

Presented on : 15.07.2022
Registered on : 16.07.2022
Decided on : 19.06.2026
Duration : Y M D
03-10-04

**APPLICATION UNDER SUB SECTION (1) OF SECTION
17 OF THE SECURITIZATION AND
RECONSTRUCTION OF FINANCIAL ASSETS AND
ENFORCEMENT OF SECURITY INTEREST ACT,
2002.**

**IN THE DEBTS RECOVERY TRIBUNAL
AT AURANGABAD
(BEFORE DR. J.R. CHAUHAN, PRESIDING OFFICER)**

SECURITISATION APPLICATION NO.295 OF 2022

1. Mr. Shaikh Naim Shaikh Jafar,
Age – 46 years, Occ- Business,
R/o : Raheman Ganj, Murgu Talav,
Dist. - Jalna-431203

.....Applicant

Versus

1. The Chikhali Urban Co-op Bank Ltd.,
R/o: Chikhali,
Regd. Officer at Shamaprasad Mukharji Chowk, Chikhali,
Dist. Buldhana,
having its branch Office at Market Yard,
Jalna-431203.

2. Manoj S/o. Gopalrao Tandale,
Age – 36 years Occ: Business,
R/o – Bhavsar Galli, College Road,
Jalna – 431203.
3. Anujkumar S/o. Shrinivasji Saraswat,
Age – major, Occ – Business,
R/o – Shri Bungalow, Mammadevi Station Road,
Jalna.431203.
4. Pravinkumar Shriram Sharma,
Age – major, Occ – Business,
R/o – Subhash Chowk, Jalna – 431203.
5. Sunilkumar Shriram Sharma,
Age – major Occ – Business,
R/o – Subhash Chowk, Jalna – 431203.
6. Sunil Eknath Zore,
Age – major, Occ – Business,
R/o – Lodhi Mohalla, Jalna – 431203.
7. Adnan Amanulla Khan,
Age – major, Occ – Business
R/o – Maniyar Galli, Jalna – 431203.
8. Sk. Habibuddin Fakaruddin,
Age – major, Occu – Business
R/o – Nutan Vasahat, Jalna 431203
9. Qureshi Shabab Abdul Razzak Mohd. Chand
Age – major, Occ – Business
R/o – Sonal Nagar, Jalna – 431203.

10. Shri. Naresh Kishanchand Kelani (HUF),
Through Shri Naresh S/o. Kishanchand Kelani
(Karta HUF) Age – 45 years, Occ – Business,
R/o – Near Santoshi Mata Mandir,
Gopikishan nagar, Jalna – 431203.
11. Shri. Sagar S/o. Murarilal Kawna
Age – 43 years, Occ – Business,
R/o – Head Post Office Road,
MAHCO Colony, Jalna – 431203.
12. Shri. Hitesh S/o. Murarilal Kawna,
Age – 43 years, Occ – Business,
R/o – Head Post Office Road,
HAHCO Colony, Jalna – 431203. ...**Respondents**

APPEARANCE :

Applicant : Mr. Shrigopal G. Dodya, Advocate
Respondents : Mr. Kamlakar J. Suryawanshi, Advocate for
respondent no.1.
Respondent nos. 2 to 9 : None present.
Respondent Nos. 10 to 12 : Mr. M. R. Sonawane, Advocate.

CORAM: DR. J.R. CHAUHAN, PRESIDING OFFICER

JUDGMENT

(Pronounced on : 19.06.2026)

1. The applicant has filed the present Securitization Application
(S.A.) under Section 17 (1) of the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”) for the following reliefs:

- I. *The proceeding initiated by the respondents under the securitization Reconstruction of Financial Assets and Enforcement of Security Interest Act against the applicant and against the said property of the applicant and respondent no.7 to 9, may kindly be declared as illegal, null and void and same may kindly be quashed and set aside;*
- II. *The respondent bank may kindly be restrained from taking further recourse to any of the measures under the Securitization Reconstruction of Financial Assets and Enforcement of Security Interest Act in respect of the said property of the applicant;*
- III. *That the impugned order passed by The Collector At District Magistrate at Jalna in case no. 10/2020 dated*

24.01.2020 for taking physical possession of the said property of the applicant may kindly declared null and void and possession taken under said order ought to be declared as illegal, null and void;

- IV. *The impugned possession taken by virtue of letter dated 13.12.2021 bearing outward no. 2021 /recover/ kavi/ Tehsil Office Jalna may kindly be declared as illegal, null and void;*
- V. *The impugned auction sale notice dated 27.06.2022 issued by the respondent no.1 bank and further proceeding initiated thereunder may kindly be declared as illegal null and void and same may kindly be quashed and set aside;*
- VI. *The respondent no.1 bank may kindly be directed to restore the possession of the said property to the applicant and/or further to release the said property from it's charge;*

VII. Any other suitable and equitable relief may kindly be granted in favour of the applicants for which he is found entitled to under the circumstances of the case and to meet the ends of justice and oblige.

VIII. The cost of application may be awarded to the applicants.

2. The brief facts as per amended Securitization Application are that the applicant along-with respondent nos. 7 to 9 are owners and possessors of the plot bearing CTS No. 3399 having MCH No. 2-8-21,22,23 total area Admeasuring 199.50 Sq. Mtr. Situated at Moti Masjid, Jalna. With an intention to perform the bank working of the applicant and respondent Nos. 7 to 9, they had appointed the respondent no. 3 as their General Power of Attorney (for short, 'GPA') for performing various tasks under the said GPA which is registered with Sub-Registrar at Jalna at day book Sr. No. 7293/2018 dated 04.12.2018. The said GPA had only power

to act as agent to comply with all loan procedure since the intention of the applicant was to develop the said property, however no any right to sell or alienate or mortgage the said property was ever granted to respondent no.3. The said fact is also clear from stamp duty paid upon the said GPA which shows that stamp duty of Rs. 500/- was paid which is only to deal with loan facility on behalf of the applicant and respondent nos. 7 to 9.

3. It is further submitted that on or about 29.01.2022, applicant got knowledge that respondent no.1 bank had got possession of the said property. Thereafter the applicant immediately approached to respondent no. 1 bank and informed that the applicant and other owners have never mortgaged the said property to respondent no.1 and asked for details of documents, but at that time, bank failed to provide any document and informed that the respondent no.3 mortgaged the said property with respondent bank as GPA of the

applicant and respondent nos.7 to 9 for the loan amount of Rs. 3.50 Crores availed by the respondent no.2. The applicant got shocked and surprised after getting knowledge of the same and asked for mortgage documents from respondent no.1, who failed to provide the same. Thereafter the applicant approached to respondent no. 3, who gave evasive reply. Thereafter the applicant obtained certified copy of GPA from Sub-Registrar, Jalna office and on perusal of the same; it found that page no. 4 was missing, the applicant approached the respondent no.1 bank along-with copy of mortgage deed. In the said mortgaged deed, property of the applicant and respondent no.7 to 9 seemed to be mortgaged by respondent no.3 being GPA of the applicant and others. The applicant when perused the GPA, shocked and surprised as there appeared a page no. 4 wherein detail of property and right to sale and mortgage appeared to be provided to GPA, which is illegal and never assigned or executed without any power and

authority and the respondent nos.1 to 3 and other persons including Registrar's Office having hand-in-glove with each other got document forged and mortgaged the property and therefore, the applicant has lodged FIR No. 0043 dated 08.02.2022 with Chandanzira Police Station at Jalna under Sections 420,406,466,467,468,471 R/w. 34 of IPC regarding cheating and forging of documents and the same is pending for adjudication.

4. It is further submitted by the applicant that respondent no.1 bank was informed that it will not proceed against the said property as the applicant has to collect all the relevant documents regarding the said alleged loan case. The applicant on or about 12.06.2022 received a notice of sale from respondent no.1 bank regarding auction sale of the said property scheduled on 27.06.2022 and the applicant approached the bank, which informed that they will not conduct the auction of the said property. On or about

07.07.2022 respondent no.7 informed the applicant that he in receipt of auction sale notice dated 27.06.2022 of the said property scheduled on 20.07.2022 for recovery of the alleged outstanding loan amount of Rs. 2,61,24,635/- in the alleged loan account of respondent no.2. The Tehsildar/ Taluka Magistrate at Jalna issued notice in order to take possession of the said property, in view of order passed by District Magistrate Jalna in case no. 10/2020 dated 24.01.2020. It was also found from the alleged guarantee deed that same appeared to be having forged signature of the applicant as the applicant never agreed to stand as guarantor to the said alleged loan of respondent no.2. The respondent no.1 is not entitled to recover the outstanding loan amount by conducting auction sale and the said sale of property is illegal and liable to be quashed and set aside. The alleged date of NPA as 30.06.2016 is false and baseless. The alleged physical possession notice affixed on the said property by the Circle

Officer and not by Tehsildar. Therefore, the action of taking physical possession of the said property by the Circle Officer Jalna City on 18.01.2022 in pursuance of letter dated 13.12.2021 issued by Tehsildar/ Magistrate Jalna, is liable to be quashed and set aside. The order of District Magistrate/ Collector passed under Section 14 of the SARFAESI Act is also illegal as no affidavit was filed with the application under Section 14 of the SARFAESI Act and aggregate loan amount was not mentioned in the application. The Claim of the bank was not within limitation. Demand notice did not authorize respondent no.1 to file application. Therefore, the order of Collector Jalna was passed in violation of Section 14 of the SARFAESI Act. The sale notice, which is illegal, bad in law, as no prior notice of 30 days was given to the applicant and auction sale notice was not published in the leading news-papers and all the actions of respondent no.1 conducted for sale of property of the applicant and respondent

nos. 7 to 9 is illegal and liable to be quashed and set aside and prayed for allowing the Securitization Application.

5. The respondent no.1 bank filed its say/written statement at Exh-12 and contested the Securitization Application on the grounds that the applicant filed SA in the month of July 2022, which is not within limitation as the applicant has challenged order dated 24.01.2020 passed by District Magistrate. The physical possession has been taken on 18.01.2022 in view of physical possession notice dated 13.12.2021 issued by Tehsildar, Jalna. The applicant should have filed SA within 45 days from the date of order dated 24.01.2020 passed by District Magistrate, Jalna or from the date of possession notice dated 13.12.2021. The physical possession of the property has been taken on 18.01.2022 and even from this date, the SA is not within time. The applicant has not challenged the action of taking physical possession of the property on 18.01.2022 and he has accepted the same. After

filing of SA, the respondent no.1 has sold the property to respondent nos. 10 to 12 in auction sale conducted on 20.07.2022 and sale certificate has been registered on 12.08.2022 after conducting the sale. Thereafter, the applicant has amended the SA and the respondent nos. 10 to 12 (Auction Purchasers) are made parties. However the applicant has not challenged the sale conducted in favour of respondent nos. 10 to 12 and no prayer has been made to set aside the sale and even no prayer has been made for set aside auction sale certificate dated 12.08.2022. In view of the fact of not challenging the auction sale and sale certificate dated 12.08.2022 executed in favour of respondent nos. 10 to 12, the prayers made by applicant in SA are liable to be declared as infructuous. It is further submitted by the bank that respondent no.2 availed cash credit loan facility of Rs. 1.00 crore with interest @ Rs. 14% p.a., working capital loan of Rs. 2.5 crore with interest @ 15% p.a. from the respondent

bank on 26.12.2018. The present applicant, respondent No.2 and respondent nos. 7 to 9 are the guarantors of the said loan for the security of the said loan. The respondent no. 2, present applicant and respondent nos. 7 to 9 through their GPA, respondent nos. 3, 4 & 5 executed registered mortgage deed dated 29.12.2018 in favour of respondent no.1 bank in respect of properties bearing CTS No. 3399 Municipal Council House No. 2-8-21,22,23 Admeasuring. 165.23 sq. mtr. owned by the applicant and respondent nos. 7 to 9 and property bearing gat no. 213 Admeasuring. 4H 42R situated at village Jamsamarth, Tq. Ghansavangi, Dist. Jalna owned by respondent nos. 4 & 5. The applicant and respondent nos. 7 to 9 executed registered GPA in favour of respondent no.3 in respect of the property bearing CTS No. 3399, Municipal Council House No. 2-8-21,22,23 Admeasuring 165.23 Sq.mtr. on 22.11.2018 giving rights in favour of respondent no.3 to do all transactions including signatures, to take loan

from bank, to mortgage property in favour of bank, to register the document in the office of Registrar etc.. The applicant and respondent nos. 2 to 9 are jointly and severally liable to repay the loan amount but they failed to repay the loan amount as per terms and conditions and therefore, the account was classified as “Non-Performing Asset” (NPA) on 29.06.2019.

6. It is further submitted that respondent no. 1 issued demand notice dated 23.07.2019 u/sec. 13(2) of the SARFAESI Act for an amount Rs. 3,70,42,426/- with future interest thereon w.e.f. 30.06.2019. The applicant and respondent nos. 2 to 9 failed to deposit the loan as per demand notice and they did not reply the notice, nor deposited the loan amount. The respondent no.1 moved application u/s. 14 of the SARFAESI Act, before Learned District Magistrate, Jalna, praying for physical possession of the mortgaged properties, which was allowed on 20.02.2020. As per the order of Learned District Magistrate, Taluka Magistrate and Tahsildar Jalna had issued

notice dated 13.12.2021 for taking physical possession of the mortgaged property. As per possession notice dated 13.12.2021, the physical possession of the property was taken on 18.01.2022 and the applicant did not raise any objection for taking physical possession. After taking physical possession, the respondent no.1 issued auction sale notice dated 07.06.2022, but no bid was received and still the applicant did not raise any objection on the said auction sale notice. Thereafter, the respondent no.1 again issued auction sale notice on 27.06.2022 and sale was scheduled on 20.07.2022. The respondent nos. 10 to 12 participated in the said auction sale and offered highest bid amount of Rs. 1,44,50,000/-, which was accepted and the respondent nos. 10 to 12 declared successful purchasers. They deposited entire sale amount and sale was confirmed and sale certificate was issued, which was registered on 12.08.2022. The possession of the property has also been handed over to the purchasers

(Resp. Nos. 10 to 12). The respondent no. 1 has followed due procedure of law and sold the property to respondent nos. 10 to 12 and there is no any illegality in the action taken by respondent no.1. The applicant was well aware about the possession taken on 18.01.2022 as per notice dated 13.12.2021 and applicant never approached to the respondent bank, as alleged by the applicant. The applicant made false statement regarding missing of page no.4 of the GPA. The respondent no.1 bank never informed to the applicant that they will not provide the details of the property. The demand notice dated 23.07.2019 was duly served upon the applicant through RPAD. The date of NPA is 29.06.2019 and not 30.06.2016, as alleged by the applicant. The respondent no.1 has denied all other allegations of the SA and prayed for dismissal of the SA with costs.

7. The respondent nos. 10 to 12 are auction purchasers and they filed their reply/Written Statement as Exh.-13/Exh.-17 and

contested the Securitization Application on the same lines as contested by respondent no.1 bank. They further submitted that respondent no. 1 has sold the property to present respondent Nos. 10 to 12 in auction sale conducted on 20.07.2022 and Sale Certificate has been registered on 12.08.2022. After conducting sale, applicant has amended the SA and respondent nos. 10 to 12 are made parties. The applicant has not challenged the sale conducted in favour of respondent nos. 10 to 12 and no prayer has been made for setting aside the sale.

8. It is further alleged by the respondent nos. 10 to 12 that respondent no.1 issued auction sale notice dated 27.06.2022 and sale was scheduled on 20.07.2022 and they participated in the said auction sale and gave highest bid of Rs. 1,44,50,000/-, which was accepted and they were declared successful purchasers. They have deposited entire loan amount and sale was confirmed. A sale certificate was issued,

which was also registered on 12.08.2022. The possession of the property has been handed over to them and they have become bona-fide purchasers of the suit property. The respondent bank has followed the due procedure of law and sold the property to the answering respondents and there is no any illegal action has taken by the respondent no. 1/bank. The possession of the said property was given to the replying respondents on 12.08.2022 and the replying respondents using the said property, for their own purpose from the date of possession.

9. The applicant has relinquished all his rights in the said property to Habibuddin Fakrudin Shaikh Tamboli, Mohamad Shahab Qureshi Abdul Rajak and Adnan Khan Amannula Khan by executing notarized document titled “KAYAM HAQQ SODPATRA” dated 03.08.2018 and now the applicant has no concern with the said property and by suppressing all these documents and facts, the applicant has

filed false affidavits and false IA before this Tribunal, whereas the applicant even has not paid earnest money received as per agreement to sell dated 29.08.2019. The respondents have submitted that on 29.08.2019 answering respondents namely Naresh Kishanchand Kelani and Sagar Murarilal Kawna entered into an agreement to purchase the property bearing CTS No. 3399 form Shaikh Naim Shaikh Jafar (present applicant) Adnan Khan Amanula Khan, Habibuddin Fakrudin Shaikh Tamboli and Mohamad Shahab Qureshi Abdul Rajak. This agreement was notarized and was supported by witnesses. All the four parties who had taken Rs. 15 lakhs each as earnest amount and the applicant also executed a relinquishment deed in favour of Adnan Khan Amanula Khan, Habibuddin Fakrudin Shaikh Tamboli and Mohamad Shahab Qureshi Abdul Rajak on 31.07.2018 and the applicant has relinquished his share in the suit property in favour of other three owners. The applicant and respondent

nos. 7 to 9 used to say that they would get the sale deed registered after sometime. Later, it was discovered that the suit property was mortgaged with Chikhali Urban Co-op Bank Ltd. (respondent No.1). Thereafter, the answering respondents asked the applicant and respondent Nos. 7 to 9 and above referred four parties confirmed that property was mortgaged with respondent no. 1. Thereafter, they assured that they are going to release the property from bank after making all the payment and they could execute the sale deed in favour of answering respondents. Thereafter, they came to know that the bank had taken the property into possession. On 29.09.2022 Habibuddin Fakrudin Shaikh Tamboli and Mohamad Shahab Qureshi Abdul Rajak executed one **“Sammattipatra”** in favour of replying respondents and they had given consent to the replying respondents that they have no objection to the auction sale and registered sale certificate

pertaining to the said property in favour of the replying respondents.

10. The respondent nos. 10 to 12 denied all other allegations of the application and prayed for dismissal of the SA with costs.
11. The applicant has filed Rejoinder Affidavit at Exh.-18 alleging that it is also false and baseless to say that an agreement to sale was executed by the applicant in favour of respondent nos. 10 to 12. The applicant has never executed any agreement to sale of the said property in favour of respondent nos. 10 to 12 or anyone else. The applicant has never waived or transferred or conveyed his right to other co-owner i.e. respondent nos. 7 to 9. The applicant is owner of his share in the said property under the impugned auction sale and till today, he owned the said share in the said property. The respondents have created false and fabricated documents to show that the applicant has created 3rd party right only to create the issue of locus of the applicant. The respondent nos.

10 to 12 steps into shoes of the respondent bank since they derived title on the basis of sale through the alleged mortgage deed in which the present applicant shown as mortgagor, therefore the respondent nos. 10 to 12 are estopped from saying that the present applicant has no concern over the suit property which they purchased under the impugned auction sale. Recently on 26.02.2026, the applicant received certified copy of GPA having registration no. 7293/2018 dated 04.12.2018, which shows that alleged page no. 4 as annexed in the mortgage deed is not on the record of the Registrar, which falsify the contention of the respondents that alleged page no.4 of the GPA was traced in the office of Registrar, which is totally false and misconceived statement. The stamp duty only Rs. 500/- does not give any right to transfer or convey the property for consideration of sale as per said GPA and therefore, the execution of mortgage deed on the basis of said GPA is illegal and has no legal force of law.

12. The applicant has produced the following documents on record as per list of documents dated 15.07.2022.:

Sr. No.	Description of document	Date	Exh.
1.	The copy of GPA registered withy sub-Registrar at Jalna at day book sr. no. 7293/2018.	04/12/2018	A1
2.	The copy of Mortgage deed registered with sub-registrar office at Jalna at day book sr. no. 7914/2018.	29/12/2018	A2
3.	The copy of FIR No. 43.	08/02/2022	A3
4.	The copy of auction notice.	07/06/2022	A4
5.	The copy of auction sale notice Received on 7.7.2022.	27/06/2022	A5
6.	The copy of impugned order passed by the District Magistrate at Jalna in case no. 10/2020 dated with application filed by respondent bank and relevant documents attached there under.	24/01/2020	A6 (Colly)
7.	The copy of letter bearing outward No. 2021/ recover/ kavi/Tehsil Officer Jalna issued by the Taluka Magistrate Jalna.	13/12/2021	A7
7A	The copy of the said sale certificate.	12.08.2022	A8

13. The respondent no.1 bank has filed copies of documents along-with written notes of arguments (**Exh.-19**).

14. The respondent nos. 10 to 12 have produced following documents on record: (**Exh.-13**).

Sr. No.	Particulars of Documents	Exhibit
1.	The copy of sale certificate, Taba Pawati	“R-1”(colly)
2.	The copies of relinquishment deed dated 31.07.2018, the agreement dated 29.08.2019 and the consent letter/ samatipatra dated 29.09.2022.	“R-2”(colly)

15. I have heard learned counsel for the parties and gone through the entire material on record as well as written notes of arguments submitted by the parties and my findings along-with reasons are as under:
16. In this case, the applicant claimed himself as neither borrower nor guarantor. The respondent no.1 is bank who advanced the loan to the respondent nos.2&3 (borrowers) on the guarantee of respondent nos. 4 to 6. The respondent nos. 7 to 9 are mortgagors. The respondent nos. 10 to 12 are the auction purchasers.

17. The learned counsel for the applicant argued that the applicant and respondent nos. 7 to 9 are owners of the property allegedly mortgaged to the respondent no.1 through GPA holder respondent no.3 for the loan availed by respondent no.2 borrower. The General Power of Attorney (GPA) nowhere provides right to mortgage the property as not stamp duty as per law on it and the bank has failed to file certified copy of GPA assigned the right to transfer or mortgage to the GPA holder. This argument of learned counsel for the applicant has no weight reason being that applicant himself has produced Registered General Power of Attorney dated 04.12.2018 as Exh.-A1 and claimed that page no.4 of this document is missing from the record of the Sub-Registrar at Jalna. The respondent bank along-with written notes of arguments (Exh.-19) has submitted copy of Registered General Power of Attorney dated 04.12.2018, registered at Sub-Registrar Jalna At Day Book Sr. No. 7293

of 2018 wherein it has specifically mentioned that the General Power of Attorney holder Anujkumar (Respondent No.3) has given right to sell away the property, mortgage, correction of record, for raising loan etc. and details of the property has been mentioned as: CTS No. 3399 having MCH No. 2-8-21,22,23 total area 199.50 Sq. Mtr. situated at Moti Masji, Jalna and bounded as “East Lane/Galli, West CTS No. 3394, North Government Road, South CTS No. 3395 and 3398”. As per mortgaged deed dated 29.12.2018 (Exh.-A2) this very property has been mortgaged to respondent no.1 vide Registered Mortgage deed with sub-Registrar Office at Jalna at “Day Book Sr. No. 7914/2018”. It may be noted here that the respondent no. 7 to 9 have not challenged the Registered General Power of attorney dated 04.12.2018 (Exh.-A1). Therefore, the respondent no.3 as General Power of Attorney holder was competent to mortgage the suit property in favour of the bank.

18. The learned counsel for the applicant further submitted that as the respondent no.3 GPA holder has mortgaged the suit property in favour of respondent no.1, the present applicant being owner of the suit property can challenge the entire proceedings conducted by the respondent no.1 pertaining to the suit property. He further argued that the order passed by the District Magistrate, Jalna on 20.02.2020 (Exh.-A-6 Colly.) is also illegal as the Authorized Officer has not filed affidavit as per Section 14 of the SARFAESI Act and even respondent no.1 bank has not produced copy of affidavit. As per District Magistrate's Order, the Tehsildar was directed to take possession of the suit property but Circle Officer, Jalna in pursuance of letter dated 13.12.2021 took the possession on 18.01.2022, which is also illegal as delegation of power was not permitted. He further submitted that since fraud was committed with the applicant as he never gave power to respondent no.3 to mortgage the suit property and the

applicant filed FIR Exh.-A3 on 08.02.2022, which is still pending for investigation. He further submitted that the possession notice was not published in two news-papers and all the possession proceedings conducted by the respondent no.1 are illegal and liable to be quashed.

19. It is established in this case that applicant and respondent nos.7 to 9 executed Registered GPA in favour of respondent no.3 in respect of the suit property as referred above on 04.12.2018 whereby the respondent no.3 was authorized to sale, mortgage, raise loan on the said property. The respondent no.2 availed cash credit loan facilities of Rs. 1.00 crore with interest @ 14% per annum and working capital loan of Rs. 2.5 crores with interest @ 15% per annum from respondent no.1 bank on 26.12.2018. The present applicant and respondent nos. 3 to 9 are guarantors of the said loan. For the security of the loan, respondent no.2, present applicant and respondent no. 7 to 9 through their GPA executed

Registered Mortgage Deed dated 29.12.2018 (Exh.A-2) in favour of respondent no.1/bank in respect of suit property and the loan was classified as NPA on 29.06.2019. Thereafter, a demand notice under Section 13(2) of the SARFAESI Act was issued on 23.07.2019 for an amount of Rs.3,70,42,426/- with interest thereon, which was served upon borrower and guarantors through RPAD. It may be noted here that the applicant and respondent nos. 2 to 9 never reply or submitted any representation under Section 13(3A) of the SARFAESI Act against the demand notice. The respondent bank moved application under Section 14 of SARFAESI Act, before District Magistrate, Jalna, who passed order on 20.02.2020 (Exh.-A6 Colly.) for taking possession of the suit property. Thereafter Tehsildar, Jalna had issued notice for taking physical possession of the property on 13.12.2021 and physical possession was taken by Tehsildar, which was handed over to respondent No.1 bank on 18.01.2022. It is

worthwhile to mention here that the Tehsildar, Jalna has also issued letter dated 13.12.2021 to Circle Officer, Jalna for seeking assistance in the process of the possession and in this case, it cannot be said that the entire possession process was completed by Circle Officer and not by Tehsildar, Jalna. Therefore, the respondent no.1 bank has taken possession of the secured assets on 18.01.2022 as per provisions of the SARFAESI Act and rules made thereunder. Therefore, argument raised by the learned counsel for the applicant declaring the possession proceedings as illegal is devoid of merits.

20. The learned counsel for the applicant further argued that the auction sale notice was issued on 07.06.2022 (Exh.-A4) and sale was scheduled on 27.06.2022 and without waiting for the first auction sale, on the very same day the second auction sale notice was issued on 27.06.2022 (Exh.-A5), which was received on 07.07.2025 by the applicant scheduled on

20.07.2022 and auction sale notice was not published in 2 leading news-papers and only 13 days' notice was issued to the applicant and other borrowers which violates the mandatory rule 9(1) of the Security Interest (Enforcement) Rules, 2002 (For Short: SI Rules) and the reliance was placed on Judgment *Govind Kumar Sharma & anr. Vs. Bank of Baroda 2024 INSC 326 & Ors. and E. Muthurathinasabathy & Ors. Versus M/s. Sri. International & Ors., 2026 Live Law (SC) 319*. This argument of learned counsel for the applicant is not sustainable reason being that auction notice dated 27.06.2022 was published in Marathi News Paper "Dainik Krushnaniti" and English News Paper "Daily Deshonnati" on 28.06.2022. Since, it was subsequent sale and only 15 days' notice was required in case of subsequent sale. The sale notice was published in News Paper on 28.06.2022, whereas auction held on 20.07.2022 and hence, there is no violation of rule 9(1) of the SI Rules. The

applicant has failed to prove in this case that the auction purchasers did not deposit the amount within stipulated period.

21. The respondent nos. 10 to 12 participated in the auction sale on 20.07.2022 and gave highest bid for an amount of Rs.1,44,50,000/-. They were declared as successful purchasers on 20.07.2022. The auction purchasers deposited the entire sale amount and sale was confirmed and sale certificate (Exh.-A8) was issued and even sale certificate was registered on 12.08.2022. The possession of the mortgaged property was also handed over to the auction purchasers. The property which is sold, was jointly owned by the applicant and respondent nos. 7 to 9, but the respondent nos. 7 to 9 have not objected the action taken by the bank. Therefore, even sale proceedings pertaining to the suit property have been conducted by the respondent no.1 as per provisions of SERFAESI Act and Rules made thereunder and hence,

Govind Kumar Sharma's case (Supra) and E-Muthurathinasabathy's case (Supra) have no bearing on the facts of the present case as the sale process has already been concluded as per provisions of the SARFAESI Act and Rules made thereunder and the same is not liable to be set aside on any of the grounds as alleged by the applicant.

22. The respondent nos. 10 to 12 auction purchasers in their Written Statement have taken the plea that the applicant has already relinquished his right in the said property to Habibuddin Fakrudin Shaikh Tamboli, Mohamad Shahab Qureshi Abdul Rajak and Adnan Khan Amannula Khan by relinquish deed dated 31.07.2018 as well as by way of agreement to sale dated 29.08.2019 and consent letter/samatipatra dated 29.09.2022 (Exh.-R2 colly) in list of document Exh.-13. It is also claimed by the auction purchasers that even the applicant and other co-owners have received earnest money and they have not returned the same.

This Tribunal has no concerned with these documents and the auction purchasers can seek appropriate remedy in the Civil Court for refund of the earnest money paid in view of agreement to sale dated 29.08.2019, but it reflects on the conduct of the applicant that he was co-owner of the suit property along-with respondent nos. 7 to 9, but by filing the present Securitization Application, he has challenged all the proceedings of the respondent no.1 for himself as well as for respondent nos. 7 to 9. When the documents Exh.-R2 colly. was produced by the auction purchasers along-with Written Statement, thereafter the present applicant has filed Rejoinder Affidavit Exh.-18 and claimed that the applicant is owner of his share in the suit property and sought the relief to the extent of his share which is afterthought. More so, when the suit property was mortgaged in favour of respondent no.1 by the applicant and respondent nos. 7 to 9 in view of registered GPA dated 04.12.2018 whereby respondent no.3 was

authorized to sale/mortgage etc., then the claim set up by the applicant in Rejoinder is afterthought. Now the respondent nos. 10 to 12 (auction purchasers) have become bona-fide purchasers for valuable consideration and sale certificate in their favour has already been registered on 12.08.2022 and even possession of the suit property has been handed over to them. Hence, the present Securitization Application filed by the applicant has no substance and the same is liable to be dismissed.

23. In view of above observations and reasoning, I pass the following order.

ORDER

- (A) The Securitisation Application No.295 of 2022 is hereby dismissed with no order as to costs.
- (B) The Interlocutory Application pending, if any, stands disposed off, in terms of the present Judgment.

- (C) The copy of this Judgment be uploaded on the Website of the Tribunal.
- (D) File be consigned to the Record Room.

**Sd/-
(Dr. J.R. Chauhan),
PRESIDING OFFICER,
DEBTS RECOVERY TRIBUNAL,
AURANGABAD**

Place : Aurangabad
Date : 19.06.2026