



IN THE DEBTS RECOVERY TRIBUNAL - 1 AT ERNAKULAM

DATED THIS 10th DAY OF JUNE, 2026

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

S.A No. 455 of 2018

Between

1. E.K. Abdurahiman,
Eranthodi Kochotttil House,
Kuttippara, Payyanad P.O.
Manjeri, Malappuram.
2. Kadeeja E.K.,
Eranthodi Kochotttil House,
Kuttippara, Payyanad P.O.
Manjeri, Malappuram.
3. Ummu Haiman,
Eranthodi Kochotttil House,
Kuttippara, Payyanad P.O.
Manjeri, Malappuram.
4. Ayisha E.K.,
Eranthodi Kochotttil House,
Kuttippara, Payyanad P.O.
Manjeri, Malappuram.
5. Ummu Hani,
Eranthodi Kochotttil House,
Kuttippara, Payyanad P.O.
Manjeri, Malappuram.
6. Abdul Haqu,
Eranthodi Kochotttil House,
Kuttippara, Payyanad P.O.
Manjeri, Malappuram.

7. Sulaikha,
Eranthodi Kochottil House,
Kuttippara, Payyanad P.O.
Manjeri, Malappuram.

--- Applicants

And

The Authorized Officer,
Manjeri Co-operative Urban Bank Ltd.
Court Road, Manjeri P.O.,
Malappuram – 676 121.

--- Defendant

This Securitization Application coming on 11.05.2026 for final hearing before me in the presence of Mr. Jithendran, representing the Counsel for the Applicants and Mr. K. Vidyasagar, Advocate for the defendant and upon hearing arguments of learned Counsels for both the parties and upon perusing the material on records, this Tribunal delivered the following:

ORDER

1. This Securitisation Application was filed on 10.12.2018 seeking to hold that the possession of secured assets of the applicants by the defendant bank is illegal and to set aside all the steps taken by the defendant under SARFAESI Act, 2002 and to order payment of compensation to the applicants.
2. The applicants availed cash credit facility of Rs.50,00,000/- Lakhs from the defendant bank on 18.12.2013 upon creation of equitable mortgage by deposit of title deeds over their immovable properties admeasuring an extent of 113.25 cents of land situated in Payyanad Village, Malappuram District in favour of the defendant bank.
3. Since the applicants defaulted in repayment of the outstanding loan due, the loan account of the applicants came to be classified as Non-performing Asset. Annexure-B1 demand notice dated 10.05.2016 was issued to the applicants calling upon them to repay the outstanding loan due within a period of 60 days from the date of receipt of the demand notice. The applicants neither sent any objection/representation to the demand notice nor did they clear off their liability due to the defendant bank.

4. Therefore, Annexure-B3 possession notice dated 23.11.2017 was issued for symbolically taking possession of the secured assets. Thereafter, the defendants approached the Chief Judicial Magistrate Court Manjeri and filed Annexure-A1 application and Annexure-B8 affidavit under Section 14 (1) of the SARFAESI Act, 2002. Annexure-A2 Order came to be passed on 03.11.2018 in CMP No.2500/2018 by the Chief Judicial Magistrate Court, Manjeri appointing Advocate Commissioner for taking physical possession of the secured asset. The Advocate Commissioner issued Annexure-A3 notice dated 09.11.2018 to the applicants informing them that he would take physical possession of the secured asset on 09.11.2018. The applicants having aggrieved against the above measures filed this SA seeking for the reliefs stated supra.

5. The Counsel appearing for the applicants submitted that demand notice was not served to the applicants and that some of the properties mentioned in Annexure-A1 application are agricultural lands which are exempted u/s 31 (i) of the SARFAESI Act 2002 and that affidavit filed along with Annexure-A1 is not in compliance with the statutory requirements of the provisions of Sec. 14 (1) of the SARFAESI Act 2002 and that therefore, the SA may be allowed as prayed for.

6. The counsel appearing for the defendant submitted that since the applicants defaulted in repayment of the outstanding loan due, their loan accounts were classified as Non-Performing Asset in accordance with RBI guidelines and the demand notice was served to the applicants and that Annexure-B3 possession notice was served to the applicants and that it was affixed on the conspicuous part of the secured assets and that secured assets is not agricultural land as evidenced from Annexure-B6 photograph and that it is a residential plot and that all the statutory requirements contemplated u/s 14 (1) SARFAESI Act 2002 has been complied with in respect of filing of application and affidavit and that therefore, SA may be dismissed with cost to the defendant.

7. Annexure-B2 copies of acknowledgment cards produced by the defendant shows that Annexure-B1 demand notice was served to the applicants. Though the applicants have not averred anything in the SA with regard to issuance of Annexure-B3 possession notice, the defendant has produced copy of the possession notice Annexure-B3 and Annexure-B4 copies of acknowledgment cards and Annexure-B5 photograph and Annexure-B7 postal receipts in order to prove their contention that possession notice was served to the applicants and that it was affixed on the conspicuous part of the secured asset.

8. The applicants has not produced any document or material before this Tribunal in order to prove their contention that the secured asset is agricultural land. They did not send any objection or representation for the demand notice stating that secured asset is agricultural land. A perusal of Annexure-B6 photograph produced by the defendant strengthens the contention that the secured asset is residential area.

9. The applicants have not produced copy of the affidavit filed in CMP No.2500/2018 before the Chief Judicial Magistrate Court, Manjeri. However, the copy of the affidavit has been produced by the defendant as Annexure-B8 along with the written statement. A perusal of the same shows that all the statutory requirements contemplated under Clause (i) to (ix) to the provisions of Section 14 (1) of the SARFAESI Act 2002 has been substantially complied with by the defendant in respect of filing of Annexure-B8 affidavit.

10. However, a perusal of Annexure-A2 order passed by the learned Chief Judicial Magistrate Court Manjeri in CMP No.2500/2018 shows that the date and month of passing order, CMP No., names of the parties, date of hearing, names of the Advocate Commissioner, Police Station and Village Office are written in ink.

11. In ***Sri Dulal Nath Sharma Vs. The State of West Bengal & ors***), the Hon'ble High Court of Calcutta has held that the order passed by the Additional District Magistrate for taking physical possession of the secured asset was in a printed format with only the blank spaces filled up and that order has been passed mechanically without application of mind and that for the aforesaid reasons, the order impugned was set aside.

12. The Hon'ble High Court of Kerala has held in ***The South Indian Bank Ltd. Vs. Jahfer M. [judgment dated 18.03.2025 in OP (DRT) No.336 of 2024]*** has held as follows :

“Though the exercise of jurisdiction by the Magistrate under Section 14 of the SARFAESI Act does not involve any adjudication, the act of the Magistrate in passing orders in printed form by filling in necessary details in blank spaces cannot be justified under any circumstances. It cannot be forgotten that the power under Section 14 of the SARFAESI Act involves drastic consequences and that is why the Parliament conferred the power to take action under Section 14 of the SARFAESI Act on high officials such as District Magistrate or the Chief Judicial Magistrate Court. While it may not be necessary to examine the correctness of the averments in the affidavit filed by a bank/financial

institution in support of the application for orders under Section 14 of the SARFAESI Act, the Magistrate must clearly apply his mind to the averments in the application and determine as to whether procedure contemplated has been followed before passing an order under Section 14 of the SARFAESI Act. Therefore, I have no doubt in my mind that the Tribunal was justified in setting aside the order of the Chief Judicial Magistrate Court, Manjeri in MC No.929/2023.”

13. Since Annexure-A2 order is cut-paste-stereo type order, it is evident that the order was passed mechanically without application of mind by the learned Chief Judicial Magistrate, Manjeri. In view of the above reason and in the light of the dictum laid down in the afore cited judgments, Annexure-A2 order is liable to be set aside.

14. In view of the foregoing reasons, this Tribunal holds that SA No.455/2018 stands allowed by setting aside Annexure-A2 order passed in CMP No.2500/2018 by the learned Chief Judicial Magistrate, Manjeri.

15. However, it is made clear that there shall be no bar for the defendant to approach the Chief Judicial Magistrate Court, Manjeri, again for taking physical possession of the secured asset in accordance with law.

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 10th day of June, 2026.

(Su. WILLYAHM)
PRESIDING OFFICER

Mj/

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

Sl. No.	Date	Particulars	
1.	09.08.2018	True copy of the application filed by the defendant before the Chief Judicial Magistrate Court Manjeri.	Annexure-A1
2.	03.11.2018	True copy of the order in CMP No2500/18 by the Chief Judicial Magistrate Court Manjeri.	Annexure-A2
3.	09.11.2018	True copy of the notice issued by the Advocate Commissioner.	Annexure-A3

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

Sl. No.	Date	Particulars	
1.	10.05.2016	True copy of the demand notice issued by the defendant to the applicants.	Annexure-B1
2.	---	True copy of the acknowledgment cards which is seen received the demand notice by the applicants.	Annexure-B2
3.	23.11.2017	True copy of the possession notice issued by the de to the applicants.	Annexure-B3
4.	---	True copy of the acknowledgment cards which is seen received the possession notice by the applicants.	Annexure-B4
5.	---	True copy of the photo which shows the possession notice affixed on the wall near the front door of the house in the mortgaged property.	Annexure-B5
6.	---	True copy of the photos in which the nature of the land is seen.	Annexure-B6
7.	---	True copy of the postal receipts in the name of the applicants by which it is seen that possession notice has been sent by the de to the applicants and true copy of acknowledgment cards with English translation.	Annexure-B7

8.	25.07.2018	True copy of the affidavit duly affirmed by the Authorized Officer filed before the Chief Judicial Magistrate Court Manjeri.	Annexure-B8
9.	27.01.2026	True copy of the judgment in W.P. (C) No.36861/2025 by the Hon'ble High Court of Kerala.	Annexure-B9

(Su. WILLYAHM)
PRESIDING OFFICER

Mj/