Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 20th DAY OF APRIL, 2026

PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No. 304/2016

1. Mr. N. Balasubramanian,
   Partner, SUFIA Garments,
   41, Muslim East Street,
   Thuvaranakurichy,
   Trichy District – 621 314.

2. Mr. Abdul Salam,
   Partner, SUFIA Garments,
   41, Muslim East Street,
   Thuvarankurichy,
   Trichy District – 621 314. --- Applicants

-Vs-

1. The Authorized Officer,
   Bank of India,
   Coimbatore Zone,
   STAR House III Floor,
   324, Oppanakkara Street,
   Coimbatore – 641 001.

2. The Branch Manager,
   Bank of India,
   Thuvarankurichi Branch,
   Thuvarankurichi,
   Trichy District – 621 314. --- 1st & 2nd Defendants Bank

Appearance of Advocates:
Mr. S. Suresh ---- ***Counsel for the Applicants***
Mr. Pala.Ramasamy (Expired) ---- ***1st & 2nd Defendants Bank***

This SARFAESI Application was heard in the presence of Counsel for the Applicants and the Defendant Bank Counsel expired and thereafter no representation from the 1st & 2nd Defendants Bank in spite of several opportunities granted to them and hence fixed for passing final order before me and upon hearing the arguments of the Counsel for the Applicants and having stood over for consideration till this day, this Tribunal delivered the following:

O R D E R

1. This Application has been filed under Sec.17(1) of the SARFAESI Act 2002 by the Applicants praying that this Hon'ble Tribunal may be pleased to set aside the entire SARFAESI Proceedings initiated by the 1st Defendant Bank ending up with the issuance of Possession Notice dated 13.07.2016 issued u/s. 13(4) of the SARFAESI Act for the Schedule Mentioned Properties and to pass such further or other orders.

2. The brief averments of the Application filed by the Applicants are as follows:-

a) The Counsel for the Applicants submitted that the Partnership Firm M/s. SUFIYA Garments, approached the 2nd Defendant for availing credit facility for the development of the business. The 2nd Defendant sanctioned credit facilities to the tune of Rs.10,00,000/-. The Applicants were prompt in repayment for the past 13 years. However, due to the business failure there was default in repayment and was not able to adhere to the repayment schedule of the Bank. Hence, the loan account became NPA and the 1st Defendant Bank issued Demand Notice dated 25.04.16 for a sum of Rs.1,11,58,594.04p. The Applicants immediately on receipt of the Demand Notice had approached the 2nd Defendant and requested time to regularize the loan account and asked for reschedule.

b) It is further submitted that the 1st Defendant without considering the request of the Applicants took possession of the properties by issuing the Possession Notice dated 13.07.16 u/s. 13(4) of the SARFAESI Act. However, the Possession Notice dated 13.07.16 was not affixed on the property nor the same was properly published in two newspapers as per Rules. Aggrieved over the above action of the Defendants, the Applicants are preferring the present appeal among the following and other

Main Grounds:-

- The 1st Defendant not served the Demand Notice & Possession Notice to the borrower partnership firm M/s. Sufiya Garments.

- The 1st Defendant not affixed the Possession Notice and not properly published in two newspapers.

- The 1st Defendant charged excess interest than the agreed rate of interest.

- The 2nd Defendant ought to have considered the request of the Applicants for reschedule of the loan account favourably.

SCHEDULE OF PROPERTY

Item No. 1

All that part and parcel of the property in Tiruchirappalli Registration District, Manaparai Sub Registration District, Manaparai Taluk, Thuvarankurichi Village, an extent of acre 24.85 cents in Natham Survey No. 261/2 in which measuring Northern side of East-West 45 feet on the Southern side of East-West 44 feet and on the Eastern side South to North 38 feet on the Western side of the South to North 39 feet totally an extent of 1713 ¼ Sq.ft. of vacant site within the following four boundaries:-

East of : Sayda Mohammed and Abhi Mohammed house,

West of : Balasubramanian's Madras terrace building, tile shed and vacant site,
North of : TSK Samsudheen's house wall and Husmad Ibrahim's boundary,
South of : Nagarathinam's House and Vacant site

In which measuring East-West 11 feet South to North 23 ½ feet totally an extent of 258 ½ sq. ft. of Madras Terraced building rooms and East -West on the both side 11 feet and Eastern side of South to North 8 feet Western side of South – North 7 ½ feet totally 85 ¼ Sq.ft. thatched shed.

Item No. 2

In Tiruchirappalli Registration District, Manaparai Sub Registration District, Manaparai Taluk, Thuvarankurichi Village, an extent of acre 24.85 cents in Natham Survey No. 261/2 in which measuring Northern side of East-West 62 feet on the Southern side of East-West 62 feet and on the Eastern side South to North 35 feet on the Western side of the South to North 38 feet totally an extent of 2263 Sq.ft. of vacant site within the following four boundaries:-

East of : Sayda Mohammed and Abhi Mohammed house, on the Eastern side of Kanagaraj compound and Kanagaraj site and house vagayarahs
West of : Balasubramanian's Site, Radha's vacant site and Savithri vacant site,
North of : TSK Samsudheen's house wall,
South of : Nagarathinam's House,

a. In which East-West 6 feet South - North 22 ½ feet totally an extent of 135 sq. ft. of thatched shed.
b. Measuring East -West 39 ½ feet and South – North 23 ½ feet totally an extent of 928 sq.ft. old Madras terraced building together with varanda, staircase, pathways, hall and hall room.

c. Measuring East -West 39 ½ feet and South – North 8 ½ feet equivalent to 336 sq.ft. Mangalore tiled shed with bathroom, latrine and etc.,

The above-mentioned property situated in Muslim East Street Door No. 41, stands in the name of Mr. N. Balasubramanian. The above property lies in New S.F.No. 674/13.

The Applicants have submitted the following List of documents in support of their claim in the SA, which are as follows:

S.No.	Date	Details of Documents
1.	25.04.16	Demand Notice
2.	13.07.16	Possession Notice
3	19.07.16	Publication of Possession Notice

3. On the other hand, the Counsel for the 1st & 2nd Defendants Bank appeared before this Tribunal and filed Vakalat, Typed set of papers & Affidavit-in-Objection wherein it was submitted that the Applicant availed loan facilities and created a valid mortgage over the schedule-mentioned property. As per the contract, the loan amount was repayable within a period of one year; however, it was not paid, resulting in classification of the account as NPA on 31.03.2016. Thus, recovery proceedings under the SARFAESI Act were initiated. The Respondent Bank scrupulously followed the provisions of law and issued a demand notice dated 25.04.2016, which was acknowledged. As the demand was not complied with, symbolic possession of the property was taken on 13.07.2016. The said fact was brought to public notice by publishing the possession notice in "The Hindu" (English) and "Dinamalar" (Tamil), both dated 19.07.2016. Further, the possession notice was affixed in a conspicuous part of the secured asset and was also served on the Applicant. Even thereafter, the Applicant did not redeem the property under these circumstances, the present application is laid and this Hon'ble Tribunal, in its proceedings dated 23.08.2016 passed conditional order as follows:

SI.No	Installment No.	Amount	Date
1	I	Rs.2,00,000/-	On or before 23.09.2016
2	II	Rs.2,00,000/-	On or before 24.10.2016

and the same was paid by the Applicants.

a) It is further submitted that the Bank has scrupulously followed the provisions of law and the procedures contemplated under the RBI guidelines; thus, the classification of the account as NPA was occasioned by the Applicant. In addition, receipt of the demand notice dated 25.04.2016 is admitted by the Applicant at page 3, paragraph 3; however, no objection has been raised to date. Further, the allegation in paragraph 5 that the possession notice was not affixed in a conspicuous part of the property or published is denied, and the Applicant is put to strict proof of the same. The contrary allegations are to be established by the Applicant.

b) It is further submitted that grounds 'a' to 'd', 'e', 'f', and 'h' to 'i' are denied as not tenable under law. The possession notice issued is valid, not arbitrary, and sustainable under law, having been issued upon default in repayment under the SARFAESI Act. There is no error apparent on the face of the record, as the Appellant has admitted receipt of the demand notice at page 3, paragraph 3, while taking a contrary stand in ground 'c' that it was not served, thereby lacking bona fides. The possession notice was duly affixed on the secured asset in a conspicuous part and published in two newspapers; hence, the contrary allegations are denied as false. Ground 'e' is vague and raised for the first time, and ground 'f' is self-contradictory. There was no written request for reschedulement, nor have the Applicant furnished any such document or date in the application. The Applicant, having availed public money, has become a chronic defaulter, and the SARFAESI proceedings have been initiated after due procedure. The present application is an abuse of process of law and is not maintainable in law or on facts.

Therefore, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the Application with cost and thus render justice.

TYPED SET OF DOCUMENTS FILED BY THE RESPONDENTS BANK

S.No	Date	Particulars
1.	25.04.2016	Demand Notice under Section13(2) of SARFAESi Act with Postal receipts
2.	28.04.2016	AD Card received from the 1st Applicant
3.	29.04.2016	AD Card received from the 2nd Applicant
4.	13.07.2016	Possession Notice with acknowledgement of 1st Applicant
5.	19.07.2016	Paper Publication of Possession in English daily "The Hindu"
6.	19.07.2016	Paper Publication of Possession in Tamil daily "Dinamalar"
7.	-	Photo affixture of Possession Notice
8.	-	Statement of Accounts

4. *ON THE BASIS OF ABOVE PLEADINGS, THE POINT WHICH ARISES FOR CONSIDERATION IS: -*

Whether the Applicants is entitled to get the reliefs as prayed for?

5. Having heard the parties and upon perusal of the entire records, I find that the Applicants availed a credit facility of Rs.10,00,000/- **(Rupees Ten Lakhs only)** from the 2nd Defendant Bank. The Applicants mortgaged the schedule-mentioned property as security for the loan facility availed in favour of the Defendant Bank.

6. I find that initially the Applicants were regular in the repayment of the loan amount; however, due to business failure, they defaulted and were unable to adhere to the Bank's repayment schedule. Hence, the Defendant Bank classified the Applicants' loan account as a Non-Performing Asset (NPA). Thereafter, the Defendant Bank issued a Demand Notice dated 25.04.2016 under Section 13(2) of the SARFAESI Act for a sum of Rs.11,15,594.04 **(Rupees Eleven Lakhs Fifteen Thousand Five Hundred**

and Ninety-Four and Paise Four only) to the Applicants, which was duly served on them **(Bank's typed set of papers, pages 07 to 09)**. I also find that the Applicants did not file any objection or reply to the said Demand Notice under Section 13(3A) of the SARFAESI Act.

7. Thereafter, the Defendant Bank issued the impugned Possession Notice dated 13.07.2016 under Section 13(4) of the SARFAESI Act. The Applicants contended that the Defendant Bank failed to publish the Possession Notice in two leading newspapers and to affix the same on a conspicuous part of the property. I also find that the Defendant Bank has not filed the acknowledgment (AD) card to prove service of the Possession Notice on one of the Applicants, viz., Mr. Abdul Salam. Moreover, in the paper publication (xerox copy) filed by the Bank, the name of the newspaper, the date of publication, and the place of publication have not been mentioned **(Bank's typed set of papers, pages 15 to 17)** whereas it is handwritten as "THE HINDU" & "DINAMALAR" both dated 19.07.2016. Further, the affixture (xerox copy) of the Possession Notice dated 13.07.2016 does not disclose the date and place in the supporting evidence **(Bank's typed set of papers, page 19)**. Since there are several irregularities in the documents filed by the Defendant Bank with regard to the issuance of paper publication and affixture of the Possession Notice, the said Possession Notice is not sustainable in the eye of law. The Defendant Bank has also failed to file the original documents despite directions. Rule 8(1) and (2) of the Security Interest (Enforcement) Rules, 2002, clearly provide that

> *"**8. Sale of immovable secured assets**.*
>
> *(1) Where the secured asset is an immovable property, the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by **affixing the possession notice on the outer door or at such conspicuous place of the property.**"*
>
> *(2) The possession notice as referred to in sub-rule (1) shall also **be published in two leading newspaper, one in vernacular language having sufficient circulation in that locality**, by the authorized officer.*

In view of the above Provision, I find that the Defendant Bank has not followed the above provision in issuance of Possession Notice.

8. I find that during the pendency of the case, this Tribunal had granted a conditional stay order dated 23.08.2016 for a sum of Rs.2,00,000/- **(Rupees Two Lakhs only)** to be paid in two installments by the Applicants and the Applicants have also complied with the conditional order and proved their bona-fide. Moreover, the same was admitted by the Defendants in their pleadings.

9. The Applicants are no doubt being defaulter are liable to repay the loan amount to the Defendants Bank and the Bank has been given ample power to recover the outstanding loan amount from the borrower by invoking the SARFAESI Act and without the intervention of any Court. But, it shall not allow the Bank to take possession of the property without following the due process of law strictly, because property is the constitutional right of an individual and hence, Bank cannot take possession of the property without following the mandatory provisions of Act & Rules. In view of the above facts and circumstances of the case, I find that the Defendants Bank have not followed the due procedures for recovery of the loan amount under SARFAESI Act. As such, I find merit in the above SARFAESI Application. Therefore, this Tribunal holds that the Applicant is entitled to get the reliefs as prayed for in **SA No. 304/2016.**

In the result,

1. **SA No. 304/2016** is allowed. No costs. Accordingly, the Impugned Possession Notice dated 13.07.2016 issued by the 1st Defendant Bank is hereby set aside and the 1st & 2nd Defendant Banks are directed not to include the expenditure incurred in issuance of Impugned Possession Notice dated 13.07.2016 in the loan account of the Applicants.

2. The 1st & 2nd Defendant Banks are at liberty to initiate fresh action against the Applicants for recovery of loan amount following the SARFAESI Rules & Act strictly.

Consequently, all pending IAs (if any) are also disposed of. No costs.

Dictated to MTS (KK), taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 20th April 2026.

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 04.05.2026