Security Interest (Enforcement) Rules an invaluable rather indefeasible right is vested on the 4th respondent Auction Purchaser since the date of confirmation of sale entitling him for delivery of vacant possession of secured asset along with the sale certificate dated 27.04.2022. Ld. Counsel concluded his submissions stating that if for

any reasons the Tribunal would hold the measures and actions of the 3rd Respondent to be invalid, the interest of the 4th Respondent Auction Purchaser who would stand to suffer prejudice for absolutely no fault of his, may be sufficiently and adequately compensated.

6. POINTS FOR CONSIDERATION, DELIBERATION AND DETERMINATION IN THE PRESENT SA:

(i) Whether the 3rd Respondent is entitled to secure physical possession of secured asset in pursuance of the impugned order dated 06.08.2022 passed by Ld. CJM, Namakkal in Crl.M.P.No.929/2022?

(ii) Whether the Applicant was served with Statutory notices in terms of section 13 (2) & section 13 (4) of SARFAESI Act?

(iii) To what reliefs are the parties hereto entitled in the present SA ?

7. STATUTORY PROVISIONS RELEVANT FOR DISCUSSION IN THE PRESENT SA:

I. SARFAESI Act :

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—

*(f) **"borrower" means any person who**, or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) which, has been granted financial assistance by any bank or financial institution or who has given any guarantee or **created any mortgage** or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who, or a pooled investment vehicle which, becomes borrower of a asset reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance or who has raised funds through issue of debt securities;*

*"(zd) **"secured creditor" means**— (i) **any bank or financial institution or any consortium or group of banks or financial institutions** holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l);*

(ii) debenture trustee appointed by any bank or financial institution; or

(iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or

(iv) debenture trustee registered with 5 [the Board and appointed] for secured debt securities; or (v) any other trustee holding securities on behalf of a bank or financial institution, ***in whose favour security interest is created by any borrower for due repayment of any financial assistance****."*

"13. Enforcement of security interest.—

(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) ***Where any borrower, who is under a liability to a secured creditor under a security agreement,*** *makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then,* ***the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).***

[Provided that —

(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.]

(iii) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower."

13(3A) *-* ***If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate [within fifteen days] of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:***

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts

Recovery Tribunal under section 17 or the Court of District Judge under section 17A.]

13(4) : In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

13(8) : Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction *or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,— (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and*

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.]"

***13 (12)** : **The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed**.*

14 : *Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—*

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that —

(i) *XXXXX*

(ii) ***the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;***

(iii) ***the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;***

(iv) *XXXXX*

(v) *XXXXX*

(vi) ***affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower****;*

(vii) ***the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower****;"*

(viii) *the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;*

(ix) *that the provisions of this Act and the rules made thereunder had been complied with:*

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets1 [within a period of thirty days from the date of application]:

[Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.]

[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

(i) to take possession of such assets and documents relating thereto; and
(ii) to forward such assets and documents to the secured creditor.]

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.

17. Application against measures to recover secured debts.—

(1) *Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:*

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower].

(1-A) *An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—*

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

(2) *The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.*

(3) *If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—*

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

***(4)** If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.*

II. SECURITY INTEREST (ENFORCEMENT) RULES:

"2. Definitions.- In these rules, unless the context otherwise requires,-

(a) "**authorised officer**" **means an officer not less than a chief manager of a public *sector bank*** *or equivalent, as specified by the Board of Directors or Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the Act;*

(b) ***demand notice means the notice in writing issued by a secured creditor or authorised officer, as the case may be, to any borrower pursuant to sub-section (2) of section 13 of the Act****;"*

"3. Demand Notice.- *(1) The service of demand notice as referred to in sub-section (2) of section 13 of the Act shall be made by delivering including hand delivery or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgement due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service:*

Provided that where authorised officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service can not be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

(2) XXXXX

(3) ***Any other notice in writing to be served on the borrower or his agent by authorised officer, shall be served in the same manner as provided in this rule****.*

(4) ***Where there are more than one borrower, the demand notice shall be served on each borrower****.*

(5) The demand notice may invite attention of the borrower to provisions of sub-section (8) of section 13 of the Act, in respect of time available to the borrower, to redeem the secured assets.]"

III. SECURITY INTEREST (ENFORCEMENT) RULES:

8. Sale of Immovable secured assets. -

"(6) the authorised 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 asset 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 newspapers including one in vernacular language having wide circulation in the locality.]"

9. Time of sale, Issue of sale certificate and delivery of possession, etc.-

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

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

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

IV. TRANSFER OF PROPERTY ACT :

"Section 8: Operation of Transfer. *Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof. Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; and, where the property is machinery attached to the earth, the moveable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith; and, where the property is a debt or other actionable claim, the securities therefore (except where they are*

also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer; and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."

V. CONSTITUTION OF INDIA : RIGHT TO PROPERTY :

300-A. *Persons not to be deprived of property save by authority of law -*

"No person shall be deprived of his property save by authority of law."

8. POINT NO.1 FOR CONSIDERATION : *Whether the 3rd Respondent is entitled to secure physical possession of secured asset in pursuance of the impugned order dated 06.08.2022 passed by Ld. CJM, Namakkal in Crl.M.P.No.929/2022?*

8.1 Concededly item No.1 property set out in section 14 Application made in Crl.M.P.No.929/2022 on the file of Ld. CJM, Namakkal and sought to be taken possession of for delivering it to the 3rd Respondent Secured Creditor Bank in pursuance of the impugned order dated 06.08.2022, is owned by the Respondents 1 & 2, their minor son R.M.Pradeepraja and the Applicant herein who has been set out as minor daughter in the description of immovable properties morefully provided in the said petition. As pointed out by Ld. Counsel for the Applicant, the Applicant has not been arrayed as a party Respondent in section 14 petition nor had the 3rd Respondent set out the minor children of the Respondents 1 & 2 as addressees/noticees in section 13 (2) Demand Notice dated 09.03.2021, Possession Notice dated 15.09.2021 and e-auction sale notice dated 05.04.2022, notwithstanding his setting out the name of Applicant in all the three statutory notices as a joint owner.

8.2 Indubitably, the 3rd Respondent Bank has got the security interest in respect of item No.1 property set out in section 14 petition created in its favour pursuant to the Memorandum of Deposit of Title Deeds dated 02.03.2016 bearing Registration No.445/2016 executed by 1stRespondent for himself and on behalf of his minor children including the Applicant along

with the 2nd Respondent for Rs.40.00 lakhs availed by 1st Respondent in the nature of working capital loan/ over draft loan sanctioned to his proprietary concern M/s.Pradeepraja Agencies by the said bank. Having caused the 1st Respondent to create mortgage over item No.1 immovable property set out in section 14 petition stated to be jointly owned by Respondents 1 & 2, their minor son and the Applicant, the Applicant in an unambiguous terms is a person falling within the term and expression "borrower" defined under section 2 (1) (f) which includes within its ambit any person who has created mortgage besides the person who has offered guarantee and the person who had been accommodated 'financial assistance'. Section 13 (4) of the Act entitles secured creditor to take possession of secured asset and bring the property for sale by way of auction or other prescribed modes and section 14 assistance for possession contemplated under the Act is in aid to section 13 (4) for assuming physical possession of secured asset from the concerned borrowers. On the side of Applicant, the Birth Certificate and Aadhar Card are produced to demonstrate that the Applicant's attaining of the age of majority as on 31.12.2016 should be in the knowledge of 3rd Respondent Bank as well in having caused the 1stRespondent to create Mortgage charge and execute Memorandum of Deposit of Title Deeds dated 02.03.2016 for himself and as guardian of his two minor children namely M.Swathirathna then aged about 17 years and R.M.Pradeepraja then aged about 12 years.

8.3 The 3rd Respondent despite setting out item No.1 property to be the joint properties of Respondents 1 & 2 and their two minor children including the Applicant in the statutory notices namely Demand Notice, Possession Notice and Sale Notice, had not issued such notices to the Applicant who was by then a Major by age and who under law was entitled to a separate, individual notice in terms of sub-rules (3) & (4) of Rule 3 of Security Interest (Enforcement) Rules which mandates the 'Authorised Officer' to serve Demand Notice and other statutory notices in writing be it Possession Notice or Sale Notice to each borrower where there are more than one. The Applicant was entitled to such notice(s) in her independent right as one of the joint owners/co-sharers of the property since she becomes one of the

borrowers under SARFAESI Act in terms of section 2 (1) (f) the moment the 3rd Respondent has insisted and caused the 1st Respondent to execute Mortgage charge for himself and as guardian of his minor children including the Applicant. The three statutory notices be it Demand Notice, Possession Notice or Sale Notice which has since deprived the Applicant of her property upon the 3rd Respondent's assuming of its symbolic possession and knocking it down in an auction sale in favour of 4th Respondent are apparently notices not issued to the Applicant who was major by age at that time or to the 1st Respondent in his capacity as Karta or natural guardian of his minor children notwithstanding the Applicant's attaining her age of majority by the time of issuance of the said notices. The 3rd Respondent's assuming of symbolic possession and auctioning of secured asset including the share of Applicant without serving any statutory notices on her despite she being a "borrower" for all purposes under SARFAESI Act is nullity in law and a grave violation rather onslaught on the constitutional right and human right guaranteed to her under Article 300-A of Constitution of India which states that no one shall be deprived of his or her right to hold property save alone by authority of law. The Tribunal ineluctably holds so, fortified by the judgments of Hon'ble Supreme Court reproduced hereunder:

(i) In the case titled *"Prabin Ram Phukan and Ors. v. State of Assam"* reported in MANU/SC/1186/2014, the Hon'ble Court held thus:

> *"26. In our considered opinion, there lies a distinction between non-service of notice and a notice though served but with some kind of procedural irregularities in serving. In the case of former category of cases, all consequential action, if taken would be rendered bad in law once the fact of non-service is proved whereas in the case of later category of cases, the consequential action, if taken would be sustained. It is for the reason that in the case of former, since the notice was not served on the person concerned he was completely unaware of the proceedings which were held behind his back thereby rendering the action "illegal" whereas in the case of later, he was otherwise aware of the proceedings having received the notice though with procedural irregularity committed in making service of such notice on him. If a person has a knowledge of the action proposed in the notice, then the action taken thereon cannot be held as being bad in law by finding fault in the manner of effecting service unless he is able to show substantial prejudice caused to him due to procedural lapse in making service on him. It, however, depends upon individual case to case to find out the nature of procedural lapse complained of and the resultant prejudice caused. The case in hand falls in former category of case."*

(ii) In the case title "*Ram Kishun and Ors. v. State of UP and Ors.*" reported in AIR 2012 SC 2288: MANU/SC/0494/2012, the Hon'ble Court held thus:

> *"8. Undoubtedly, public money should be recovered and recovery should be made expeditiously. But it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of statutory provisions.*
>
> *9. A right to hold property is a constitutional right as well as a human right. A person cannot be deprived of his property except in accordance with the provisions of statute.*
>
> *Thus, the condition precedent for taking away someone's property or disposing of the secured assets, is that the authority must ensure compliance of the statutory provisions."*

8.4 The impugned order dated 06.08.2022 in Crl.M.P.No.929/2022 on the file of Ld. CJM, Namakkal has come to be passed considering the section 14 petition and affidavit of 3rd Respondent wherein the Demand Notice under section 13 (12) *(may be mistake for section 13 (2))* was stated to have been issued to the borrowers and came to be served on them which appears to be a 'misstatement' in so far as the Applicant is concerned since no notice under section 13 (2) came to be issued or served either on the Applicant herself or the 1stRespondent in his representative capacity as Karta or natural guardian of the Applicant. Though section14 petition sets out the name of the Applicant as Joint owner of item No.1 property more fully described under the description of immovable properties therein, the impugned order has come to be passed overlooking the non-service of section 13 (2) Demand Notice to the Applicant who is a borrower under the SARFAESI Act entitled for a separate, individual notice to avail herself of the valuable right of representation, reply or objection to the secured creditor in terms of section 13 (3-A).

8.5 The impugned order or act of Ld. CJM though cannot be called in question in any Court or before any Authority in view of section 14 (3) of the Act, the 3rd Respondent's obtention of such order is in aberration and

violation of the legal requirement inserted in clauses (vi) & (vii) of Section 14(1) mandating the 'Authorised Officer' of secured creditor to file an affidavit declaring as to his serving of 60 days notice on the borrower as required by provision of sub-section (2) of section 13 and his receipt or non-receipt of objection or representation in reply to the notice so served on the borrowers. The 3rd Respondent having failed to issue and serve notice under section 13 (2) to the Applicant who as well is a 'borrower' under SARFAESI Act is not entitled to assume physical possession of secured asset in pursuance of the impugned order which has come to be obtained upon misstating as to its issuance and service of notice to the borrowers.

8.6 The 3rd Respondent who seeks to take possession of SA schedule item No.1 property owned by Applicant jointly with the Respondents 1 & 2 and their son Mr.Pradeep Raja, have also not arrayed the Applicant as one of the Respondents in section 14 petition. For the above reasons and other ones alluded supra the 3rd respondent is not entitled to the benefit or advantage of the impugned order. The Point No.1 is answered in the NEGATIVE and against the 3rd Respondent.

9. <u>POINT NO.2 FOR CONSIDERATION:</u> *Whether the Applicant was served with Statutory notices in terms of section 13 (2) & section 13 (4) of SARFAESI Act?*

9.1 The law is no longer *resintegra* having been authoritatively declared by Hon'ble Apex Court in the case titled *Standard Chartered Bank vs. V.Noble Kumar* reported in MANU/SC/0874/2013 as to the secured creditor's entitlement to assume physical possession of secured asset pursuant to making of an Application to DM, CMM or CJM as the case may be either directly or after receiving resistance or obstruction from the borrower while attempting to assume possession in pursuance of issuance of symbolic possession notice under sub-rule (1) & (2) of Rule.8 of Security Interest (Enforcement) Rules read with Section 13 (4) of SARFAESI Act meaning thereby that any secured creditor is entitled to assume physical or actual possession of secured asset from the concerned borrower anytime after

expiry of 60 days statutory period provided for payment of secured debt under section 13 (2) consequent upon the borrower's failure to pay the said debt in full.

9.2 The Applicant who contended, claimed and demonstrated to the satisfaction of the Tribunal as to the 3rd Respondent's non-issuance of Statutory Notices to her be it Section 13 (2) Demand Notice, section 13 (4) symbolic Possession Notice or the sale notice which culminated in knocking down of secured asset in auction sale in favour of the 4th Respondent, is entitled to assail the order dated 06.08.2022 passed by Ld. CJM, Namakkal in Crl.M.P.No.929/2022 on the context of the 3rd Respondent's disentitlement to such an order.

9.3 The Tribunal having found and observed in the foregoing paras as to the 3rd Respondent's non-service of statutory notices, proceeds to consider whether a Demand Notice in terms of Section 13 (2) of the Act has come to be issued by the 3rd Respondent to sustain its subsequent measures and actions of assuming physical possession and selling of secured asset in terms of section 13 (4). The notice styled as "Demand Notice" dated 09.03.2021, as rightly pointed out by Ld. Counsel for Applicant,is not a Demand Notice issued by the secured creditor in terms of the provisions of SARFAESI Act and is bereft of the contents mandated to be set out in such notice as per the relevant provisions of law. There is not any prescribed statutory format under the Security Interest (Enforcement) Rules as in the case of "Possession Notice" or "Sale Notice" for issuance of a Demand Notice in terms of Section 13 (2). Any statutory notice would of-course not be rendered invalid merely for the reason of non-quoting of the relevant provision of law or misquoting of it.

9.4 Axiomatically, the Demand Notice dated 09.03.2021 does not meet out the legal requirements of sub-section (2) of section 13 of SARFAESI Act as it is not indicative of the classification of loan account of the borrower as Non Performing Asset which is *sine qua non* for a secured creditor to cause a notice in writing to borrowers who are under a liability under a security

agreement to repay the same. The so called Demand Notice is not addressed to the Applicant and her brother Mr.Pradeep Raja who are stated therein to have joint ownership over the property intended to be proceeded against to an extent of 1.10 acres of land and building at old S.F.No.5/3B, New Nos.5/3B-1, 4/2B of Ariyagoundampatti village, Namagiripettai nor does it provide 60 days time for repayment of secured debt in having demanded to clear of the same on or before 15.03.2021 failing which the Branch-Incharge has expressed his intention to proceed further under the provisions of SARFAESI Act by taking possession and proceeding to dispose of the securities provided thereunder.The said Demand Notice is also bereft of the legal requirement to mention the time available to the borrower in terms of amended section 13 (8) to redeem the secured asset, despite Rule 3 (5) of Security Interest (Enforcement) Rules postulating the secured creditor to invite attention of the borrower to the said provision. Though the expression used in the said Rule 3 (5) is *'may'* and not *'shall'* in relation to the obligation casted upon the 'Authorised Officer' to mention about the time available to the borrower to redeem the secured asset in terms of section 13(8), a mindful reading of the given demand notice dated 09.03.2021 which is bereft of the relevant provision of such notice, non-mentioning about the classification of loan account as NPA, granting of just 6 days time for payment of total dues as against the statutory period of 60 days envisaged to be given therein and non-mentioning of the time then available for redemption to the borrowers renders the said notice issued by 'Branch incharge' who is concededly not the 'Authorised Officer' to be invalid, illegal and ineffectual.

9.5 Palpably, sub-section (12) of Section 13 of SARFAESI Act postulates that the right of secured creditor under the said Act may be exercised by one or more of his officers authorised in such manner as may be prescribed. Rule 2 (a) of the Security Interest (Enforcement) Rules defines the expression "Authorised Officer " to mean an officer not less than a Chief Manager of a public sector Bank. The 3rd Respondent Bank is a public sector bank and it has no case or contention as to its Branch Incharge who issued the Demand

Notice dated 09.03.2021 to be of the rank of Chief Manager and above to be competent to issue or cause a notice in writing in terms of section 13 (2) to set in motion the provisions of SARFAESI Act and Rules. While Rule 2 (b) of Security Interest (Enforcement) Rules defines the "Demand Notice" to mean the notice in writing issued by the Secured Creditor or an Authorised Officer, the next question which arises in the mind of the Tribunal is to whether the Branch In-charge could contend himself and claim himself to be a secured creditor to have issued the said notice himself and the answer it gets is in the NEGATIVE since the term/expression "secured creditor" as defined under Section 2 (1) (zd) of the Act would mean to include any Bank or any Financial Institution or any consortium or group of Banks or Financial Institutions holding any title or interest upon any tangible asset or intangible asset in whose favour security interest is created by any borrower for due repayment of any financial assistance. As the Ld. Counsel for 3rd Respondent could not place on record any material document to show that the Branch In-charge who issued Demand Notice is either an "Authorised Officer" or a person or Authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor to exercise its rights under the Act, the inevitable conclusion which the Tribunal arrives at is this. The Demand Notice dated 09.03.2021 is not a statutory notice in terms of Section 13 (2) issued by an Authorised Officer competent to cause such notice in writing as envisaged in section 13 (12) of the Act read with Rule.2 (a) of the relevant Rules. It holds so respectfully reminiscing the following judgments:

(i). The Hon'ble High Court of Kerala in the case titled "*Bobby Sebastian v. Authorised Officer*" reported in MANU/KE/0612/2014 held thus:

> *"8. The learned counsel for the petitioner, per contra, would submit that as the statute and rules made thereunder specify a particular mode, the same has to be complied with, especially, because, it involves the taking away of the property belonging to the borrower. S. 13(2) of the Act makes it clear how the right of a secured creditor has to be enforced, which has to be by a notice. R. 2(b) makes it clear that it has to be by the secured creditor or its authorised officer.*

On a plain reading of R. 2(a) and 2(b), it can be seen that only an officer of the bank, as specified by the Board of Directors, can issue a notice of demand under S. 13(2) of the Act as contemplated under R. 2(b) of the Security Interest Rules, 2002. I, therefore, respectfully disagree with the views rendered by the High Courts of Calcutta and Rajasthan. In the result, the Writ Petition is allowed."

(Emphasis is mine)

(ii). The Hon'ble High Court of Andhra Pradesh in the case titled "*Sampoorna Battu v. ICICI Bank*" reported in MANU/AP/0835/2012 held thus:

"5. An officer not less than a Chief Manager of a Public Sector Bank or equivalent as may be specified (notified) by the Board of Directors of the secured creditor (Bank/financial institution) or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured officer is an "authorised officer" for the purpose of Section 13(2) read with Section 13(12) of the Act.

6. To be an authorised officer, a person has to be a Chief Manager of a Public Sector Bank or an officer of equivalent rank. Secondly, such officer shall have to be specified by the Board of Directors of the Bank to be authorised officer for the purpose of exercising powers under Chapter III of the Act. As per Rule 2(b) of the Rules, a demand notice can be issued by the secured creditor or authorised officer. Needless to mention that the secured creditor means as defined in Section 2(zd) of the Act, and an authorised officer through whom the secured creditor exercises the rights (Section 13(12) of the Act) is the one who falls within the ambit of Rule 2(a) of the Rules."

(iii). The Hon'ble DRAT Allahabad in the case titled *"Shakthi Medical & Surgical Co., And Others Vs. State Bank of India & Others*" reported in MANU/DA/0013/2009 held thus:

"1. The controversy in this case revolves around the question, "whether Branch Officer' of a bank is competent to issue the notice under Sec. 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (to be referred to as SRFAESI Act hereinafter)." Vide impugned order dated 29th October, 2007 the learned D.R.T. came to the conclusion that the said notice was issued by the authorized officer with the seal of the concerned branch of the respondent bank. He also observed that the notice can be issued by the secured creditor i.e. the respondent bank.

2. He was of view that the role of authorized officer comes into play while the proceedings come under the purview of Sec. 13-A of SRFAESI Act. The learned counsel for the appellant submitted that

both Secs. 13(2) and Section 13(1) of the SRFAESI Act, 2002 refer about the secured creditor only.

3. The second submission made by the counsel for the respondent bank was that the Branch Officer of the branch office of a bank is also an authorized person.

.....

7. .....The learned Presiding Officer however, observed after going through the record that Mr. J.K. Gandhi did not appear to be the Chief Manager at the time of issuance of notice under Sec. 13(2) of the Securitisation Act i.e. on or about 22nd December, 2003. .....The appellant bank had not placed on record any material for showing that Mr. J.K. Gandhi was falling in the second category of definition of authorised officer. It was also not pointed that he was a person or authority exercising powers of superintendence, direction or control of the business or affairs of the secured creditors and in fact, that was not even the bank's case. It was therefore observed by the learned Presiding Officer that the officer issuing the notice under Sec. 13(2) of the Securitisation Act appeared to be not authorized which meant that initiation of the action under the Securitisation Act was not in accordance with law. He held that this also meant that all the subsequent steps taken by him were not sustainable in law.

8. This is well settled that an order passed by an officer having no authority of law has no effect. It neither creates any right in favour of a party for whom such order is made nor imposes any obligation on opposite party against whom it was passed. In the result, I, hereby, accept the appeal, set aside the impugned order passed by the learned D.R.T. and quash notice under Sec. 13(2) of the SRFAESI, Act."
(emphasis is mine)

9.6 The Demand Notice in terms of Section 13(2) is the first step, measure and action under the SARFAESI Act entitling the secured creditor to proceed with its further measures and actions in terms of section 13 (4) of the Act on the failure of the borrower to pay the secured debt within the statutory period of 60 days to be provided therein. The said notice being not mere a show cause notice but a measure and action taken under SARFAESI Act as per the Hon'ble Apex Court judgment rendered in the case of *"Transcore vs Union of India"* reported in MANU/SC/8844/2006 that operates as injunction or attachment forbearing the borrower in any manner dealing with secured assets after service of such notice on him, could not be issued by any person be it a Branch In-charge if he would be a person less than the rank of a Chief Manager of the secured creditor bank.

9.7 The initial step and action in SARFAESI Act having been flawed by the 3rd Respondent in having got issued a Demand Notice through a Branch Incharge who is not of the rank of Chief Manager and above of the public sector Bank, the consequential measures and actions proceeded with by it in terms of section 13 (4) and section 14 of the Act fails and falls to ground. The Tribunal arrives at such an infallible conclusion fortified by the judgment of Hon'ble Apex Court rendered in the case of *"State of Punjab Vs. Davinder Pal Singh Bhullar and Others"* reported in (2011) 14 SCC 770: MANU/SC/1476/2011 which readeth thus:

> *"107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublatofundamentocadit opus meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case."*

The factual and legal position being as afore, Point No.2 is answered in NEGATIVE and against the 3rd Respondent.

10. <u>POINT NO.3 FOR CONSIDERATION:</u> *To what reliefs are the parties hereto entitled in the present SA ?*

10.1 The Ld. Counsel for the Applicant would submit that the 1st Respondent, father of Applicant had since deposited and kept Rs.56.29 between 19.07.2022 and 02.02.2023 with the 3rd Respondent bank in pursuant to order of this Tribunal dated 13.01.2023 which sum can be appropriated towards discharge of the secured debt to the tune of Rs.55,77,261.20 as on 31.03.2022 as set out in the impugned Sale Notice.

10.2 The Ld. Counsel for the 4th Respondent submitted that the auction bid amount being Rs.52,25,000/- was deposited with the 3rd Respondent as early on 27.04.2022 despite which the 3rdRespondent bank has not inducted the said Auction Purchaser in actual possession and enjoyment of the secured asset acquired by him in a statutory auction sale. The sale certificate dated 27.04.2022 is not yet got registered awaiting for the 3rd Respondent's assuming of physical possession of secured asset in

pursuance of the impugned order dated 06.08.2022 of Ld. CJM, Namakkal which the secured creditor bank is statutorily obligated to deliver to complete the sale and operation of transfer in terms of section 8 of Transfer of Property Act read with Sub Rule (9) and (10) of Rule 9 of the Security Interest (Enforcement) Rules as held by the Hon'ble Apex Court in the case titled *"ITC Limited v. Blue Coast Hotels Limited and Ors."* reported in MANU/SC/0263/2018, would be the further submission on the side of 4th Respondent. On the side of 4th Respondent Auction purchaser it was assertively pleaded that he should be sufficiently and adequately compensated for having stood to suffer prejudice without any lawful excuse or justifiable cause.

10.3 The Applicant having demonstrated the illegalities and infirmities disentitling the 3rd Respondent Bank to assume physical possession of the secured asset in pursuance of the impugned order dated 06.08.2022 passed in Crl.M.P.No.929/2022 on the file of Ld. CJM, Namakkal, the 3rd Respondent Bank is necessarily to be interdicted from seeking execution of the impugned order. In arriving at such a decision, the Tribunal stands fortified by the judgment of the Hon'ble High Court of Kerala rendered in the case titled *"Roshan Narayanan C.S v. The Authorised Officer, Central Bank of India and Ors."* reported in MANU/KE/0840/2017 which readeth thus:

> *"9. The role of the Magistrate, at this stage is merely to facilitate the taking of physical possession, based on the application preferred by the secured creditor. The procedural requirements, with regard to the contents of the affidavit filed by the secured creditor before the Magistrate, which were introduced w.e.f 15.01.2013 through the Amendment Act of 2013, are designed to ensure that any action by the Magistrate concerned is based on the affidavit filed by the secured creditor, the contents of which are duly affirmed by the authorised officer of the secured creditor. This procedure, in my view, is intended to make the secured creditor accountable for the steps taken for getting physical possession. In the event of it being subsequently demonstrated, that the contents of the affidavit were not factually correct, then, in proceedings under Section 17 of the SARFAESI Act, the said measure taken by the secured creditor can be set aside by the DRT, as not in accordance with the provisions of the Act or Rules. In that event, the DRT also has the power to prevent further proceedings, as also to order a restoration of possession, if already taken."*

10.4 The Applicant has filed this SA on 11.08.2022 seeking to declare the steps taken under section 14 of SARFAESI Act pursuant to the impugned order dated 06.08.2022 of Ld. CJM, Namakkal to be invalid and the Tribunal unhesitantly proceeds to hold it so for the foregoing reasons and findings. Besides assailing the section 14 proceedings, the Applicant has sought to declare the auction held on 25.04.2022 in pursuance of sale notice dated 05.04.2022 as invalid and to hold all notices issued to be void in all aspects. Though the challenge to sale notice dated 05.04.2022 made in the SA filed on 11.08.2022 would appear to be barred by limitation prescribed under Sub Section (1) of section 17 of SARFAESI Act which postulates for filing of an application against any of the measures referred to in sub section (4) of section 13 within 45 days from the date on which such measures had been taken, the Applicant has a definite case of she not been served with any statutory notices be it the Demand Notice dated 09.03.2021, Possession Notice dated 15.09.2021 or the impugned sale notice dated 05.04.2022 which culminated in the impugned auction sale held on 25.04.2022 and sale certificate dated 27.04.2022 issued eventually despite she being a 'borrower' in terms of section 2(1)(f) of SARFAESI Act-the said expression including the person who has created mortgage as well. The 3rd Respondent Bank which had caused the 1st Respondent to execute MODT dated 02.03.2016 in respect of SA schedule item No.1 property for himself and as guardian of minor Applicant Ms.Swathi Rathna then aged 17 years, had not issued statutory notices to the Applicant who had attained the age of majority on 31.12.2016 rendering the entire proceedings from the stage of demand notice dated 09.03.2021 to the sale certificate dated 27.04.2022 *non est*, null and void and are thus struck down in entirety in the backdrop of the Demand Notice dated 09.03.2021 been issued by Branch In-charge and not by 'Authorised Officer' who alone is competent to initiate any measures or actions under SARFAESI Act in terms of sub section (12) of section 13 of SARFAESI Act read with Rule 2(a) of the Security Interest (Enforcement) Rules.

10.5 The Tribunal having struck down the entire SARFAESIA measures and actions from section 13(2) stage, the SA is partly allowed declaring the 3rd Respondent's Demand Notice dated 09.03.2021, Possession Notice dated 15.09.2021, Sale Notice dated 05.04.2022, auction sale held on 25.04.2022 and sale certificate dated 27.04.2022 to be illegal and invalid and the section 14 order dated 06.08.2022 to be inexecutable. In the said backdrop the 3rd Respondent is directed to refund Rs.52,25,000/- deposited and kept with it by 4th Respondent Auction Purchaser together with simple interest @ 9% per annum from the date of deposit till repayment from and out of Rs.56,29,000/- and interest accruals thereof deposited and kept by 1st Respondent between 19.07.2022 and 02.02.2023 with the 3rd Respondent Bank, which would and should be a just and adequate compensation to the 4th Respondent Auction Purchaser. The Tribunal awards interest @9% per annum fortified by the judgment of Division Bench of the Hon'ble High Court of Madras rendered in the case titled ***"The Chief Manager, Punjab National Bank vs. M.V. Dillibabu and Ors."*** reported in MANU/TN/2082/2019 and ***"D. Karthikeyan vs. The Chairman, Indian Bank, Indian Bank Corporate Office and Ors."*** reported in MANU/TN/4437/2023.

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COIMBATORE
DEBTS RECOVERY TRIBUNAL

CONCLUSION

11. Ergo, the SA stands partly allowed –

(i) declaring the Sale Notice dated 05.04.2022, auction sale held on 25.04.2022 and sale certificate dated 27.04.2022 issued to 4th Respondent Auction Purchaser by 3rd Respondent without serving of section 13(2) Demand Notice dated 09.03.2021 by 'Authorised Officer' of the 3rd Respondent Bank on any borrowers including the Applicant and non-service of section 13(4) symbolic Possession Notice dated 15.09.2021 on the Applicant, to be *non est*, null and void, illegal and invalid and by consequently setting aside all statutory notices emanating from Demand Notice dated 09.03.2021;

(ii) interdicting the 3rd Respondent Bank from seeking execution of the impugned order dated 06.08.2022 passed by Ld. CJM, Namakkal in Crl.M.P.No.929/2022; and

(iii) directing the 3rd Respondent Bank to pay to the 4th Respondent the entire auction bid amount of Rs.52.25 lakhs with simple interest @ 9% p.a. from the date of its deposit till realization within a week from its receipt of the order consequent upon appropriating the monies deposited and kept by the 1st Respondent in pursuance of the conditional order of the Tribunal to the extent of discharging its secured debt as on the date of such deposit. On the 3rd Respondent's failure to pay the auction bid amount within a week as ordered, the 4th Respondent would be entitled for interest @ 12% p.a from the date of his deposit till realization in par with the commercial rate of interest as may be levied and charged by Banks including the 3rd Respondent;

12. Considering the nature of the case, there is no order as to costs.

13. The Registry shall forward copy of this order to all parties concerned in terms of R.16 of DRT (Procedure) Rules read with Rule 11(2) of Security Interest (Enforcement) Rules.

[Dictated to my steno directly on the computer, corrected and pronounced by me in the open Tribunal on this the 04th day of April, 2026].

[N SOMASUNDAAR]
PRESIDING OFFICER

A P P E N D I X

APPLICANTS' DOCUMENTS

S.No.	Date	Description /Particulars of documents
1.	09.03.2021	Demand Notice u/s. 13(2) of SARFAESI Act
2.	15.09.2021	Possession Notice u/s. 13(4) of SARFAESI Act
3.	28.06.2021	Sale Notice
4.		Aadhar Card of the Applicant
5.	31.12.1998	Copy of Birth Certificate of the Applicant
6.	27.04.2022	Sale Certificate
7.	06.08.2022	Copy of Partition, Affidavit and order of Ld. CJM of Namakkal in C.M.P. No.929/2022
8.	20.09.2006	Copy of Partition Deed executed between Applicant's father and his brother vide Doc. No.1358/2006 with translation
9.	06.08.2022	Copy of Order in Ld. CMP No.929/2022 with translation



PRESIDING OFFICER

IN THE DEBTS RECOVERY
TRIBUNAL, COIMBATORE

PRESENT : SRI. N. SOMASUNDAAR, B.A.; B.L.
PRESIDING OFFICER

Dated the 04th April, 2026

SA No.785 of 2022

Between

Ms.R.Swathi Rathna,
D/o.Mohankumar,
34A, Kongalamman Kovil Nagar,
Nandhavanakadu,
Ariyakoundanpatti Post,
Rasipuram,
Namakkal District.
..... Applicant

And

Mr.R.Mohankumar,
Proprietor,
M/s.Pradeepraja Agencies,
D.No.52/B1 Pillayar Koil Street,
(Elumalaiyan Petrol Bunk)
Tiruchengode Road,
Namakkal – 637 001.

& 03 others. ..... Respondents

O R D E R