

Presented on : 26.10.2023
Registered on : 10.11.2023
Decided on : 19.06.2026
Duration : Y M D
02-07-22

**IN THE DEBTS RECOVERY TRIBUNAL
AT AURANGABAD**

SECURITISATION APPLICATION NO. 171 OF 2024

SVC Co-Operative Bank Ltd.

A Multistate Co-Operative Bank, registered under

Multistate Co-Operative Societies Act 2002, having its

Regional Office at Office No.301/302, Sai Trade Centre, Near

Mayors Bunglow, Station Road, Aurangabad-431005

Also having its Branch Office at

Ground Floor, Rajendra Bhawan, Plot No.1, Adalat Road,
Aurangabad.

Through its Authorized Officer Mr. Sachin Ingle

Age: 34 years, Occupation: Service, Having his address for
communication at Office No.301/302, Sai Trade Centre, Near

Mayors Bunglow, Station Road, Aurangabad-431 005

....Applicants

Versus

1. Asset Reconstruction Company (I) Ltd. Ruby,
10th Floor, 29, Senapati Bapat Marg, Dadar(W),
Mumbai-400 014.

Also having its Branch Office at

ARCIL ARMS A-3,
1st floor, Suyash Complex, Kalda Corner,
Aurangabad-431 005

Through its Authorized Officer

2. Mr. Ravi Bhikaji Shinde,
Age: Major, Occupation: Business
Having address for communication at
Shri Gajanan Enterprises, c/o Sasi Enterprises,
D-40/1, MIDC Area, Waluj,
Dist. Aurangabad-431 133.

3. Gajanan Bhikaji Shinde,

Age : Major, Occupation Business,

Having address for communication at

Shri Gajanan Enterprises, c/o Sasi Enterprises,

D-40/1, MIDC Area, Waluj,

Dist. Aurangabad-431 133.

4. Shriram Bhausaheb Gaikwad,

Age : Major, Occupation Business,

Having his address for communication at,

Plot No.92, South City, CIDCO Waluj Mahanagar-II

Aurangabad-431 001

....**Respondents**

APPEARANCE :

Applicants : Mr. Dabholkar Mandar M, Advocate

Respondent No.1 : Mr. Mishra Atul A, Advocate

Respondent Nos.2 to 4 : None present

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

JUDGMENT

(Pronounced on : 19.06.2026)

AN APPLICATION UNDER SECTION 17 OF THE
SECURITISATION AND RECONSTRUCTION OF FINANCIAL
ASSETS AND ENFORCEMENT OF SECURITY INTEREST
ACT.

1. This Securitization Application (S.A.) under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as “SARFAESI” Act) has been filed by the applicant for the following reliefs.

I. All the actions initiated by Respondent No.1 under the provisions of Sec. 13(2), 13(4) and 14 be quashed and set aside.

II. Order dated 14.03.2022 Passed by Ld. District Magistrate- Aurangabad in Application No.36/2019 be quashed and set aside.

III. Notice dated 11.09.2023 issued by Addl. Tahsildar- Aurangabad be quashed and set aside for taking possession of the property at Flat no.A-12, Building A, Dwaraka Nagari, Gut No.52/2, Village Wadgaon Kolhati, Tal. & Dist. Aurangabad.

IV. Respondent No.1 be restrained from taking further recourse to any of the measures under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, in respect of the said property i.e. Flat no. A-12, Building A. Dwaraka Nagari, Gut No.52/2, village Wadgaon Kolhati, Tal. & Dist. Aurangabad.

2. The brief facts of this Securitization Application (SA) are that Respondent No. 2 & 3 allegedly availed credit facilities from the respondent No.1. The respondent no.4 is Bonafide Purchaser with consideration of the property proposed to be seized by Respondent No.1 who is Asset Reconstruction Company. Respondent No.4 is neither a borrower nor a debtor of Respondent No.1. Still, on the basis of some false and misleading

documents, possession is proposed to be taken by the said Respondent No.1. The Respondent No.4 purchased the suit property from Respondent no.3 bearing Flat No.A-12, Building A, Dwaraka Nagari, Gut no.52/2, Village Wadgaon Kolhati, Tal. & Dist. Aurangabad on 23.02.2018 by way of Sale Deed bearing day book Sr. No.1081/2018 registered at the Office of Sub-Registrar-5 at Aurangabad. Subsequent to the execution of Sale Deed in favour of Respondent No.4, complied with the requisite process and vide Mutation Entry No.2443 dated 16.10.2019 duly approved by competent revenue authority on 23.11.2019, the name of the Respondent No.4 came to be entered in the column of ownership in the Revenue Record in respect of the said property under Gut no.52/2 as per 7/12 extract.

3. It is further stated that in or about in February 2021, Respondent No.4 approached to the Bank and seeking credit facility of an amount of Rs.12,50,000/- and the applicant bank sanctioned the credit facility on 15.03.2021 as Retail Mortgage Loan. The

Respondent no.4 created Security Interest in respect of said property in favour of applicant bank by way of Mortgage Deed dated 09.04.2021 registered at the Office of Sub-Registrar at Aurangabad-3 at day book Sr. No.2980/21. Upon execution of Mortgage Deed, the applicant bank registered CERSAI charge on 25.06.2021, bearing security interest ID No.400054785086. The applicant bank is having an exclusive charge over the property and Respondent no.1 does not have any locus to invoke the provisions of SARFAESI Act against the property at Flat No.A-12, Building, Dwarka Nagari, Gut No.52/2, Village Wadgaon Kolhati, Tal. & Dist. Aurangabad.

4. It is further stated by the applicant that Respondent No.4 received information that some Authorized persons came to the property on 20.10.2023 and pasted notice dated 11.09.2023 issued by Addl. Talsildar- Aurangabad thereby intimated and informed that physical possession is scheduled on 25.10.2023 and copy of notice was pasted at the conspicuous part of the property under

the first and exclusive charge of the applicant bank. The applicant after obtaining certified copy of the documents and Ld. District Magistrate order dated 14.03.2022, has filed the present Securitization Application through Authorized Officer of the Bank.

5. It is averred by the applicant that application filed by Respondent No.1 before Ld. District Magistrate is not in accordance with the provisions of law as it does not disclose the mode and manner in which security interest was created. The applicant does not disclose the date of NPA and service of demand notice to the borrower. The application filed by the Respondent no.1 before Ld. District Magistrate was not within the prescribed period of limitation and affidavit filed before the Ld. District Magistrate by the Authorized Officer was not in accordance with the provisions to Sec.14 of SARFAESI Act. The charge of Respondent no.1 was not registered with Central Registry and Respondent no.1 has committed apparent defects for proceeding under section 14 of

SARFAESI Act. The Respondent No.1 has not mentioned the date of NPA neither in the application or in the affidavit. The order of Ld. District Magistrate reflects date of NPA as 11.10.2018.

6. The application moved by Respondent No.1 was silent on the date of execution of mortgage. It only mentions date of execution of documents on 03.02.2014. The security interest of the Respondent No.1 was not found in accordance with this Central Registry on search and therefore all the proceedings conducted by the Respondent no.1 and order of Ld. District Magistrate dated 14.03.2022 are illegal, null and void and liable to be set aside and prayer for allowing the Securitization Application.
7. The Respondent No.1 has filed reply and contested the Securitization Application on the grounds that the Respondent No.1 is Asset Reconstruction Company (1) Limited (hereinafter referred as ARCIL) which is a securitization and reconstruction company registered under the Companies Act as well as with

Reserve Bank of India and under section 3 of SARFAESI Act. The Respondent no.2 & 3 availed loan from India Infoline Finance Limited and the loan account being NPA and transferred in favour of Respondent No.1 by way of Deed of Assignment dated 13.07.2018. The Respondent No.2 & 3 availed loan against property to the extent of Rs.18,75,000/- on 03.02.2014 and they executed loan documents and also mortgaged the property bearing Flat no.A-12, stilt 2nd floor A Building, Dwaraka Nagari, TK Developers, Bajaj Nagar, Gut No.52/2, Wadgaon Kolhati, Tal. Gangapur, Dist. Aurangabad. The Respondent No. 2 & 3 have deposited the original sale deed with the applicant bank bearing day book no.5204/2010 dated 29.06.2010. The Respondent No.2 & 3 were irregular in payment of EMIs and made default in repayment of the said loan which was categorized as NPA on 30.06.2021 (on 30.07.2015 as per Demand Notice).

8. Thereafter, the demand notice under section 13 (2) of the SARFAESI Act was issued on 11.10.2018 in respect of loan facility of Rs.35,17,775/- + interest, expenses and other charges which was served upon the Respondent No.2 & 3, but they did not raise any objection to the notice. The demand notice was also published in “Times of India” and “Loksatta” on 25.10.2018. The respondent No.1 thereafter filed an application on 24.01.2019 before Ld. District Magistrate Aurangabad u/s 14 of SARFAESI Act for taking physical possession of the secured assets and accordingly the Ld. District Magistrate passed order on 14.03.2022 after following the procedure and as per law.
9. Thereafter, Tahsildar issued possession notice dated 11.09.2023 for taking physical possession of the secured assets on 05.10.2023, the Respondent No.4 purchased the said property from Respondent No.3 on 23.02.2018 and that is after the mortgage of the Respondent No.1 which is illegal in the eyes of law. The Respondent No.4 has not challenged the symbolic

possession or the demand notice. Respondent No.4 had knowledge about the action of Respondent No.1 and the present application is filed in collusion with the Respondent No.2 to 4 to delay and defeat the proceedings initiated by Respondent no.1. The Respondent No.1 has denied all other allegations of the application and prayed for dismissal of the Securitization Application with costs.

10. The applicant has filed following documents on record as per list of documents Exh.4.

Sr. No.	Particulars of Documents	Date	Annexure
1.	Power of Attorney executed by Applicant Bank in favor of the Authorized Officer	12.05.2023	A-1
2.	Sale Deed executed by Respondent No.3 in favor of Respondent No.4 registered at the Office of Joint Sub-Registrar-Aurangabad-5 at Day Book Sr.No.1081/2018.	23.02.2018	A-2
3.	Mutation Entry No.2443 depicting name of Respondent No.4 as owner of property in question.	16.10.2019 duly approved on 23.11.2019	A-3
4.	7/12 Extract of Gut No.52/2,	21.10.2023	A-4

	Village Wadgaon Kolhati, Tal. & Dist. Aurangabad		
5.	Index II in respect of Mortgage Deed executed by Respondent No.4 in favor of Applicant Bank depicting document Registered at Day Book Sr. No.2980/2021.	09.04.2021	A-5
6.	CERSAI Debtor Based search in respect of Respondent No.1.	23.10.2023	A-6
7.	Notice Issued By Addl. Tahsildar Aurangabad.	11.09.2023	A-7
8.	Application And Affidavit By Respondent No.1 Filed Before Ld. District Magistrate- Aurangabad Bearing No.36/2019.	24.01.2019	A-8
9.	Order Passed By District Magistrate-Aurangabad	14.03.2022	A-9
10.	CERSAI Debtor Search of Respondent No.3.	23.10.2023	A-10

11. The Respondent No.1 produced CERSAI report vide Diary No.1767/2026. The respondent has also produced alongwith reply copy of Mortgage Deed dated 03.02.2014, Demand Notice dated 11/10/2018, postal receipts and publication of demand notice in newspaper dated 25.10.2018 in Times of India (English) and Loksatta (Marathi).

12. I have heard Learned counsel for the parties and gone through the entire material available on the record. My findings, alongwith reasons are as under.
13. Before proceeding further, it is necessary to make reference of certain facts. The present Respondent No. 2 & 3 availed loan of Rs.18,50,000/- on 03.02.2014 from India Infoline Finance Limited and as per mortgage deed date 03.02.2014, they mortgaged the property bearing Flat No.A-12, stilt 2nd floor, A Building, Dwaraka Nagari, TK Developers, Bajaj Nagar, Gut No.52/2, Wadgaon Kolhati, Tal. Gangapur, Dist. Aurangabad. The original lender namely India Infoline Finance Limited assigned the loan to present Respondent No.1 ARCIL vide Deed of Assignment dated 13.07.2018. The Respondent No.2 & 3 failed to repay the loan amount and the loan account was declared NPA on 30.07.2015. Thereafter, the Respondent No.1 issue Demand Notice u/s 13 (2) of the SARFAESI Act on 11.10.2018 for an amount of Rs.35,17,775/-. The Demand Notice was also

published in two newspapers on 25/10/2018 namely “Times of India” (English) and “Loksatta” (Marathi). In order to seek possession of the secured assets, the Respondent No.1 moved an application u/s 14 of the SARFAESI Act before Ld. District Magistrate on 24.01.2019 and District Magistrate passed an order dated 14.03.2022. In view of the order dated 14.03.2022, Tahsildar issued possession notice dated 11.09.2023 for taking possession of the secured assets on 05.10.2023. There is no evidence produced on record that these proceedings have been challenged by the borrowers Respondent No.2 & 3 but the present applicant namely SVC Co-Operative Bank Limited filed the present Securitization Application on 26.10.2023 challenging all the proceedings of the Respondent No.1 on the ground that Respondent No.4 namely Mr. Shriram Bhausahab Gaikwad has purchased the property from Respondent No.3 namely Mr. Gajanan Bhikaji Shinde vide Sale Deed at Exhibit A-2 dated 23.02.2018 in the list of documents Exhibit-4 registered at Office

of Joint Sub-Registrar, Aurangabad at Day Book Sr. No.1081/2018 and mutation entry and the name of Respondent No.4 was incorporated in the Revenue Record as per documents at Exhibit A-3 and A-4. The Respondent No.3 thereafter availed loan of Rs.12,50,000/- from the present applicant on 15.03.2021 and he executed registered mortgage deed dated 09.04.2021 (Exhibit A-5) in favor of present applicant and charge of the Respondent No.1 over the suit property was not found to be registered as per CERSAI Debtor based report at Exhibit A-6 dated 23.10.2023 as well as, as per CERSAI Debtor search report of Respondent No.3 as Exhibit A-10 dated 23.10.2023.

14. In view of the above factual position, the learned counsel for the applicant argued that the charge of the Respondent No.1 was not found before Registry anywhere as search was made as per report at Exhibit A-6 and Exhibit A-10 in the list of documents Exhibit-4 on 23.10.2023. The Respondent No.4 has purchased the suit property from Respondent No.3 after verifying all the record of

the suit property. When no charge was found on the property, he purchased the same from Respondent No.3 vide registered Sale Deed at Exhibit A-2 dated 23.02.2018 and on the basis of this Sale Deed, mutation entry no.2443 was recorded on 16/10/2019 duly approved by competent authority on 23/11/2019 as per document at Exhibit A-3 and name of Respondent No.4 was incorporated as owner of the property in question in document at Exhibit A-4 dated 21.10.2023 bearing 7/12 extract of Gut No.52/2. The Respondent No.4 had become bonafide purchaser for valuable consideration without notice and thereafter on the basis of the documents, the applicant advanced the loan of Rs.12,50,000/-. The charge of the Respondent No.1 was found not registered anywhere and the proceedings conducted by the Respondent No.1 under SARFAESI Act are not sustainable.

15. On the other side, it was argued learned counsel for Respondent No.1 that the Respondent no.4 has not challenged the SARFAESI proceedings initiated by the Respondent No.1 against Respondent

No. 2 & 3 and only the present applicant being lender of the Respondent No.4 has filed present Securitization Application. The Respondent No.2 & 3 availed loan on 03.02.2014 and the property in question was mortgaged in favor of the original lender vide mortgage deed dated 03.02.2014 and charge of the Respondent No.1 has been registered with Central Registry as per CERSAI report submitted vide Diary No.1767/2026. He further submitted that since the security interest for the property in question was created in favor of Respondent No.1 on 03.02.2014, the Respondent No.3 has sold the property in question to Respondent No.4 on 23.02.2018 and hence, the Respondent No.1 has a prior charge over the suit property. It is further submitted that Respondent No.3 has sold away the property to Respondent No.4 by way of fraudulent manner without permission of the Respondent no.1 and this act of the borrower cannot be protected and present Securitization Application filed by the applicant is liable to be dismissed.

16. Admittedly, the Respondent No.2 & 3 availed loan on 03.02.2014 from India Infoline Finance Limited. This loan was assigned to Respondent no.1 by Deed of Assignment dated 13.07.2018. It is also established that the same property in question was mortgaged in favor of Respondent No.1 vide mortgage deed dated 03.02.2014. It is also established that Respondent no.3 has sold away the property in question to Respondent no.4 vide registered sale deed dated 23.02.2018 (Exhibit A-2). Therefore, the Respondent No.2 & 3 had already mortgaged this property in favor of Respondent No.1 on 03.02.2014 and Respondent No.3 could not sold away the property during existence of this mortgage to any other person without the permission of the Respondent No.1 and they sold the property in question to Respondent no.4 without permission of the Bank which is not permissible and such act of the said borrower cannot be legalized merely because the mutation entry or the name of said vendee has been incorporated in the Revenue

Record. More-so, the Respondent No. 4 had purchased the property in question at his own risk and applicant is at liberty to proceed further against its borrower Respondent No.4 as per law against the other properties of the Respondent No.4. When the security interest in this property was created by Respondent No.2 & 3 in favor of Respondent No.1, then Respondent No.1 has right to proceed further against this mortgaged property to recover its outstanding loan against Respondent no.2 & 3.

17. As per perusal of the CERSAI report produced by Respondent No.1 vide Diary No.1767/2026, date of security interest creation has been given as 26.05.2018 of the Flat No. A-12 which has been shown A-12, A building, stilt 1st floor, in the column of city/town/village mentioned as “not available” but the State of Maharashtra, Pin Code 431 001 has been recorded. The learned counsel for the applicant submitted that Respondent No.1 has produced CERSAI report pertaining to some other property as it does not give complete detail of city/town/village. This argument

of learned counsel for the applicant has not weight reason being that in this report, name of borrower No.1 is recorded as Mr. Gajanan Bhikaji Shinde and name of borrower No.2 as Mr. Ravi Shinde. The Respondent No. 2 to 4 have not contested this application as they did not appear in this case despite service and the CERSAI report submitted by Respondent No.1 must be read in totality which reflects that the charge of the immovable property registered in favor of India Infoline Finance Limited, name of the both borrowers have been recorded and details of property is also rightly mentioned therein. Hence, it is established that the property in question was earlier mortgaged in favor of the original lender of Respondent No.2 & 3.

18. Therefore, from the evidence on record, it is established that the property in question was already mortgaged in favor of Respondent No.1 on 03.02.2014 and the Respondent No.1 is competent to proceed further against the Respondent no.2 & 3 for recovery of their outstanding loan under SARFAESI Act and

rules made there under and present applicant has no superior right over the property in question. Further, the proceedings have not been challenged by borrowers of the both Financial Institutions and therefore, the claim of the applicant is not sustainable and same is liable to be dismissed.

19. For the reasons record above, I pass the following order:

Order

1. The Securitization Application No.171/2024 is hereby dismissed with no order as to costs.
2. The Interlocutory Application, if any, pending stands disposed of in terms of the present Judgment.
3. This Judgment be uploaded on the website of the Tribunal.
4. File to be consigned to record.

Announced in open court.

Date: 19.06.2026.

(Dr. J.R. Chauhan),
PRESIDING OFFICER,
DEBTS RECOVERY TRIBUNAL,
AURANGABAD