Fair Order

IN THE DEBTS RECOVERY TRIBUNAL - 1 AT ERNAKULAM

DATED THIS 7th DAY OF MAY, 2026

PRESENT: Su. WILLYAHM, B.Sc., M.L.
[DISTRICT JUDGE - Retd]
PRESIDING OFFICER

S.A No. 697 of 2023

Between

M.K. Mohammed Kutty,
S/o Abdul Rahiman,
Mavullakandathil House,
Puduppadi Post, Adivaram,
Kozhikode-673 586.

--- Applicant

And

1. The Authorized Officer,
Dhanlaxmi Bank Ltd,
Ground Floor,
Door No.60/4008,
Jail Road, Puthiyara Post,
Kozhikode-673 004.

2. Dhanlaxmi Bank Ltd,
Kozhikode Main Branch,
17/1341 H, Ram Mohan
Road, Chinthavalappu,
Kozhikode-673 016.
Represented by its
Branch Manager.

--- Defendants

This Securitization Application coming on 05.02.2026 for final hearing before me in the presence of Mr. Raynold Fernandaz, Counsel appearing for the Applicant and Mr. C.K. Karunakaran Advocate appearing for the defendants and upon hearing arguments of learned Counsels for both the parties and upon perusing the material on records, this Tribunal delivered the following:

O R D E R

1. This Securitisation Application was filed on 17.11.2023 seeking to set aside Demand Notice, Possession Notice and dispossession notice issued by the Advocate Commissioner, Annexure-A1 application filed in CMP No.149/2023 and to declare that the classification of accounts as NPA is illegal and to order restoration of possession of the property described in the Possession Notice and to order cost and compensation to the applicant.

2. The applicant availed two loans totalling to a sum of Rs.3,00,00,000/- from the 2nd defendant bank. The wife of the applicant stood as guarantor. As the collateral security for the aforesaid credit facilities, the applicant has created equitable mortgage over his immovable properties which are mentioned as Schedule-I and II in the SA.

3. Since the applicant defaulted in repayment of the outstanding loan due loan accounts of the applicant came to be classified as Non-performing Asset on 27.12.2020.

4. Therefore, Annexure-B1 (c) demand notice dated 12.08.2021 was issued to the applicant and the guarantor calling upon them to repay the outstanding loan due within a period of 60 days from the date of receipt of the demand notice. Annexure-B1 (d) evidences the service of demand notice to the applicant and the guarantor. The applicant and the guarantor neither sent any objection/representation to the demand notice nor did they clear off their liability due to the 2nd defendant bank.

5. Hence the defendants issued Annexure-B1 (e) possession notice dated 15.09.2023 for symbolically taking possession of the secured assets. Annexure-B1 (f) evidences the service of Possession notice to both the applicant and the guarantor. Possession notice was published in Madhyamam Malayalam edition and the Hindu English edition dated 18.09.2023 as per Annexure-B1 (g) and B1 (h). It was also affixed on the conspicuous part of the both items of the secured assets as per Annexure-B1 (i) and B1(j).

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6. Thereafter the defendants approached the Chief Judicial Magistrate Court Kozhikode and filed Annexure-A1 application and affidavit under Section 14 (1) of the SARFAESI Act, 2002. Order came to be passed appointing Advocate Commissioner for taking physical possession of the secured assets. The Advocate Commissioner issued Annexure-A2 notice dated 10.11.2023 to the applicant and the guarantor informing them that he would take physical possession of the secured assets on 21.11.2023. The applicant having aggrieved against the above measures filed this S.A seeking for the reliefs stated supra.

7. The Counsel appearing for the applicant submitted that classification of the loan accounts of the applicant is illegal and is also in violation of the circulars issued by the RBI and that the persons who issued the demand notice and possession notice have no authority to issue such notices and that the description of the secured assets and the amount mentioned in the demand notice, possession notice and Annexure-A1 application is incorrect. Exorbitant rate of interest has been charged. Possession notice dated 15.09.2023 is invalid since it was issued in violation of Rule 8 (2) of the Security Interest (Enforcement) Rules 2002. Physical possession of the properties was taken without complying the mandates as prescribed under the SARFAESI Act 2002. Secured assets were not registered with the Central Registry. Therefore the SA may be allowed as prayed for.

8. The counsel appearing for the defendants submitted that since the applicant who is the principal borrower was irregular in remitting the loan instalments, the loan accounts were classified as Non-Performing Asset as per RBI guidelines and that the Authorized Officer has the authority to initiate the measures under the SARFAESI Act 2002 and the Rules made there under. The amount claimed in the demand notice, possession notice and in Annexure-A1 application is correct. Correct description of the property has been furnished in the demand notice, possession notice and in Annexure-A1 application. Objection/ representation to the demand notice was not sent by the applicant. Possession notice was published in two leading newspapers and it was affixed on the conspicuous part of the secured assets. The security interest over the properties has been registered with the Central Registry. The outstanding amount against both the loan accounts is Rs.1,54,25,447.06 as on 30.11.2023 and 28.11.2023 respectively. There are no procedural irregularities in respect of the measures initiated by the defendants under the SARFAESI Act 2002 and the Rules made there under.

9. Though the applicant has not categorically admitted in paragraph 3 of the SA that he defaulted in repayment of the outstanding loan due, he has averred as follows:

> "Despite such high rate of interest, the EMI towards the credit facility was initially serviced for the accounts by the applicant till he suffered from severe financial stringencies due to the COVID-19 pandemic."

The above averment of the applicant is suffieint to hold that he defaulted in repayment of the outstanding loan due. Further, it is clearly stated in Annexure-B1 (c) demand notice that since the applicant committed default in repayment of the outstanding loan due the loan accounts were classified as Non-Performing Asset. Though the applicant and the guarantor received the demand notice, they did not send any objection stating that the classification of the loan accounts as Non-Performing Asset is against the circulars issued by the RBI. Therefore, the contention of the applicant with regard to the illegal classification of the loan accounts as Non-Performing Asset is absolutely incorrect.

10. On perusal of Annexure-B1 (c) demand notice, B1 (e) possession notice and Annexure-A1 application shows that the description of the secured assets is correctly stated.

11. The documents produced by the defendants as Annexure-B1 (e) to B1 (f) evidences the service of possession notice to both the applicant and the guarantor, its publication in two leading newspapers, one in Madhyamam Malayalam edition and another one in the Hindu English edition and also affixture of the possession notice on the conspicuous part of the secured assets. Hence this Tribunal does not find any substance in the contention of the applicant Rule 8 (2) of the Security Interest (Enforcement) Rules 2002 was not complied with.

12. The defendants have produced copy of ID based Asset search report along with memo ID Nos.11139/25 and 2074/26 after filing of their written statement. A perusal of the same shows that security interest over the first item of the secured assets was registered with the Central Registry on 11.05.2018 and the security interest over the second item of the secured assets was registered with the Central Registry on 03.05.2018. Hence the contention of the applicant that security interest was not created over the secured assets does not hold good.

13. On perusal of the SA it is discernable that there is no specific averment or challenge with regard to non-compliance of the statutory requirements contemplated under Clause (i) to (ix) to the provisions of Section 14 (1) of the SARFAESI Act 2002. The affidavit filed in CMP No.149/2023 before the Chief Judicial Magistrate Court, Kozhikode and the order passed in the above CMP No.149/2023 was not produced along with the SA. There is also no specific challenge with regard to the order passed in CMP No.149/2023. Without challenging the above order, the mere challenge in respect of Annexure-B1 (m) notice issued by the Advocate Commissioner is unsustainable.

14. The applicant has miserably failed to prove his case so as to get the relief sought for in the SA.

Resultantly, S.A No.697/2023 stands dismissed. However, there shall be no order as to costs.

Dictated to Steno, taken down, transcribed, typed by him, corrected and pronounced by me in the open court on this the 7th day of May, 2026.

(Su. WILLYAHM)
PRESIDING OFFICER

Mj/

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List of documents filed by the Applicant along with the S.A.

Sl. No.	Date	Particulars	
1.	13.01.2023	True copy of CMP No.149/2023	Annexure-A1
2.	10.11.2023	True copy of dispossession notice issued by the Advocate Commissioner	Annexure-A2
3.	03.08.2023	True copy of payment receipts	Annexure-A3

List of documents filed by the defendants 1 & 2 along with the written statement

Sl. No.	Date	Particulars	
1.	----	True copy of the statement of account maintained by the defendant bank of Account No.004156400000165 duly certified	Annexure-B1(a)
2.	----	True copy of the statement of account maintained by the defendant bank of Account No.004156400000151 duly certified	Annexure-B1(b)
3.	12.08.2021	True copy of the Notice issued to the applicant and the guarantor under section 13(2) of SARFAESI Act, 2002	Annexure-B1(c)
4.	----	True copy of the acknowledgement card received evidencing delivery	Annexure-B1(d)
5.	15.09.2023	True copy of the Notice under section 13 (4)	Annexure-B1 (e)
6.	19.10.2022	True copy of the acknowledgement card in relation to the dispatch of section 13 (4) Notice	Annexure-B1 (f)
7.	18.09.2022	True copy of the Section 13 (4) Notice published in Madhayamam Malayalam newspaper	Annexure-B1 (g)
8.	18.09.2022	True copy of the Section 13 (4) Notice published in the English newspaper "The Hindu"	Annexure-B1(h)

9.	----	True copy of the photograph taken at the time of affixture	Annexure-B1 (i)
10.	----	True copy of the photograph taken at the time of affixture	Annexure-B1 (j)
11.	----	True copy of the photograph taken at the time of affixture	Annexure-B1 (k)
12.	13.01.2023	Judicial Magistrate Court, Kozhikode in CMP No.149 of 2023	Annexure-B1 (l)
13.	10.11.2023	True copy of the Notice issued by the Advocate Commissioner	Annexure-B1 (m)
14.	16.03.2023	True copy of the interim order of the Hon'ble High Court	Annexure-B1 (n)
15.	15.10.2023	True copy of the judgement of Writ Petition No.9188 of 2023	Annexure-B1 (o)

(Su. WILLYAHM)
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