

IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated this the 10th day of June, 2026

SECURITIZATION APPLICATION No.373/2023

Between

Jiju J. Kandramattom,
Kandramattom,
Eravuchira P.O.,
Thottakkad,
Kottayam.

...Applicant

And

The Authorized Officer,
South Indian Bank,
Regional Office,
1st Floor,
Regency Square,
Collectorate P.O.,
Kottayam.

...Defendant

This Securitization Application having been heard on 20.05.2026 in the presence of Advocate Mr. Sasi N for the applicant and Advocate Mr.Ananthu V Lal for the defendant and stood over to this day for consideration, the Tribunal delivered the following:

FINAL ORDER

Challenging the securitization proceedings initiated by the defendant under the provisions of the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), the applicant has filed this SA under S.17(1) of the SARFAESI Act seeking relief to setting aside the entire securitization proceeding including the order passed by the CJM, Kottayam.

Brief facts of the case:

2.1 The applicant availed overdraft facility of ₹57,00,000/- for M/s.JK Feeds, a partnership firm in the year 2016 by mortgaging the 9.46 Ares of land along with residential building there on of Thottakkad Village, Changanacherry Taluk, Kottayam District. In the SA the applicant claims that the loan was regular up to March 2020. But due to Covid pandemic, his business was badly affected and he could not repay the loan in time.

2.2 The possession notice issued by the defendant under section13(4) of the SARFAESI Act was received by the applicant on 07.06.2023 regarding taking of symbolical possession of the secured assets which was challenged by the applicant before the Hon'ble High Court of Kerala but the same was not entertained.

2.3 The defendant proceeded with the securitization proceeding without taking all the statutory measures in accordance with the law and the possession notice was also not issued by

following the statutory requirement. Hence the SA is filed challenging the securitization proceeding with prayer to set aside the same.

2.4 During pendency of the SA, the applicant amended the pleading and claims that the demand notice u/s.13(2) of the SARFAESI Act was not served to the partnership firm and the partners. Hence the proceeding initiated before the CJM, Kottayam in M.C.No.573 of 2023 u/s.14 of the SARFAESI Act is illegal. The Advocate Commissioner is not legally entitled to take possession of the secured asset. Hence the applicant claims for setting aside the entire securitization proceeding including the order passed by the CJM.

3. The defendant filed written statement denying the averments and claim *inter alia* that the loan availed by the applicant turned to NPA due to irregular repayment by the applicant. The demand notice u/s.13(2) of the SARFAESI Act was issued on 19.08.2022. Postal receipts are produced. After due service of the demand notice the applicant did not raise any objection. Hence step was taken u/s.13(4) of the SARFAESI Act to take possession of the secured assets after complying all the statutory requirements. The relevant documents in compliance of the statutory requirement are

produced in this case. In the additional written statement, the defendant claims that there is no illegality in the proceeding initiated before the CJM, Kottayam u/s.14 of the SARFAESI Act. In the absence of any illegality, the applicant has no right to challenge the securitization proceeding and hence the defendant claims for dismissal of the SA.

4. From the respective case of the applicant and defendant, the following points emerged for adjudication in this case:

- (i) Whether the securitization proceedings initiated by the defendant suffer from any illegality to intervene with the same?
- (ii) Whether the applicant is entitled to get any relief in this case?

FINDINGS:

Point Nos.(i) & (ii):

5. During argument the learned counsel for the applicant did not point out any illegality in the securitization proceeding. The learned counsel for the applicant contended that the demand notice u/s.13(2) of the SARFAESI Act was not duly served on the partnership firm and all the partners. Hence the securitization

proceeding is not legally sustainable. Further it is contended that in the affidavit filed before the CJM by the Authorised Officer, the aggregate amount is not stated which vitiates the securitization proceeding, including the order passed by the CJM. Hence the entire proceeding, being illegal, may be set aside.

6. On the other hand, the learned counsel for the defendant would contend that the demand notice was served to the applicant, who is the partner of the partnership firm, namely JK Foods. The postal AD card regarding service of demand notice on the applicant and other partner are produced in this case. The service of demand notice to one partner is also service to all the partners including the partnership firm in view of the statutory provision contained u/s.24 of the Indian Partnership Act. In the affidavit filed before the Chief Judicial Magistrate, the Authorised Officer has specifically stated the aggregate amount due on the date of filing application. There is no illegality in the proceeding initiated before the CJM. Hence the SA, being devoid of any merit, the applicant is not entitled to get any relief.

7. Admittedly, the applicant, being a partner of the JK Feeds, availed credit facility from the defendant and due to default in repayment, the securitization proceeding was initiated. The

applicant claims that the demand notice was not served on all partners and the partnership firm and hence the securitization proceeding is vitiated. The defendant has produced postal receipts and acknowledgement cards showing delivery of the demand notice to the applicant and other partner who received the same by putting their respective signature in the capacity of the partners of the partnership firm. But the notice issued to the partnership firm was returned unserved.

8. Question arises whether non-service of demand notice on the partnership firm vitiates the securitization proceeding? The Hon'ble High Court of Kerala in the judgment reported in 2022 (3) KLT 645 in the case of **AGP City Gas Private Limited v. M/s.Lynx Properties & Developers & others** had held in paragraph 19 as follows:

"19. A reference to section 24 of the Indian Partnership Act in this context is apposite. S.24 deals with the effect of notice to a partner. The said section stipulates that service of notice to a partner operates as notice to the firm, except in the case of fraud on the firm. S.24 is based on the principle that a partner stands as an agent in relation to the firm and a notice to the agent tantamount to notice to the principal and vice versa. As a general rule, notice to a principal is notice to all his agents; and notice to an agent in respect of matters connected with his agency is notice to his principal. Such a notice is binding, if the following conditions are satisfied: (a) the notice must be given to a partner; (b) the notice must be a notice of any matter relating to the affairs of the firm, and (c) fraud should not have been committed with the consent of such partner on the firm. (See Ashutosh v. State of Rajasthan and Others [(2005) 7 SCC 308]."

In view of this ratio, the applicant, having received the demand notice as a partner of the partnership firm, it amounts to service of demand notice on the partnership firm and hence the contention raised by the applicant on this aspect has no leg to stand.

9. The last contention of the learned counsel for the applicant is that in the affidavit filed before the CJM, Kottayam by the Authorised Officer in M.C.No.513/2023, the aggregate amount due as on the date of filing of the application is not stated which vitiates the order of the Chief Judicial Magistrate. On careful consideration of the submission and referring the affidavit, the amount due as on 30.09.2023 i.e. the date of swearing affidavit is stated in paragraph 9 of the affidavit. Hence the contention raised by the learned counsel for the applicant regarding non-compliance of the statutory provision as contained under Section 14(1) of the SAREFAESI Act is totally unfounded and baseless. The applicant has failed to establish any illegality or material illegality in the securitization proceeding to interdict with the same and hence both the points are answered against the applicant.

Hence it is ordered:-

ORDER

10. In view of the foregoing reasons, the SA, being devoid of any merit, is hereby dismissed with cost of ₹10,000/- (Rupees Ten-thousand only) payable by the applicant to the defendant for causing unnecessary delay in the securitization proceeding

(Dictated to my Steno, corrected and pronounced by me in the open Tribunal on this the 10th day of June, 2026.)

**[SOVAN KUMAR DASH]
PRESIDING OFFICER**

Documents on the part of the applicant

Annexures	Date	Particulars of documents
A1	07.06.2023	True copy of the possession notice.
A2	30.09.2023	Certified copy of the petition in M.C.No. 513/2023 filed before the Chief Judicial Magistrate Court, Kottayam.
A3	30.09.2023	Certified copy of the affidavit filed in M.C.No.513/2023
A4	10.10.2023	Certified copy of the Order in M.C.No.513/2023 of the Chief Judicial Magistrate, Kottayam.
A5	21.10.2023	Copy of the Legal Notice issued by the Advocate Commissioner.

Documents on the part of the defendants

Annexure	Date	Particulars of documents
B1	19.08.2022	Copy of Notice under Section 13(2) of the SARFAESI Act.
B2	-	Copy of postal receipt evidencing issuance of notice to the applicant, Mr. Kathirvel Subbiah Nadar and the partnership firm.
B3	-	Copy of acknowledgement card evidencing receipt of notice under Section 13(2) of SARFAESI Act.
B4	07.06.2023	Copy of Possession Notice.
B4(a)	-	Copy of the acknowledgement card evidencing receipt of the possession notice.
B5	-	Copy of postal receipt evidencing issuance of the possession notice.
B6	09.06.2023	Copy of Possession Notice published in leading Malayalam daily "Deepika".

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| B6(a) | 09.06.2023 | Copy of the Possession Notice published in leading English daily "New Indian Express" daily. |
| B7 | - | Photocopy of photograph evidencing the affixture of the possession notice on a conspicuous part of the building. |
| B8 | - | Copy of the affidavit filed by the defendant bank before the CJM, Kottayam in M.C.No.513/2023. |

PRESIDING OFFICER

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