ORDER SHEET

DEBTS RECOVERY TRIBUNAL, SILIGURI

SA/75/2025

Mr. Prasenjit Roy & Anr — Applicants

Vs

Aadhar Housing Finance Ltd. & Ors — Respondents

Date of Order	Order with Signature	Office action with date and dated signature of parties when necessary.

Item No.36

Order No.

12.05.2026

Present :-

Counsel for the Applicants : Ms. Jyoti Bhakta, virtually.

Counsel for the Respondents : Mr. Sagnik Bhowmick, virtually.

Judgment is passed in SA/75/2025 and a copy of the Judgment is kept on record.

Let the judgment be uploaded on website of the Tribunal and the Registry is directed to serve/send copy of this judgment to the parties free of cost.

Record be consigned to the record room along with the judgment.

(RAKESH PATI TIWARI)
Presiding Officer
DRT-Siliguri

Case Citation: (2026) ibclaw.in 381 DRT

IN THE DEBTS RECOVERY TRIBUNAL, SILIGURI

S.A. No.75/2025

1. Mr. Prasenjit Roy, S/O Mr. Chitra Roy, residing at Tantipara, Paharpur Jalpaiguri, Near Paharpur Ancha, District- Jalpaiguri, Pin- 735 121, West Bengal.
2. Mr. Chitra Roy, S/O Late Sikindra Nath Roy, residing at Tantipara, Paharpur Jalpaiguri, Near Paharpur Anchal, District Jalpaiguri, Pin- 735 121, West Bengal.
3. Mrs. Anjana Roy, W/O Mr. Chitra Roy, residing at Tantipara, Paharpur Jalpaiguri, Near Paharpur Anchal, District- Jalpaiguri, Pin- 735 121, West Bengal.

.....Applicants

Vs.

1. Aadhar Housing Finance Limited, having its Corporate Office at 802, Natraj By Rustomjee, Western Express Highway, Sir M.V. Road, Andheri East, Mumbai, Pin- 400 069, Maharashtra.
2. Authorized Officer, Aadhar Housing Finance Limited, having its Branch Office at Siliguri, 2nd Floor, N-W Corner, Gitanjali Complex, Sevoke Road, District- Darjeeling, Pin- 734001, West Bengal.

.....Respondents

Counsel for the applicant : Mrs. Alaknanda, Ms. Jyoti Bhakta
Counsel for the respondents : Mr. Sagnik Bhowmick, Ms. Nima S. Sherpa

PRESIDING OFFICER: RAKESH PATI TIWARI
Date of Judgment - 12.05.2026

Presiding Officer
Debts Recovery Tribunal
Siliguri

JUDGMENT

This is an application under section 17(1) of The Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act), filed by the applicants for setting aside the possession notice dated 11.03.2025 issued under section 13(4) of the SARFAESI Act, 2002.

2. Case of the applicants in short is that the respondent bank on 03.10.2019 sanctioned an Loan of Rs. 7,35,000/- for development of business of the applicants upon securing the equitable mortgage of the subject property. The contention of the applicants is that is that the loan accounts were initially regular and conducted in accordance with the terms and conditions of sanction, and the applicants had established a stable business in the market. However, due to the sudden serious illness of the father of Applicant No. 1, substantial expenses were incurred towards medical treatment outside the State, which adversely affected the business operations and resulted in irregularity in repayment of

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IBC Laws | www.ibclaw.in

EMIs, leading to classification of the account as NPA. The applicants contend that they are not wilful defaulters and had sought assistance from the respondent bank, but no cooperation was extended. It is further alleged that the respondent bank illegally took symbolic possession of the secured asset on 11.03.2025 without duly serving the possession notice under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, and that the demand notice dated 09.10.2024 under Section 13(2) of the SARFAESI Act was never served upon them in accordance with Rule 3 of the said Rules. According to the applicants, in absence of valid service of notice under Section 13(2), the consequential action under Section 13(4), including the possession notice dated 11.03.2025, is illegal, void, and liable to be set aside. Another plea of the applicants is that the possession notice dated 13.06.2025 is bad in law and liable to be set aside. It has been pleaded by the applicants that the respondent bank issued the instant notices in undue haste and in a very casual manner without due application of mind to the matters of record and issues pertaining to alleged security and as such the instant notices are void ab initio and deserve to be withdrawn. The applicants have contended that the respondent bank published the possession notice in an English language newspaper namely "Business Standard" and in a vernacular newspaper namely "Aajkal" under Rule 8(2) of The Security Interest (Enforcement) Rules, 2002 on 15.03.2025. According to the applicants the respondents have failed to provide proof of service of demand notice and also possession notice and it is a well settled principle of law that any action taken or to be taken under the said Act of 2002 has to be in connection with a non-performing asset and not otherwise.

12.5.2026
Presiding Officer
Debts Recovery Tribunal
Siliguri

3. The respondents filed their written objection stating inter-alia that through the notice dated 09.10.2024 issued under Section 13(2) of the SARFAESI Act, 2002, the Applicants were duly informed that the loan account bearing No. 34210000186 had been classified as a Non-Performing Asset (NPA), and the outstanding dues were quantified at Rs.7,94,556/- (Rupees Seven Lakhs Ninety-Four Thousand Five Hundred and Fifty-Six only) as on 09.10.2024. The said demand notice specifically contained the details and break-up of the outstanding dues in compliance with Section 13(3) of the SARFAESI Act. The Respondent Bank also caused publication of the said demand notice in two widely circulated newspapers on 13.12.2024, namely "The Business

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Standard" (English) and "Aajkal" (Bengali vernacular). Despite receipt of the demand notice, the Applicants failed and neglected to regularize the loan account or repay the outstanding dues of the Respondent Bank. That it is submitted that after expiry of the statutory period of 60 days from issuance of the demand notice under Section 13(2) of the SARFAESI Act, 2002, the Respondent Bank proceeded strictly in accordance with the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002, and upon completion of all mandatory legal formalities, issued the Possession Notice dated 11.03.2025 under Rule 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002. According to the respondent bank the Applicants duly received the said Possession Notice, which is evident from Annexure-B at Page No. 51 of the SARFAESI Application filed by the Applicants themselves. The Respondent Bank further complied with all statutory requirements by publishing the Possession Notice on 13.03.2025 in two widely circulated newspapers, namely "Business Standard" (English) and "Aajkal" (Bengali vernacular), which fact is admitted by the Applicants and reflected in Annexure-C at Page Nos. 52 to 53 of the application. The said notice was also affixed at a conspicuous place of the secured asset in strict compliance with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. Thus, the Respondent Bank acted transparently, lawfully, and strictly in accordance with the provisions of the SARFAESI Act and Rules throughout the process of taking symbolic possession. In support of the aforesaid contentions, the Respondent Bank relies upon the Possession Notice dated 11.03.2025, postal receipts, newspaper publications dated 13.03.2025, and affixation photographs collectively marked as Annexure "A Series".

12.5.2026
Presiding Officer
Debts Recovery Tribunal
Siliguri

4. The applicants filed their reply to the written objection filed by the respondent bank reiterating the averments made in their SA, contending that the same are vague, misleading, and intended to justify the illegal and arbitrary actions taken under the SARFAESI Act. The applicants submit that they have lawfully exercised their statutory rights and are not barred by estoppel, waiver, or acquiescence. It is further contended that the bank failed to substantiate the classification of the loan account as NPA and failed to prove proper service of the demand notice under Section 13(2) of the SARFAESI Act. The applicants assert that the possession notice dated 11.03.2025 and its publication were issued in violation of Rule 8(1) and 8(2) of the Security Interest

(Enforcement) Rules, 2002, as no valid service was effected upon them. They further submit that the alleged withdrawal of the possession notice was never published through corrigendum, thereby vitiating subsequent proceedings. According to the applicants, the entire SARFAESI action, including measures under Section 13(4), is illegal, arbitrary, contrary to statutory provisions, and liable to be set aside.

5. Learned counsel of the applicants and learned counsel of the respondents have already been heard.

6. **First plea** of the applicants is that the bank did not follow the guidelines of RBI while classifying the loan account NPA.

7. Subsection (o) of section 2 of the SARFAESI Act defines the NPA as hereunder :-

> *(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, 2 [doubtful or loss asset,—*
>
> *(a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;*
>
> *(b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank];*

12.5.2026
Presiding Officer
Debts Recovery Tribunal
Siliguri

8. In view of the prudential norms of the Reserve Bank of India "Non Performing Asset" is such an asset which becomes non performing when it ceases to generate income for the bank and non performing asset is a loan or an advance where interest and/or installment of principal remain overdue for a period of more than 90 days. The borrower has defaulted in repayment of the loan amount and thus loan account of the borrower became irregular and finally as per the guidelines of Reserve Bank of India the respondent bank classified the loan account as Non Performing Asset (N.P.A.).

9. **Second plea** of the applicants is that no prior intimation letter has been given to the applicants regarding the classification of Non Performing Assets but it is also not maintainable in the eye of law as there is no such mandate of the statute to serve any notice to the borrower before classifying the loan account NPA.

10. In case of **Paritran Trust Vs. Punjab National Bank [2014 SSC OnLine (Jharkhand) 2064]** the Hon'ble High Court has held that no prior notice is required to be issued before

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classifying the account as NPA. The above judgment of the Hon'ble Jharkhand High Court (supra) has been followed by The Madhya Pradesh High Court in case of **M/s Neelam Beverages Vs The State of Madhya Pradesh (2022 SCC On Line MP 5609).**

11. **Third plea** of the applicants is that 13(2) notice dated 09.10.2024 was never served applicants.

12. From perusal of the written objection of the bank it transpires that the respondent bank has annexed the postal receipt along with the tracking report with regards to the service of notice issued under section 13(2) of the SARFAESI Act. From perusal of the tracking report it also transpires that the item was not delivered upon the addressee rather it returned to the "sender". The Respondent Bank has further produced documents showing publication of the demand notice in two widely circulated newspapers, namely "Business Standard" (English) and "Aajkal" (Bengali vernacular) on 13.12.2024.

13. It is pertinent to mention that mode of service of Demand Notice is prescribed under Rule 3 (1) of the Security Interest (Enforcement) Rules, 2002 (here-in-after referred to as Rules, 2002) which runs as under : -

> *"**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."*

12.5.2026
Presiding Officer
Debts Recovery Tribunal
Siliguri

14. Thus as per proviso of Rule 3(1) of the Rules, 2002, service may be effected by publishing the contents of the notice in two leading newspapers, one in vernacular language having sufficient circulation in the locality.

15. In the instant matter, service has been effected on dated 13.12.2024 by publishing 13(2) notice in two newspapers including one vernacular language on dated 13.12.2024 and the admitted fact is that 13(4) notice has been issued on dated 11.03.2025 and thus after giving clear 60 days time to deposit the entire dues amount possession notice under section 13(4) has been issued by the secured creditor.

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Case Citation: (2026) ibclaw.in 381 DRT

16. **The main plea** of the applicants is that 13(4) notice dated 11.03.2025 was never served to the applicants though it was affixed and published in two newspapers.

17. On this point the reply of the respondent bank in para – 12 of the written objection is as under :-

> "This 'Possession Notice' was issued and served in strict accordance with Rule 8(1) and (2) of 'The Security Interest (Enforcement) Rules, 2002' ....."

18. There is no specific pleading on the point of individual service of possession notice. Settled principle of law is that the denial must be clear and specific. When the individual delivery of possession notice was challenged duty was cast upon the respondent Bank to show that actually it was served.

19. In case of **Mathew Varghese Vs. M. Amritha Kumar & Ors [(2014) 5 SCC 610],** the Hon'ble Supreme Court held that individual service, publication as well as affixation, all the three steps have to be complied with. The instant S.A. has been filed challenging the possession notice dated 11.03.2025 and the respondents have failed to prove that the possession notice has been served upon the applicants.

20. Apart from the proof of affixation and publication in two newspapers, including one vernacular language, copy of dispatch of possession notice through speed post has been annexed (running page No. 11 of the written objection) but any track report has not been filed to prove the delivery of such notices. Thus the respondent bank did not prove the delivery of 13(4) notice to the applicants.

12.5.2026
Presiding Officer
Debts Recovery Tribunal
Siliguri

21. In case of **Authorized Officer, Indian Overseas Bank and Another Vs. M/s Ashok Saw Mill (2009) 8SCC 366)** the Hon'ble Supreme Court has held as under :-

> *"35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof."*

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22. In view of the discussions made here-in-above, the S.A. of the applicants is hereby **allowed** with a liberty to the respondent bank to proceed afresh for realizing the dues amount from the borrower.

23. No order as to cost.

24. Registry is directed to send/serve copy of this order upon both the parties free of cost.

25. Order be uploaded in the website of the Tribunal.

26. Let the record be consigned to the Record Room.

The judgment is signed and pronounced in the open Tribunal on 12th day of May, 2026.

Rakesh Pati Tiwari
12.05.2026

(RAKESH PATI TIWARI)
Presiding Officer
DRT, Siliguri.

Presiding Officer
Debts Recovery Tribunal
Siliguri