Fair Order

IN THE DEBTS RECOVERY TRIBUNAL - 1 AT ERNAKULAM

DATED THIS 4th DAY OF MAY, 2026

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

S.A No. 321 of 2018

Between

Susmitha Mohan,
D/o K.P Mohan,
6L, DD Nest Apartment,
Thammanam Pulleppady
Road, Kaloor-682 017.

--- Applicant

And

1. Dewan Housing Finance
Corporation Ltd,
1st Floor, KMM Buildings,
Door No.32/2383-D,
Palarivattom, Kochi-682 025.
Represented by its Branch Manager.

2. Authorized Officer,
Dewan Housing Finance
Corporation Ltd,
1st Floor, KMM Buildings,
Door No.32/2383-D,
Palarivattom, Kochi-682 025.

3. Dr. Nirmala Kurien,
ESI Hospital, ESIH Campus,
North Cochin, Ernakulam-680 018.

4. Vinod Madhavan,
Administrator,
M/s Apple A Day Properties,
Apple Tower, Palarivattom,
Ernakulam-680 018.

5. Piramil Capital and Finance Ltd.
5th Floor S L Floor, S.L. Plaza,
Near Petrol Pump, Sonia Nagar,
Palarivattom, Ernakulam-682 025,
Represented by its Branch Manager.

(*Impleaded as additional. 5th defendant*
As per order dt. 01.07.2024 in
IA No.4041.2023).

--- Defendants

This Securitization Application coming on 24.03.2026 for final hearing before me in the presence of Ms. Jani K Jayaraj, Counsel appearing for the Applicant and Mr. Viswanathan Advocate appearing for the defendants 1, 2 and 5 and Ms. Jane Mariya Tomy counsel appearing for 3rd defendant and 4th defendant having been set exparte 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 27.07.2018 seeking to set aside Annexure-A2 Possession Notice and A5 sale notice and to set aside confirmation of the sale in favour of 3rd defendant and to direct the defendants 1 and 2 to permit the applicant to conduct private sale of the secured asset and settle her liabilities towards defendants 1 and 2 and to direct the defendants 1 and 2 to acquire proper valuation report for the secured assets.

2. The applicants availed housing loan of Rs.15,00,000/- on 5.1.2007 from the 1st defendant Finance Corporation (hereinafter to be referred as the 1st defendant) upon creation of equitable mortgage over her immovable property by deposit of title deeds with the 1st defendant.

3. Due to default in repayment of the outstanding loan due, the loan account of the applicant came to be classified as Non-performing Asset. Hence, Annexure-B1 demand notice dated 29.11.2016 was

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issued to the applicant calling upon her to repay the outstanding loan due within a period of 60 days from the date of receipt of the demand notice. The applicant neither sent any objection/representation to the demand notice nor did she clear off her liability due to the 1st defendant.

4. Therefore, the defendants 1 and 2 issued possession notice dated 08.03.2017 Annexure-A2 for symbolically taking physical possession of the secured asset. Subsequently, the defendants 1 and 2 approached the Chief Judicial Magistrate Court, Ernakulam and filed application and affidavit under Section 14 (1) of the SARFAESI Act, 2002. According to the applicant, pursuant to the order passed in MC No.287/2017 physical possession of the secured asset was taken.

5. According to the defendants 1 and 2, first sale notice was issued on 29.12.2017, sale was not fructified for want of bidders. Second sale notice was issued on 13.02.2018, sale was not fructified for want of bidders. Third sale notice was issued on 08.03.2018, sale was not fructified for want of bidders. Fourth sale notice was issued on 12.04.2018, sale was not fructified for want of bidders. Fifth sale notice dated 09.05.2018, Annexure-A5 was issued. Property was sold to the highest bidder, who is the 3rd defendant.

6. Counsel appearing for the applicant submitted that demand notice, Annexure-B1 was not served to the applicant and that issuance of the demand notice after the period of limitation is not sustainable. Reserve price for the property was fixed at Rs.25,60,000/- as against the prevailing market value of more than Rs.50,00,000/-. The applicant sent Annexure-A6 letter dated 13.06.2018 to the 2nd defendant requesting to refrain from conducting the auction on the ground that the reserve price fixed for the property is very low. The 2nd defendant sent reply letter dated 21.06.2018 Annexure-A7 to the applicant stating that the property was sold on 13.06.2018. The defendants 1 and 2 colluded with the 3rd defendant and sold the property at a lesser rate to the 3rd defendant and caused wrongful loss to the applicant. The claim of the defendants 1 and 2 to recover the debt is time barred. Excessive rate of interest has been charged. Therefore, the S.A may be allowed as prayed for.

7. The Counsel appearing for the defendants 1 and 2 submitted that since the applicant failed to repay the outstanding loan due regularly, her loan account was classified as Non-Performing Asset and the demand notice Annexure-B1 was served to the applicant and that reserve price for the secured asset was fixed only after obtaining Annexure-B3 valuation report from the approved Valuer. First sale notice was issued on 29.12.2017, sale was not fructified for want of

bidders. Second sale notice was issued on 13.02.2018, sale was not fructified for want of bidders. Third sale notice was issued on 08.03.2018, sale was not fructified for want of bidders. Fourth sale notice was issued on 12.04.2018, sale was not fructified for want of bidders. Fifth sale notice dated 09.05.2018, Annexure-A5 was issued. Property was sold to the highest bidder. Sale of the secured asset was conducted in accordance with the provision under SARFAESI Act 2002 and the Rules made there under. Claim of the debt is not barred since the mortgage of the property was created in the year 2007 and the period of limitation of enforcement of mortgage is 12 years. The fact that sale was not fructified pursuant to issuance of earlier four sale notices is sufficient to show that no prospective purchasers came forward to bid the property. The reserve price for the property was reduced only by 10% for each and subsequent sale notices. There is no collusion between the defendants 1 and 2 and the 3rd defendant. There is no infirmity or illegality in the conduct of the auction. Interest has been charged as per the terms of the loan agreement. The applicant is not entitled for private sale of the secured asset after issuance of the sale notices. Therefore, SA may be dismissed.

8. Annexure-B2 copy of acknowledgment card produced by the defendants 1 and 2 evidences the service of demand notice on the applicant. Though Annexure-A2 possession notice was issued on 08.03.2017, it was not challenged by the applicant within the period of 45 days from the date of issuance of the possession notice.

9. No challenge has been made by the applicant against taking physical possession of the secured asset pursuant to order passed by the Chief Judicial Magistrate Court, Ernakulam in MC No.287/2017.

10. The applicant has conveniently omitted to aver in the SA with regard to issuance of earlier four sale notices for sale of the secured asset for the best reasons known to her. Annexure-B3 valuation report was obtained on 15.11.2017 prior to issuance of the first sale notice dated 29.12.2017. Hence, the contention of the applicant that reserve price for the property was fixed without obtaining valuation report is absolutely incorrect.

11. The applicant has not contended in the SA with regard to publication and affixture of the Annexure-A5 sale notice. Hence it appears that the defendants 1 and 2 have not averred in the written statement in this regard. The contention of the defendants 1 and 2 in the written statement with regard to issuance of the sale notices dated 29.12.2017, 13.02.2018, 08.03.2018, 12.04.2018 and fixation of the reserve price as Rs.19,00,000/- for the first sale notice and Rs.35.10 Lakhs for the second sale notice and Rs.31.60 Lakhs for the third sale notice and Rs.29.44 Lakhs for the fourth sale notice has been neither challenged nor refuted by the side of the applicant. Admittedly, the

reserve price for the property at Rs.25.60 Lakhs in the fifth sale notice by which sale was fructified. Therefore, it is evident that the reserve price for the property was reduced by 10% for each and subsequent sale notices. Further, the fact that no bidders came forward to bid the property pursuant to issuance of earlier four sale notices goes to go that the reserve price fixed for the property was not very low. Otherwise, the bidders would have bidded the property for the reserve price fixed in the earlier four sale notices.

12. The 3rd defendant is the successful bidder, who bidded the property for a total bid amount of Rs.25,60,000/-. Sale confirmation letter dated 13.06.2018 Annexure-R3 (A) was issued in favour of the 3rd defendant after payment of the entire bid amount. Though the applicant has alleged in the SA that there was collusion between the defendants 1 and 2 and the 3rd defendant, no material has been placed before this Tribunal to prove the same. This Tribunal does not find any infirmity or illegality in the sale of the secured asset held in the auction on 13.06.2018.

13. Annexure-A6 letter was sent to the 2nd defendant by the applicant on 13.06.2018 on which date sale had been conducted. The above letter was received by the 2nd defendant on 14.06.2018 as evidenced from the reference made in Annexure-A7 reply letter sent by the 2nd defendant to the applicant. Though the applicant had stated in Annexure-A6 that property would fetch more than Rs.50 Lakhs, no proof had been enclosed along with the letter to prove the above contention.

14. The applicant has not specifically pointed in the SA as to how the rate of interest charged is excessive. This Tribunal does not find any substance in the contention of the applicant that claim of the debt is time barred for the reason that security interest over the immovable property was created in the year 2007 and the measures were initiated by the defendants 1 and 2 in the year 2016.

15. The applicant did not approach the 1st defendant for private sale of the secured asset prior to issuance of the sale notices. There is also no averment in the SA as to whether she requested the 1st defendant for private sale of the secured asset. Be that as it may, once the sale of the secured asset is concluded, the borrower is not entitled to claim for the private sale of the secured asset. Reserve price for the property was fixed only after obtaining Annexure-B3 valuation report, hence the relief sought for the applicant in the SA to direct the defendants 1 and 2 to acquire valuation report is unsustainable.

13. The applicant has miserably failed to prove her case so as to get the reliefs sought for in the SA. In view of the foregoing reasons, this Tribunal holds that the applicant is not entitled to get the reliefs sought for in this SA.

Resultantly, S.A No.321/2018 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 4th 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.	----	True copy of the bank statement issued by the defendants	Annexure-A1
2.	08.03.2017	True copy of the possession notice	Annexure-A2
3.	08.11.2017	True copy of the notice affixed on the door of applicants apartment	Annexure-A3
4.	03.07.2018	True copy of the printout of the website https://www.99acres.com/3-bhk-bedroom-apartment-flat-for-sale-in-big-apple-apartment-palarivattom-kochi-1730-sq-ft-spid-J36309561	Annexure-A4
5.	09.05.2018	True copy of the sale notice issued by the 1st and 2nd defendants	Annexure-A5
6.	13.06.2018	True copy of the letter preferred by the applicant	Annexure-A6
7.	21.06.2018	True copy of the letter issued by the 2nd defendant	Annexure-A7
8.	10.07.2018	True copy of the judgement of the Hon'ble High Court of Kerala in WPC 22347/2018	Annexure-A8

List of documents filed by the defendants 1, 2 and 5 along with the written statement

Sl. No.	Date	Particulars	
1.	29.11.2016	Copy of sec13(2) demand notice	Annexure-B1
2.	----	Copy of AD card confirming service of demand notice on applicant.	Annexure-B2
3.	15.11.2017	Property valuation report submitted by the approved valuer	Annexure-B3

List of documents filed by the 3rd defendant along with the written statement

Sl. No.	Date	Particulars	
1.	13.06.2018	True copy of the successful Bid confirmation letter issued by the 2nd defendant	Annexure-R3(A)
2.	31.07.2018	True copy of the receipt issued by the 1st defendant bank of the payments	Annexure-R3(B)
3.	13.09.2018	True copy of the written request submitted by the 3rd defendant	Annexure-R3(C)
4.	27.11.2018	True copy of the written request submitted by the 3rd defendant for final remittance the full bid amount	Annexure-R3(D)

(Su. WILLYAHM)
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