

IN THE DEBTS RECOVERY TRIBUNAL-II, BANGALORE

Dated this 19th Day of June, 2026

PRESENT: SHRI T. RAJESH
Hon'ble Presiding Officer

S.A. No. 23 of 2024

BETWEEN:

Mr. Shivaraj Badigar
S/o. Mr. Magappa
Aged about 34 years
Prop: M/s. Lawanya Electricals
Residing at.No.2/B, R.S. No.55/2,
Mallikarjun Nagar, Khasbag,
Belagaum-590001

. . . Applicant

AND:

The Authorised Officer
JANA Small Finance Limited
Reg, Office at, Fairway Business Park,
#10/1, 11/2, 12/2B, Off Domlur,
Koramangala Inner Ring Road,
Next to EGL Business Park,
Challaghatta, Bangalore - 560071

. . . Respondent

Ld. Counsels on record / appeared :-

Counsel for Applicant :- Sri. E. Devaraju
Counsel for Respondent :- M/s. M.G.C. & Co.,

: - O R D E R - :

1. This Securitization Application, SA is filed under section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act; herein after been referred to as SARFAESI Act or the Act, where in the possession notice is under challenged by the applicant, the contends as follows.

2. The applicant had availed housing loan of Rs.38,00,000/- in the year 2020, which was repayable in 180 monthly EMIs. It also contended that apart from the covid period, the applicant had been making regular EMIs and without following the mandate of RBI and without taking note of the fact that, the default occur only during Covid, the respondent had classified the account as NPA. It is also stated that, no demand notice is served on the applicant before issuance of possession notice. In the grounds to the SA also, the applicant is reiterating the contention as to the alleged non service of demand notice and also non affixture of the possession notice. It is also stated that, in the redemption clause as mandated as per the statute is not included in the possession notice and on that ground the applicant submits that, the possession notice is liable to be set aside. The applicant is also having a case that, the due amount as mentioned in the possession notice is exorbitant and the said amount is not due in the account. Another contention is taken by the applicant is that, the date of issuance of demand notice is not mentioned in the impugned possession notice. Along with SA, the applicant has produced the possession notice dated 21.12.2023.

3. The respondent had filed their objections, contending that the SA is not maintainable either in law or on facts. The respondent had also explained as to the availment of credit facility and as to the creation of security interest including the registration of secure asset with Central Registry. It is stated that, since the applicant had failed to pay back the

SA/23/2024

amount and became a defaulter, the account has been classified as NPA on 01.10.2023 and the demand notice dated 18.10.2023 was issued. It is also stated that, the said notice was sent through RPAD. The respondent also contends that, the demand notice also published as mandated under the statute. Since no repayment was forthcoming the impugned possession notice is issued which is also published and affixed as mandated under the statute. Hence according to the respondent, the measures initiated and continued leading to the impugned possession notice is in accordance with the statute. Along with the objections, the respondent had filed the following documents:

- i. Power of Attorney
- ii. Loan application dated 06.11.2020
- iii. Sanction letter dated 14.12.2023
- iv. Loan agreement dated 14.12.2020
- v. Registered Memorandum of Entry dated 28.01.2021
- vi. CERSAI details dated 15.12.2020
- v. Demand notice dated 18.10.2023
- vi. postal receipts
- vii. Paper publications dated 20.10.2020
- viii. possession notice dated 21.12.2023
- ix. Postal receipts

x. Postal Track Consignment

xi. Paper publication dated 26.12.2023

xii. photographs showing the affixture

4. Heard the counsel for both sides and perused the records.

5. The only issue gone into is as to the validity of the measures leading to the impugned possession notice.

6. Since the applicant is not disputing the sanctioning, disbursement and creation of security interest, the first dispute that is to be decided is as to the alleged classification of the NPA which according to the applicant is only due to defaults caused during covid period wherein the Government had issued moratorium. Even though such a specific contention as to the so claimed repayment is made, no scrap of paper evidencing the so claimed remittance forth coming along with the SA. In the absence of any evidence as to the so claimed repayments, much less any repayment this Tribunal is not ready to accept the contention of the applicant as to their claim as to the prompt repayments.

7. The applicant had specifically taken a contention that the demand notice not served on them. Despite, the said contention the respondent only produced the postal receipts evidencing the issuance of demand notice and also the publication. Whether the above procedure followed by the respondent to fulfill the mandate of Rule 3 is to be looked into in view of

the plain language of Rule 3 Security Interest (Enforcement) Rules which reads as follows:

Section 3 in The Security Interest (Enforcement) Rules, 2002

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] [Inserted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).] 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 acknowledgment 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 authorized 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 cannot 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.

(2) Where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate as specified under sub-rule (1).

(3) Any other notice in writing to be served on the borrower or his agent by authorized officer, shall be served in the same manner as provided in this rule.

(4) Where there are more than one borrower, the demand notice shall be served on each borrower.

(5) [The demand notice may invite attention of the borrower to provisions of sub-section (8) of section 13 of the Act, in respect of time available to the borrower, to redeem the

SA/23/2024

secured assets.] [Inserted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]

8. Going by the mandate of Rule 3 can be seen that the Proviso to Rule 3 mandates that, if the Authorize Officer is of the opinion or belief that, the borrower or his agent is avoiding the service, the same has to be affected 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 resides(Emphasis supplied). In the case in hand though the mandates as to the publication of demand notice is complied, no proof as to the compliance as to the affixture of demand notice on the place of residence of the borrower is forth coming. The mandate of the provision which mandates that, the provisions which mandates the affixture of demand notice on the residence of the borrower is important as the said provision is mandated to let the borrower aware as to his default and the noncompliance of the same is fatal.

9. In view of the absence of any proof as to the affixture of the demand notice and as to the due service of the demand notice the only finding that can entered is that, there is no due compliance of Rule 3 of the Security Interest (Enforcement) Rules.

10. Even though the respondent had produced the proof as to compliance of Rule 8 (1) and 8(2) as the postal receipt evidencing the issuance, publication and affixture of possession notice is forth coming, the same are not resorted to in view of the earlier finding entered by this

Tribunal as to non-compliance of Rule 3 which is the root cause of initiation of measures.

11. The discussion as held above and findings had entered therein leads to the conclusion that, the very initiation of measures by issuance of demand notice is without following mandatory provisions, which vitiates the entire proceedings leading to the issuance of impugned possession notice and hence the applicant had succeeded in proving that the measures initiated and continued by the respondent are not in accordance with the statute.

12. The only conclusion that can be entered into in view of the finding as to the non-compliance of Rule 3 is that the applicant is entitled to succeed in his challenge as to the measures.

13. In view of the above SA.No.23/2024 stands allowed.

(i) The measures initiated and continued to the issuance of impugned possession notice is found to not in order and is hereby set aside.

(ii) It will be open for the respondent to re-initiate the measures if the account continues to be a NPA and if they are otherwise entitled.

(iii) In the fact and circumstances of the case, no order as to costs this order.

(iv) All pending IAs stand closed. The parties to bear their respective costs. Copy of this order be communicated to the parties concerned.

SA/23/2024

(Dictated to the Stenographer (PR), after her transcription and necessary corrections, signed and Order passed on this 19th day of June 2026)

**(T. RAJESH)
PRESIDING OFFICER**