

Fair Order



IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 25th DAY OF JUNE 2026

PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No. 290/2023 &
Connected SA No. 271/2025

1. R.Subramonian,
S/o. Late. S. Ramaswamy Achary,
1-6/2, Lakshmi Vilasam,
Katcherinadai, Kollem code,
Kanyakumari – 629 160. --- Applicant

-Vs-

1. The Chief Judicial Magistrate,
Kanyakumari District at Nagercoil --- 1st Defendant

2. The Authorized Officer,
State Bank of India,
Stressed Assets Recovery Branch,
LMS Compound,
Opposite to Museum West Gate,
Vikas Bhavan Post,
Thiruvananthapuram – 695 033,
Kerala. --- 2nd Defendant

Appearance of Advocates:

M/s. V.Vadivelan & S.Suresh --- ***Counsels for the Applicant***

Mr. P. Pethu Rajesh --- ***Counsel for the 2nd Defendant Bank***

The 1st Defendant is none other than the Ld. CJM, Kanyakumari District

These both SAs were heard together in the presence of Counsels for the Applicants and the 2nd Defendant Bank and both SAs together have been fixed for passing final order before me as both cases aroused out of same cause of action and upon hearing the arguments of the Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

ORDER

1. a. SA No. 290/2023: This Application has been filed under Sec. 17(1) of the SARFAESI Act, 2002 by the Applicants praying that this Hon'ble Tribunal may be pleased to call for the records pertaining to the initiation of proceedings under the SARFAESI Act, 2002, ending with the impugned order passed by the 1st Defendant in Cr.M.P. No. 7284 of 2023 dated 16.06.2023 under Section 14 of the SARFAESI Act against the Applicant and the schedule-mentioned properties on the file of the Defendant Bank, and quash the same and restore encumbrance-free possession to the Applicant.

Further in

b. SA 271/2025: This Application has been filed under Sec. 17(1) of the SARFAESI Act, 2002 by the Applicants praying that this Hon'ble Tribunal may be pleased to call for the records pertaining to the initiation of proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ending with the impugned order passed by the Chief Judicial Magistrate, Kanniyakumari District at Nagercoil, in Cr.M.P. No. 802 of 2025 dated 29.03.2025 under Section 14 of the SARFAESI Act against the Applicant and the schedule-mentioned properties on the file of the Defendant Bank, and quash the same and restore encumbrance-free possession to the Applicant.

2. The brief averments of the Application filed by the Applicant is as follows:-

a) The Counsel for the Applicant submitted that, he is the Managing Partner of Sriram Jewellers situated at Kollencode Village, Vilavancode Taluk, Kanyakumari District. The applicant's jewellery shop is an ISO 9001:2015 certified establishment dealing in BIS Hallmarked jewellery and has been engaged in the jewellery business since 1956. The applicant has been a customer of SBT since January 2006. Initially, the applicant had availed a CC loan of Rs.1.45 crore from SBT, Parassala Branch, and SBT increased the applicant's CC limit to Rs.10 crore. Thereafter, upon the merger of SBT with SBI, the applicant's loan account was shifted to SBI, Parassala Branch, and the Cash Credit limit was reduced to Rs.9.75 crore. The applicant had been regularly paying the dues to SBI, Parassala Branch without any default. While so, in November 2016, the Government announced demonetization and, in July 2017, implemented GST. Due to demonetization and the implementation of GST, the applicant sustained huge losses in business. Hence, the applicant requested SBI, Parassala Branch to convert the Cash Credit loan into a Loan Against Property. However, there was no response from the bank. In July 2019, without the knowledge of the applicant, the applicant's loan account was shifted to the Commercial Branch, Thiruvananthapuram, which is 45 kilometres away from the applicant's jewellery shop. Hence, the applicant could not operate the loan account at the Commercial Branch, Thiruvananthapuram. Therefore, the applicant periodically requested the Commercial Branch, Thiruvananthapuram to shift the loan account to Parassala Branch. Under such circumstances, in November 2019, the bank opened a sub-account at Parassala with a Cash Credit limit of Rs.1 crore. However, the bank failed to issue a cheque book. After repeated requests made by the applicant, the

cheque book was issued in February 2020. Due to the delay, the applicant sustained considerable loss in business.

- b) It is submitted that, due to the lockdown, the applicant sustained huge losses in business. Hence, the applicant requested the bank to sanction a GECL loan as announced by the Government. After repeated requests, the Commercial Branch, Thiruvananthapuram sanctioned a GECL loan of Rs.1.90 crore. Upon sanction of the GECL loan, the Commercial Branch, Thiruvananthapuram reduced the Cash Credit limit to Rs.8 crore. The applicant had also availed a Term Loan of Rs.20 lakhs. Consequently, the Cash Credit limit was reduced to Rs.6.80 crore. Owing to the losses sustained during the Covid-19 pandemic, the applicant periodically requested the Commercial Branch, Thiruvananthapuram to convert the Cash Credit facility into a Term Loan. However, the bank did not accede to the request. Thereafter, with the intention of closing the loan account, the applicant requested a One Time Settlement. In response, the Defendant Bank insisted that the applicant pay 25% of the outstanding amount. Accordingly, during September and October 2022, the applicant paid nearly Rs.2.50 crore. Even then, the bank rejected the applicant's request for a One Time Settlement for reasons best known to it.

- c) It is further submitted that, while so, the applicant's loan account was classified as a Non-Performing Asset on 06.12.2022. Thereafter, on 23.12.2022, the applicant's loan account was migrated to the file of the Defendant Bank. The following loan accounts are presently maintained with the Defendant Bank:

FACILITY	ACCOUNT NUMBER	AMOUNT AVAILED (in Rupees)
Cash Credit	67007035020	6,80,00,000

Cash Credit	38771176339	1,00,00,000
Term Loan	40095737518	20,00,000
GECL	39759792404	1,90,00,000
	TOTAL	9,90,00,000

d) It is further submitted that, under the circumstances, a demand notice dated 17.01.2023 under Section 13(2) of the SARFAESI Act was issued for recovery of Rs.7,86,54,927/-. In response, the applicant submitted a reply dated 07.02.2023 seeking time to settle the dues. However, the 2nd Defendant issued a possession notice dated 23.03.2023 for recovery of Rs.8,14,27,051/-. Aggrieved by the possession notice, the applicant filed W.P.(C) No.12431 of 2023 before the Hon'ble High Court of Kerala at Ernakulam. By order dated 05.04.2023, the Hon'ble High Court directed the applicant to approach the Bank within three weeks with a proposal for closure of the loan account. The Bank was directed to communicate its decision on such proposal within one month thereafter. The Hon'ble High Court further directed the Bank not to dispossess the applicant for a period of two months to facilitate a decision on the proposal. In compliance with the said order, the applicant submitted a proposal for closure of the loan account. However, the Defendant Bank rejected the same. The applicant has always been willing and interested in settling the loan account, but the Defendant Bank did not accede to the applicant's requests. Thereafter, the 2nd Defendant filed Cr.M.P. No.7284 of 2023 under Section 14 of the SARFAESI Act before the 1st Defendant, and the same was allowed on 16.06.2023. The applicant was not aware of the impugned order dated 16.06.2023 passed by the 1st Defendant. Under such circumstances, on 20.07.2023, the Defendant Bank, along with an Advocate Commissioner, approached the applicant's jewellery shop

to take physical possession of the property. The Advocate Commissioner attempted to take possession without issuing any notice to the applicant. The impugned order was passed without following the due procedure prescribed under the SARFAESI Act.

- e) It is further submitted that, Challenging the order passed in Cr.M.P. No. 7284 of 2023 dated 16.06.2023, the applicant filed S.A. No. 290 of 2023 before this Hon'ble Tribunal. This Hon'ble Tribunal, by order dated 31.07.2023, was pleased to grant interim stay subject to payment of 40% of the claim amount, i.e., Rs.8,14,27,051/-, in five equal instalments as mentioned hereunder:

Installment	Date (on or before)	Amount
1 st installment	31.08.2023	Rs.65,15,000/-
2 nd installment	30.09.2023	Rs.65,15,000/-
3 rd installment	30.10.2023	Rs.65,15,000/-
4 th installment	29.11.2023	Rs.65,15,000/-
5 th installment	29.12.2023	Rs.65,15,000/-

- f) It is further submitted that, he could pay only the 1st and 2nd instalments, amounting to Rs.1,30,30,000/-. Upon payment of the said two instalments, the applicant's loan accounts, namely Cash Credit Sub Limit Account No. 38771176339 and WCTL Account No. 40095737818, were closed. Since the applicant failed to pay the 3rd to 5th instalments, the interim stay granted by this Hon'ble Tribunal stood vacated. Thereafter, the Defendant issued sale notices dated 04.04.2024 and 30.04.2024. Challenging the said sale notices, the applicant filed S.A. No. 329 of 2024 before this Hon'ble Tribunal. However, the same was closed as infructuous since the sale was not conducted. Subsequently, the Defendant issued another sale notice dated 26.06.2024 for recovery of Rs.8,98,18,781/-. However, the

sale was not held. In the meanwhile, when Cr.M.P. No. 7284 of 2023 was listed for hearing on 31.07.2024, the Bank failed to inform the Court whether the entire debt had been discharged or not. Consequently, the learned Chief Judicial Magistrate came to the conclusion that the applicant had discharged the debt and closed Cr.M.P. No. 7284 of 2023, with liberty to the Bank to file a fresh petition if any debt remained outstanding.

- g) It is further submitted that, the defendant brought 5 items of the mortgaged properties out of 6 items for auction. The jewellery shop alone was not brought for auction. Even as per the sale notices issued by the 2nd Respondent, the reserve price of the 5 items is Rs.11,53,00,000/-. As per the latest sale notice dated 26.06.2024, the outstanding amount is Rs.8,98,18,781/-. As per Rule 8(5) of the Security Interest (Enforcement) Rules, 2002, the Bank may sell the whole or any part of the immovable secured assets to realize the outstanding amount. Hence, the 5 items of the mortgaged properties are more than enough to realize the outstanding amount. Even then, the Defendant filed Cr.M.P. No.802 of 2025 before the Chief Judicial Magistrate, Kanyakumari District at Nagercoil under Section 14 of the SARFAESI Act to take possession of the jewellery shop in order to disturb the applicant's livelihood. The learned CJM, by order dated 29.03.2025, allowed Cr.M.P. No.802 of 2025 and appointed Mr. N.S. Premkumar as Advocate Commissioner to take physical possession of the property. On enquiry, the applicant came to know that the Advocate Commissioner, Mr. N.S. Premkumar, is a panel advocate for the State Bank of India. Hence, the Advocate Commissioner will certainly be biased in favour of the Defendant and cause injustice to the applicant. Therefore, the applicant presented a memo dated 03.04.2025 before the Chief Judicial Magistrate seeking to change the Advocate Commissioner. However, the learned CJM returned the memo. The impugned order was passed without following the due

procedure laid down under the SARFAESI Act. Hence, the applicant prefers the present S.A. challenging the impugned order passed by the Chief Judicial Magistrate, Kanyakumari District at Nagercoil on the following grounds:

- The impugned order dated 16.06.2023 passed by the 1st Defendant and the entire measures initiated under the SARFAESI Act are arbitrary, illegal, contrary to law, unsupported by evidence, and therefore liable to be set aside.
- The Defendant wrongly classified the applicant's account as a Non-Performing Asset (NPA). The classification was not in accordance with the RBI guidelines.
- The mortgaged properties are worth approximately Rs.70 crore, which is far in excess of the outstanding liability. The properties are situated in prime locations within the city. One of the mortgaged properties houses a running jewellery shop. Moreover, instead of granting a reasonable opportunity to the applicant, the Bank issued the notices with a view to selling the properties for an amount far below their actual value and with mala fide intent.
- The Defendant Bank has not obtained a fresh valuation report before bringing the secured asset for sale, as required under Rule 8(5) of the Security Interest (Enforcement) Rules, 2002.
- Statement of Accounts Not Furnished: The applicant further submits that the Defendant Bank has not furnished the complete statement of accounts, as certain credit entries are not reflected therein. Hence, the Defendant Bank may be directed to produce and furnish the complete statement of accounts.

- It is submitted that, at the time of sanction of the loan, the Defendant Bank obtained the applicant's signatures on blank papers and pre-filled forms. The applicant was kept in the dark regarding the purpose for which those documents were obtained and the manner in which they were subsequently used.
- It is submitted that the Defendants have failed to mention the particulars of the loan availed, the particulars of the guarantee, the details of the documents executed, and the name of the Authorized Officer in the demand notice issued under Section 13(2) of the SARFAESI Act as well as in the possession notice.
- It is submitted that the interest levied by the Defendant Bank is contrary to the principles and guidelines issued by the Reserve Bank of India. The Defendant Bank is not entitled to charge penal interest in the manner claimed by it. The Defendant Bank has charged interest at the rate of 17.5%, whereas the loan was originally sanctioned at an interest rate of 9.9%.
- It is submitted that the Defendant Bank failed to publish the notices in two newspapers having wide circulation in the locality where the secured properties are situated and also failed to upload the possession notice on its official website, as required under Rule 8(2) of the Security Interest (Enforcement) Rules, 2002.
- It is submitted that the 1st Defendant ought to have considered that, under Section 14(1) of the SARFAESI Act, the secured creditor is required to file an affidavit affirming compliance with the statutory requirements. The 1st Defendant ought to have satisfied himself regarding such compliance before passing an order granting assistance. In the present case, the grievance raised by the applicant was not properly considered or disposed of. Therefore, the 2nd

Defendant was not justified in obtaining an order under Section 14 of the SARFAESI Act. Consequently, the impugned order is contrary to the principles of natural justice and is liable to be set aside.

- It is submitted that the 1st Defendant, being a statutory authority, ought to have exercised his powers in a fair, reasonable, and transparent manner. However, the 1st Defendant passed the impugned order in a mechanical manner without proper application of mind. Further, the 1st Defendant failed to comply with the proviso to sub-section (1) of Section 14 of the SARFAESI Act.
- It is submitted that the intention of the finance company is only to prolong the proceedings so as to increase the outstanding liability by continuing to levy higher interest and thereby make the entire property liable for satisfaction of the alleged dues.
- It is submitted that the Guidelines on Fair Practices Code issued by the Reserve Bank of India are binding on the 2nd Defendant. The said guidelines require the lender to provide reasonable notice to the borrower before taking any decision to recall the loan or accelerate repayment of the outstanding dues.
- It is submitted that the applicant had submitted applications seeking One Time Settlement on various occasions. However, the Defendant Bank failed to consider and dispose of the said applications in a fair and reasonable manner.
- It is submitted that the Defendant has not registered the mortgage with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) established under Section 20 of the Act. The Government of India, Ministry of Finance, had directed banks as early as 2011 to register all mortgages with the Central

Registry. However, the Defendant failed to comply with the said requirement for reasons best known to it.

- It is submitted that the Reserve Bank of India directed banks to grant a moratorium on loan repayments falling due between 01.03.2020 and 31.08.2020. Further, the Hon'ble Supreme Court, in Small Scale Industrial Manufacturers Association (Regd.) Vs Union of India & Others, reported in (2021) 8 SCC 511, held that penal interest shall not be levied during the moratorium period. However, the Defendant Bank has levied penal interest during the moratorium period, which is contrary to the directions of the Reserve Bank of India and the law laid down by the Hon'ble Supreme Court.
 - It is submitted that the 2nd item of the mortgaged property is a running jewellery shop in which more than 20 employees are employed. The jewellery shop is the sole source of income of the applicant. If the Respondent Bank takes physical possession of the jewellery shop, it would seriously affect the livelihood of the applicant as well as the employees working therein.
 - It is pertinent to point out that, as per Rule 8(5) of the Security Interest (Enforcement) Rules, 2002, the Respondent Bank may sell the whole or any part of the immovable secured assets to realise the outstanding dues. Therefore, the Bank can proceed against the other mortgaged properties, excluding the jewellery shop, for recovery of the outstanding amount.
- h) It is submitted that the learned Chief Judicial Magistrate ought to have noted that the Defendant Bank, in its petition, had sought relief only in respect of the 2nd item of the mortgaged property. However, the order was passed in respect of all the properties. Hence, the order of the learned Chief Judicial Magistrate is bad to that extent and is

liable to be set aside. Further, the action of the Defendant is hit by the principles of res judicata.

In the Written Argument, the Ld. Counsel appearing on behalf of Applicant has submitted that,

- i. The applicant has paid the 1st and 2nd instalments within the time frame fixed by this Hon'ble Tribunal. Upon payment of the 1st and 2nd instalments, two out of the four loan accounts were closed. As the applicant could not mobilize funds to pay the 3rd instalment within the stipulated time, he filed I.A. No. 2446 of 2023 in S.A. No. 290 of 2023 seeking extension of time. At the request of the respondent bank for filing a counter in I.A. No. 2446 of 2023, the matter was adjourned to 06.11.2023. Pending disposal of the extension petition, the respondent bank proposed to take physical possession of the mortgaged property on 01.11.2023. There are six items of mortgaged properties, and Item No. 2 is the applicant's jewellery shop. More than 20 employees are working in the said shop, which is the sole source of income for the applicant. If the respondent bank takes physical possession of the jewellery shop, it would adversely affect the livelihood of the applicant as well as his employees.
- ii. The 1st item of the mortgaged property, measuring 163.625 cents, has a value of Rs. 16.40 crores, which is more than sufficient to cover the outstanding liability. As on 10.10.2023, the total outstanding amount was only Rs. 7.80 crores, excluding legal expenses. Hence, the applicant hereby gives consent to the respondent bank to sell the 1st item of the mortgaged property at the prevailing market value for recovery of the outstanding dues.
- iii. Since the Applicant's business falls under the MSME sector, the Defendant Bank ought to have conducted a viability study before

classifying the loan account as NPA. Hence, the NPA classification is bad in law, and the Defendant Bank has no right or jurisdiction to invoke the provisions of the SARFAESI Act.

- iv. The Hon'ble Supreme Court, in its recent decision in the case of **M/s. Pro Knits v. Board of Directors of Canara Bank** and batch cases, has clearly held that the classification of an MSME account as NPA without complying with the applicable RBI guidelines and without undertaking the prescribed viability assessment is unsustainable in law.

“...Instructions/Directions issued by the Central Government under Section 9 of the MSME Act and by the RBI under Section 21 and Section 35A have statutory force and are binding to all the Banking Companies.”

- v. Hence, the classification of the Applicant's MSME loan account as NPA on 06.12.2022 is bad in law, and the Defendant Bank has no right to proceed against the Applicant under the SARFAESI Act, 2002. The letter dated 08.12.2022 relied upon by the Defendant Bank does not come to its rescue or cure the defect, as the said letter was obtained after the loan account had already been classified as NPA on 06.12.2022. As per the MSME guidelines, RBI notifications, and the judgments of the Hon'ble Supreme Court and the Hon'ble High Courts, the Bank ought to have constituted the requisite committee before classifying the loan account as NPA and referred the account to such committee to explore the possibility of restructuring. Admittedly, no such exercise was undertaken in the present case. Therefore, the Defendant Bank cannot take shelter under the subsequent letter obtained from the Applicant after the classification of the account as NPA.

vi. Further, The Sale Notice dated 19.02.2024 issued by the Defendant Bank (Defendant Bank Typeset Pages 99–100) clearly shows that the Bank has sufficient security and can bring those two properties for sale, as the reserve price fixed for the said properties is Rs.10,11,00,000/-. The outstanding loan amount at the relevant time was only Rs.8,37,10,788/-. Thereafter, the Defendant Bank issued various sale notices. As per the Sale Notice dated 13.08.2024 (Defendant Bank Typeset Pages 109–112), the Defendant Bank reduced the reserve price of the properties, and the value of Sl. No. 1A and B properties was fixed at Rs.9,10,00,000/-. Therefore, the Defendant Bank can proceed against those properties, which are sufficient to enable the Bank to recover the outstanding dues. The Applicant is also willing to give consent for bringing those properties for sale.

SCHEDULE OF IMMOVABLE PROPERTY

Item No.1

All the part and parcel of property consisting of 163.625 cents of land in Re. Sy. No. 284/4 of Kollencode Village, Vilavancode Taluk, Kanyakumari District.

Boundaries:

East: Road

South: Property of Palamoni

West: Property of Gomathi Amma

North: Property of Krishnan Asari

Item No.2

All the part and parcel of property consisting of 21 cents of land and building in Re. Sy. No. 197/6 and 197/12, Kollencode Village, Vilavancode Taluk, Kanyakumari District.

Boundaries:

East: Property of Lekshmanan

South: Property of Dasayyan

West: Road

North: Property of Damodaran Nair

Item No.3

All the part and parcel of property consisting of 31.962 cents of land in Re. Sy. No. 271/2A of Kollencode Village, Vilavancode Taluk, Kanyakumari District.

Boundaries:

East: Property of Thankayyan Nadar

South: Property of Bhagavathy Pillai and Vazhy

West: Property of Thankaraj

North: Property of Subramanian and Kochappi

Item No.4

All the part and parcel of property consisting of 5.00 cents of land in Re. Sy. No. 197/3B of Kollencode Village, Vilavancode Taluk, Kanyakumari District.

Boundaries:

East: Property of Rajan

South: Property of Damodaran Nair

West: Parassala Kollencode Road

North: Property of Manoharan

Item No.5

All the part and parcel of property consisting of 36 cents of land in Re. Sy. No. 197/10 of Kollencode Village, Vilavancode Taluk, Kanyakumari District.

Boundaries

East: Property of Sreekantan Nair

South: Property of Vishalakshi and Madhavan Asari

West: Parassala Kollencode Road

North: Property of Pankajakshan Thampi

Item No.6

All the part and parcel of property consisting of 9.386 cents of land in Re. Sy. No. 271/2-A, 271/2 of Kollencode Village, Vilavancode Taluk, Kanyakumari District.

For Property in R.S. No. 271/2

Boundaries

East: Property of Vishalakshi

South: Property of Thankaraj

West: Property of Chinnappa

North: Property of Dharmarajan

For Property in R.S. No. 271/2A

Boundaries:

East: Property of Kochappi

South: Property of Vishalakshi

West: Property of Dharmarajan

North: Property of Yesudas

The Applicant has submitted the following consolidated typed set of papers in support of his claim in the SA, which are as follows: (SA No. 290 of 2023)

SI.No.	Date	Documents / Annexure
1.	31.12.2022	Calculation of excess interest charged by the Defendant Bank
2.	17.01.2023	Demand Notice issued by the Defendant Bank under section 13(2) of the SARFAESI ACT
3.	07.02.2023	Reply given by the Applicant for Demand Notice
4.	16.02.2023	Statement of Account for account number 67007035020
5.	16.02.2023	Statement of Account for account number 38771176339

6.	23.03.2023	Possession Notice issued by the Defendant Bank under section 13(4) of the SARFAESI ACT
7.	05.04.2023	Order passed in Writ Petition(C) No.12431 of 2023 on the file of the Hon'ble High Court of Kerala at Ernakulam
8.	19.04.2023	Statement of Account for account number 40095737818
9.	19.04.2023	Statement of Account for account number 3975972404
10.	23.04.2023	Proposal submitted by the Applicant for One Time Settlement
11.	25.04.2023	Reply Notice issued by the 2 nd Defendant
12.	03.05.2023	Statement of Account for account number 67007035020
13.	03.05.2023	Statement of Account for account number 38771176339
14.	16.06.2023	Impugned order passed by the 1 st Defendant in Cr.M.P.No.7284 of 2023
15.	----	PAN Card of the Applicant

Typed set of papers dated 27.09.2023

S.No.	Date	Particulars
1.	31.07.2023	Order passed in I.A No.1369 of 2023 in SA No.290 of 2023 on the file of this Hon'ble Tribunal
2.	25.08.2023	Proof of payment of Rs.65,15,000/- towards 1 st installment with covering letter
3.	26.09.2023	Proof of payment of Rs.30,00,000/- towards 2 nd installment

Typed set of papers dated 31.10.2023

S.No.	Date	Particulars
1.	07.07.2019	Circular issued by the Reserve Bank of India
2.	08.07.2023	Circular issued by the Reserve Bank of India
3.	31.07.2023	Order passed in I.A No.1369 of 2023 in SA No.290 of 2023 on the file of this Hon'ble Tribunal
4.	25.08.2023	Proof of payment of Rs.65,15,000/- towards 1 st installment with covering letter
5.	01.09.2023	Representation given by the Applicant to the Defendant Bank for restructure

6.	26.09.2023	Proof of payment of Rs.30,00,000/- towards 2 nd installment
7.	29.09.2023	Proof of payment of Rs.35,15,000/- towards 2 nd installment
8.	30.09.2023	SMS received from the Defendant Bank
9.	07.10.2023	Representation given by the Applicant for return of document.
10.	10.10.2023	Reply given by the Defendant Bank.

Additional typed set of papers dated 01.11.2023

Sl.No.	Date	Description
1.	20.01.2023	Valuation Report for the mortgaged property
2.	30.10.2023	Proceedings in SA. No. 290 of 2023 on the file of this Hon'ble Tribunal

The Applicant has submitted the following consolidated typed set of papers in support of his claim in the SA, which are as follows: (SA No. 271 of 2025)

S.No.	Date	Nature of Documents
1.	17.01.2023	Demand Notice issued by the Defendant Bank under section 13(2) of the SARFAESI ACT
2.	07.02.2023	Reply given by the Applicant for Demand Notice
3.	23.03.2023	Possession Notice issued by the Defendant Bank under section 13(4) of the SARFAESI ACT
4.	05.04.2023	Order passed in Writ Petition(C) No.12431 of 2023 on the file of the Hon'ble High Court of Kerala at Ernakulam
5.	16.06.2023	Order passed by the Chief Judicial Magistrate, Kanniyakumari District at Nagercoil in Cr.M.P.No.7284 of 2023
6.	31.07.2023	Interim Order passed in SA.No.290 of 2023 on the file of this Hon'ble Tribunal
7.	01.09.2023	Representation given by the Applicant to the Defendant Bank for restructure
8.	26.09.2023	Proof of payment of Rs.30,00,000/- towards 2 nd installment
9.	29.09.2023	Proof of payment of Rs.35,15,000/- towards 2 nd installment
10.	04.04.2024	Sale Notice issued by the Defendant Bank
11.	04.04.2024	Sale Notice issued by the Defendant Bank

12.	30.04.2024	Sale Notice issued by the Defendant Bank
13.	07.05.2024	Reply given by the Defendant Bank.
14.	20.06.2024	Sale Notice issued by the Defendant Bank
15.	26.06.2024	Sale Notice issued by the Defendant Bank
16.	31.07.2024	Order passed by the Chief Judicial Magistrate, Kanniyakumari District at Nagercoil in Cr.M.P.No.7284 of 2023
17.	16.12.2024	Affidavit and Petition filed by the Defendant Bank in Cr.M.P.no 802 of 2025 on the file of the Chief Judicial Magistrate, Kanniyakumari District at Nagercoil
18.	28.03.2025	Order passed by the Chief Judicial Magistrate, Kanniyakumari District at Nagercoil in Cr.M.P.No.802 of 2025
19.	03.04.2025	Memorandum filed by the Applicant herein in Cr.M.P.No.802 of 2025 on the Chief Judicial Magistrate, Kanniyakumari District at Nagercoil.
20.	----	PAN Card of the Applicant

During the course of arguments, the Applicants filed additional documents.

S.No.	Date	Particulars
1.	11.10.2022	Holidays – Govt of Tamil Nadu 2022

3. On the other hand, the learned Counsel for the Defendant Bank appeared before this Tribunal and filed Vakalat, Written Arguments, Reply Statement, Counter Affidavit, Typed Set, Additional Typed Set, and a Memo along with original documents. In the said pleadings, it is stated that the present Applicant is the Managing Partner of the firm, namely M/s. Sriram Jewellers, situated at Kollencode Village, Kanyakumari District. In his capacity as Managing Partner, the Applicant availed a Cash Credit facility of Rs.1,45,00,000/- (Rupees One Crore and Forty-Five Lakhs only) in the name of the firm, bearing Account No. 67007035020, from the State Bank of Travancore. The said facility was sanctioned on 19.01.2006. Apart from the Applicant, Mr. Sankar and Mr. Nagarajan are the partners of the firm. Mr. Krishnan and Mrs. Visalakshi stood as guarantors for the said credit facility. To secure the credit facility, the Applicant and the guarantors,

namely Mr. Krishnan and Mrs. Visalakshi, mortgaged their properties in favour of the Bank.

- ❖ The Cash Credit limit was enhanced on 09.10.2009 from Rs.1.45 crores to Rs.2.50 crores.
- ❖ The Cash Credit limit was once again enhanced from Rs.2.50 crores to Rs.5.00 crores on 02.09.2011. To secure the enhanced credit facility availed by the firm, the Applicant and the guarantors, namely Mr. Krishnan and Mrs. Visalakshi, mortgaged their properties by executing a Registered Memorandum of Deposit of Title Deeds.
- ❖ The Credit Limit was enhanced from Rs.5.00 crores to Rs.7.50 crores on 31.03.2015 and thereafter from Rs.7.50 crores to Rs.10.00 crores on 18.07.2016. To secure the enhanced credit facilities availed by the firm, the Applicant and the guarantors, namely Mr. Krishnan and Mrs. Visalakshi, executed a Registered Memorandum of Deposit of Title Deeds dated 14.03.2018 in respect of the properties mortgaged as security.
- ❖ The Credit Limit availed by the firm was reduced from Rs.10.00 crores to Rs.9.75 crores on 10.04.2018.
- ❖ State Bank of Travancore was merged with State Bank of India, and on 16.09.2019, the Cash Credit Account of the firm bearing Account No. 67007035020 was migrated to the State Bank of India, Commercial Branch, Thiruvananthapuram. For operational convenience, the firm was sanctioned a sub-limit of Rs.1.00 crore in Account No. 38771176339.
- ❖ The said Cash Credit facility was reduced from Rs.9.75 crores to Rs.8.00 crores, comprising Rs.7.00 crores in Cash Credit Account

No. 67007035020 and Rs.1.00 crore in Cash Credit Account No. 38771176339. In addition thereto, a Guaranteed Emergency Credit Line Working Capital Term Loan was sanctioned to the tune of Rs.1.90 crores in Account No. 39759792404.

❖ The said Cash Credit facility was reduced from Rs.8.00 crores to Rs.7.80 crores, comprising Rs.6.80 crores in Cash Credit Account No. 67007035020 and Rs.1.00 crore in Cash Credit Account No. 38771176339. In addition thereto, a Working Capital Term Loan of Rs.20 lakhs was sanctioned in Account No. 40095737818, and a Funded Interest Term Loan to the tune of Rs.51,06,479/- was also sanctioned. These credit facilities were in addition to the existing Guaranteed Emergency Credit Line – Working Capital Term Loan of Rs.1.90 crores. The said Funded Interest Term Loan was subsequently repaid in full.

a) It is submitted that, after availing the aforesaid facilities, the Applicant and the other partners failed to maintain the loan accounts and allowed the same to fall into default. Consequently, the accounts were classified as Non-Performing Assets (NPA) on 06.12.2022. Thereafter, despite repeated demands and follow-up efforts, the Applicant and the other partners failed to service the principal and interest dues in the loan accounts. Consequently, the State Bank of India, Commercial Branch, Thiruvananthapuram, issued a Demand Notice dated 17.01.2023 under Section 13(2) of the SARFAESI Act to the Applicant, the other partners, and the guarantors, demanding payment of a sum of Rs.7,86,54,927/- as on 16.01.2023, together with future interest and expenses, within 60 days from the date of receipt of the said notice. The said Demand Notice was served on 20.01.2023.

- b) It is further submitted that, the Applicant sent a representation to the Bank in response to the Demand Notice through email dated 08.02.2023, raising certain untenable grounds. In the meantime, the loan accounts were migrated to the 2nd Defendant Branch for the purpose of recovery. The said representation submitted by the Applicant was duly considered and rejected by the 2nd Defendant Bank by communication dated 13.02.2023, assigning various reasons therein. The said communication was served on 16.02.2023. The communication dated 13.02.2023 is enclosed in the Typed Set of Papers and may be treated as part and parcel of this Reply Statement.
- c) It is further submitted that, the subsequent representations of the Applicant dated 13.02.2023, 02.03.2023, and 14.03.2023 were duly replied to by the 2nd Defendant Bank on 23.02.2023, 08.03.2023, and 20.03.2023 respectively. As the Applicant failed to show any progress in repaying the loan dues, the 2nd Defendant Bank proceeded further under the SARFAESI Act and issued a Possession Notice under Section 13(4) read with Rule 8 to the borrower and guarantors on 23.03.2023. The said notice was served on them on 24.03.2023 and was also affixed on the mortgaged property on 23.03.2023 itself. Thereafter, the Possession Notice was published in the Tamil daily “Dina Thanthi” and the English daily “The Hindu” on 28.03.2023. Even after the issuance of the Possession Notice, the 2nd Defendant Bank received representations from the Applicant dated 23.04.2023 and 29.04.2023, which were duly replied to by the Bank on 25.04.2023 and 03.05.2023 respectively. Since the Applicant failed to hand over peaceful possession of the mortgaged property, the Bank filed an application under Section 14 of the SARFAESI Act in CrI.M.P. No. 7284 of 2023 on the file of the learned Chief Judicial Magistrate, Nagercoil. Upon perusal of the records, the

learned Chief Judicial Magistrate allowed the application by order dated 16.06.2023.

- d) It is further submitted that, challenging the said order, the Applicant preferred the present SARFAESI Application before this Hon'ble Tribunal. Before invoking the remedy under Section 14 of the SARFAESI Act, the Defendant Bank had duly complied with the requirements prescribed under Section 13 of the Act and Rule 8 of the Security Interest (Enforcement) Rules, 2002. At the stage of admission, this Hon'ble Tribunal was pleased to grant an interim order of stay on 31.07.2023, subject to certain conditions. However, the Applicant failed to comply with the said conditional order. Consequently, the interim stay granted by this Hon'ble Tribunal stood automatically vacated.
- e) It is further submitted that, pending disposal of the main application, the Applicant sought an interim stay and has now prayed for extension of the interim stay granted by this Hon'ble Tribunal on 31.07.2023. The said relief cannot be granted by this Hon'ble Tribunal for the following reasons:
- i. While dealing with an application under Section 17 of the SARFAESI Act, this Hon'ble Tribunal is required to examine whether the procedural requirements under Section 13(4) of the Act have been complied with by the secured creditor while enforcing the security interest in accordance with the provisions of the Act and the Rules framed thereunder. If it is found that the proceedings initiated under Section 13(4) are not in accordance with law, this Hon'ble Tribunal may interfere with the same in the interest of justice and to protect the interests of the borrower. On the other hand, if this Hon'ble Tribunal finds that the proceedings initiated under Section

13(4) of the Act are in accordance with law, the same cannot be restricted or interfered with. In the present case, the Defendant Bank, through its Reply Statement and the Typed Set of Papers filed before this Hon'ble Tribunal, has clearly established its case on merits and demonstrated compliance with all the mandatory requirements under the Act and the Rules. In such circumstances, it is respectfully submitted that the Securitisation Application itself is liable to be dismissed on merits. When the main application itself is liable to be dismissed, the question of granting or extending an interim stay does not arise for consideration. The proceedings under Section 17 of the SARFAESI Act are summary in nature, and this Hon'ble Tribunal, being constituted under the said Act, is expected to render justice expeditiously while ensuring effective enforcement of the provisions of the Act. Furthermore, there is no provision under the Recovery of Debts and Bankruptcy Act empowering this Hon'ble Tribunal to stay proceedings initiated under Section 13(4) of the SARFAESI Act and the consequential proceedings arising therefrom.

- ii. It is submitted that the order passed by the learned Chief Judicial Magistrate, Nagercoil, is not adjudicatory in nature and has been passed in strict compliance with Section 14 of the SARFAESI Act, 2002. While considering an application under Section 14 of the SARFAESI Act, the learned Chief Judicial Magistrate is only required to examine whether the authorised officer of the Bank has complied with the mandatory requirements prescribed under Section 14 of the Act. If the learned Magistrate is satisfied that the procedure adopted by the Bank is in conformity with the requirements contemplated under Section 14 of the SARFAESI Act, the application is liable to be allowed. This issue has been

considered by the Hon'ble High Court in W.P. No. 34527 of 2019, M/s. Techno Builders and Others v. M/s. Canara Bank, decided on 16.12.2019. Hence, the prayer in the present Securitisation Application challenging the order passed by the learned Chief Judicial Magistrate, Nagercoil, under Section 14 of the SARFAESI Act is not maintainable and is liable to be dismissed in limine.

- iii. Further, the Applicant had not chosen to challenge the Possession Notice issued by the 2nd Defendant Bank. The impugned order passed under Section 14 of the SARFAESI Act is nothing but an offshoot of the Possession Notice. In such a case, the Petitioner cannot challenge the order passed by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act without challenging the Possession Notice. Waiving his right to challenge the Possession Notice leads to admitting the same.

In the Counter affidavit, the Ld. Counsel appearing on behalf of Defendant Bank has submitted that,

- f) By challenging the said order, the Petitioner preferred this SARFAESI Application before this Hon'ble Tribunal. Before invoking the relief under Section 14 of the SARFAESI Act, the 2nd Respondent Bank had complied with the mandates required under Section 13 of the Act and Rule 8. At the time of Admission Hearing of the present Application, this Hon'ble Tribunal was pleased to grant an order of interim stay with conditions to be complied with on 31.07.2023. As per the said interim order, the Petitioner had to pay a sum of Rs.65,15,000/- on or before 31.08.2023 as the 1st instalment, a sum of Rs.65,15,000/- on or before 30.09.2023 as the 2nd instalment, a sum of Rs.65,15,000/- on or before 30.10.2023 as the 3rd instalment, a sum of Rs.65,15,000/- on or before 29.11.2023 as the

4th instalment, and a sum of Rs.65,15,000/- on or before 29.12.2023 as the 5th instalment to the 2nd Respondent Bank directly. It is rightly observed in the said order that, in case of non-compliance with any of the instalments stated above, the interim stay granted will be vacated automatically and the 2nd Respondent Bank is at liberty to proceed with the order passed by the CJM, Kanyakumari District. Aggrieved by the interim order in I.A. No. 1369/2023 in S.A. No. 290/2023, the Respondent Bank filed an appeal before the DRAT, Chennai on 25.08.2023, and the same was numbered as AIR No. 1244/23.

- g) It is further submitted that, the said conditional order was not complied with, and the Petitioner paid only the first two instalments. The 3rd instalment was not paid. On such failure, the interim stay granted had already stood vacated. The Petitioner now seeks extension of the same. The request of the Petitioner cannot be accepted for the reason that the Petitioner is a chronic defaulter, having defaulted in paying the principal and interest as agreed, which necessitated the initiation of proceedings under the SARFAESI Act. Challenging the said proceedings, the Petitioner filed the present SARFAESI Application. The Petitioner had sought an interim stay of the impugned proceedings initiated pursuant to the order passed by the CJM, Kanyakumari, under Section 14 of the SARFAESI Act, and the same was generously considered by this Hon'ble Tribunal as stated supra. If the Petitioner was genuinely aggrieved by the interim order passed by this Hon'ble Tribunal, he ought to have preferred an appeal before the Appellate Tribunal (DRAT). However, the Petitioner did not choose to do so and instead seeks extension of the order passed by this Hon'ble Tribunal. As of now, no interim order remains in force on the file of this Hon'ble Tribunal.

The Counsel for the Defendant Bank has filed a Reply Statement in S.A. No. 271 of 2025, wherein it is submitted that, as directed by this Hon'ble Tribunal, the Applicant failed to comply with the interim order granted. Though the Applicant paid the 1st and 2nd instalments, he failed to pay the remaining three instalments within the stipulated time. An Extension Petition in I.A. No. 2446 of 2023 was filed seeking extension of time for payment of the 3rd instalment. Though a reply was filed by the Defendant Bank opposing the said petition, this Hon'ble Tribunal was pleased to allow the same on 09.11.2023 and directed the Applicant to pay the 3rd and 4th instalments on or before 29.11.2023, and posted the matter for compliance on 30.11.2023. Despite the said order, the Applicant failed to comply with the direction to pay the 3rd and 4th instalments and continued to remain in default. When the matter was taken up on 30.11.2023, the Applicant filed yet another Extension Petition in I.A. No. 2884 of 2023 seeking further extension of time to comply with the payment of the 3rd and 4th instalments, despite having already been granted such relief by order dated 09.11.2023. Though objections were raised on behalf of the Defendant Bank, this Hon'ble Tribunal was pleased to grant further time to the Applicant and directed him to pay the 3rd and 4th instalments on or before 12.12.2023, and posted the matter on 13.12.2023. In both the aforesaid instances, although time was granted for payment of the defaulted instalments, the stay of further proceedings was not extended.

h) It is further submitted that, when the case was taken up for hearing on the said date, this Hon'ble Tribunal found that the interim stay granted in the said SARFAESI Application and the subsequent time granted for payment of the instalments through two Extension Applications were not complied with and no payment was made in compliance with the orders passed. Hence, the stay granted in the said application stood vacated. On the said date, the arguments of the Defendant were heard and the case was posted for arguments on

the side of the Applicant on 18.01.2024. On 18.01.2024, when the case was taken up for hearing, the Applicant sought time for arguments till 03.06.2024. The Applicant, in order to further delay the proceedings, filed a Petition for Interim Injunction restraining the Bank from taking possession of the property in I.A. No. 1954 of 2024. The said application was taken up for hearing on 20.05.2024 and the same was dismissed vide a detailed order by recording the default on the part of the Applicant in complying with the earlier orders.

- i) It is further submitted that, while dismissing the said application, this Hon'ble Tribunal was pleased to post the case for arguments on 19.06.2024. On 19.06.2024, when the case was taken up for hearing, the Applicant sought time for arguments till 12.07.2024. Throughout the proceedings, the Applicant was keen on obtaining adjournments in the said application on one ground or another to drag on the proceedings. Pending the said proceedings, the Defendant Bank initiated sale proceedings vide Sale Notice dated 04.04.2024 to sell the properties. The said Sale Notice was challenged before this Hon'ble Tribunal in S.A. No. 329 of 2024. Since there was no bidder to purchase the property, the sale was not concluded, and recording the same, the said SARFAESI Application was closed on 27.05.2024.
- j) It is further submitted that, the earlier petition before the learned Chief Judicial Magistrate, Kanyakumari, in CrI.M.P. No. 7284 of 2023 was taken up for hearing on 31.07.2024. On the said date, assuming that the Applicant may discharge the loan amount, the learned Chief Judicial Magistrate, Kanyakumari, was pleased to dispose of the case, granting liberty to the Defendant Bank to file a fresh application if any arrears of debt remained due. In total, the Applicant succeeded in his attempt before this Hon'ble Tribunal as well as before the learned Chief Judicial Magistrate by adopting delay

tactics. Left with no other option, the Defendant Bank filed a fresh application before the Chief Judicial Magistrate, Kanyakumari at Nagercoil under Section 14 of the SARFAESI Act in CrI.M.P. No. 802 of 2025 and obtained a fresh order on 29.03.2025, which is impugned in the present SARFAESI Application.

- k) It is further submitted that, in respect of the averment that the Bank can sell 5 properties leaving the jewellery shop and the reliance placed on Rule 8(5) of the Security Interest (Enforcement) Rules, 2002, the Defendant Bank would submit that the Applicant is misinterpreting the said Rule in his favour. A reading of the said Rule would clearly indicate that the Defendant Bank may, at its liberty, sell the whole or any part of the immovable secured asset. The word "may" used in the said Rule indicates that the provision is not mandatory in nature. In fact, the Defendant Bank had scheduled the property for sale vide Sale Notices dated 19.02.2024, 04.04.2024, 30.04.2024, 26.06.2024, and 13.08.2024. In all the proceedings, the sale was not concluded for want of bidders. The Applicant is a man of influence and is managing to keep bidders away from participating in the auction whenever the sale is scheduled. Since possession of the property remains with the Applicant, the bidders are hesitant to bid for the property. Unless all the properties are proceeded against simultaneously, the Defendant Bank will be deprived of its recovery proceedings. The Applicant, being a defaulter, cannot dictate to this Hon'ble Tribunal or the Defendant Bank the manner in which the mortgaged properties are to be sold.
- l) I further submitted that, in respect of the bias that may happen in appointing the Advocate Commissioner, who is alleged to be a panel advocate of the State Bank of India, the said allegation is bald and baseless and unsupported by any proof. Even assuming the said fact, the said ground cannot be taken into consideration for the

reason that the Advocate Commissioner is appointed by the learned Judge for assisting the Court for the purpose of the particular case, namely CrI.M.P. No. 802 of 2025. In the said case, the Advocate Commissioner is neither appearing for the Petitioner nor for the Respondent. Hence, the question of bias does not arise.

m) It is further submitted that, in respect of the grounds raised in support of the SARFAESI Application, the following reply is submitted:

Ground No.	Reply to the Ground
1	Arbitrariness, illegality, contradiction of law have to be specifically pleaded and established before this Hon'ble Court. Unless there is a specific pleading, the Defendant Bank is not in the position to make a reply to the same.
2	Classification of the Account as NPA is done as per the norms and if there is any violation the Applicant can specifically mention the said violation which enables the Defendant Bank to make a specific reply on the said point. Revival and rehabilitation: Defendant Bank handed over an application for rehabilitation/revival under RBI framework and also a notice dated 02.12.2022 regarding proposed action. But the Applicant is not ready to accept/acknowledge the same and returned it. The unit vide registered letter dated 08.12.2022 and email dated 09.12.2022 has informed the Defendant Bank that they are in the final stage of arranging funds for closure of limits. Also, they have stated that they are not submitting an application to the committee for corrective action plan since it is not necessary for them. Copy of the letter is enclosed in the

	Typed Set of Papers.
3	The Defendant Bank have adhered to the applicable guidelines under the SARFAESI Act while conducting the e-auction of the mortgaged properties. As stated in earlier Para sufficient opportunity was given by the Bank and this Hon'ble Tribunal. The earlier order passed by the Tribunal in SA No.290 of 2023 is a good evidence to establish the fact how far this Hon'ble Tribunal showered its sympathy to the Applicant in repayment of the dues and how much the Applicant had violated the same by non-compliance.
4	The Defendant Bank adhered to the applicable guidelines under the SARFAESI Act while conducting the e-auction of the mortgaged properties. But anyhow, questioning the valuation report will not be a ground in a challenge made against the order passed under Section 14 of the SARFAESI Act.
5	Account statement was provided to the borrowers whenever they have requested. The statement was sent through registered post vide our letter No. SARB/ TVM/RJB/ KRK/ 177/2023-24 dated 03.05.2023 and the same was acknowledged by the borrower on 06.05.2023. Copy of the said letter is enclosed in the Typed Set of Papers.
6	The said averment is false and the same is denied, and the Applicant is put to strict proof of the same. The Applicant is not an illiterate to sign blank paper without knowing the reason.
7	All the particulars required were mentioned in the Demand Notice issued under Section 13(2) of the

	SARFAESI Act. Copy of the Demand Notice is enclosed in the Typed Set of Papers.
8	The interest charged is as per the terms of the concluded contract entered between the Applicant and the Defendant Bank. Default clause was agreed by the Applicant while availing the Credit Facility. Enjoying the facilities for years alone, the Defendant is precluded from questioning the same after several years and this Forum cannot assume jurisdiction to justify the same.
9	The averment is not true, hence denied. Updating the Possession Notice in the Bank's official website is not mandated under the Act/Rules. Rule 6(2) of the Security Interest (Enforcement) Rules, 2002 never speaks about the said ground.
10 & 11	Para No. 2 of the Impugned Order would clearly establish the fact that the Learned Judge, before passing the Impugned Order, had perused the affidavit filed by the Authorized Officer of the Defendant Bank. Procedures mentioned in Section 14(1) were strictly complied with. The grievance addressed by the Applicant was rightly addressed and the reply given to the Applicant was enclosed in the Typed Set of Papers.
12	Perusal of the Typed Set of Papers and the orders passed in the earlier SARFAESI Application in S.A. No. 290 of 2023 will clearly establish how the Applicant has dragged the issue and how cleverly he is able to manage to remain in possession of the property mortgaged with the Bank without repaying the loan amounts due.
13	Recall Notice was issued to the Applicant on 20.03.2023.
14	Defendant Bank advised the borrower on 08.03.2023 to remit at least 10% of the outstanding due to be deposited

	<p>in a no-lien account for the proposed compromise amount and to submit the compromise proposal in the prescribed format, duly signed by all the borrowers, for consideration on its merits. However, the borrower failed to comply with these requirements.</p>
15	<p>Copy of the CERSAI Registration is enclosed in the typed set of papers.</p>
16	<p>The account was classified as NPA on 06.12.2022, after the moratorium period. Penal interest charged during the moratorium period was reversed on 27.09.2021 as per the Supreme Court directions.</p>
17	<p>The loan account was restructured on 29.01.2021. The unit vide registered letter dated 08.12.2022 and email dated 09.12.2022 have informed the Defendant Bank that they are in the final stage of arranging funds for closure of limits. Also, they have stated that they are not submitting an application to the committee for corrective action plan since it is not necessary for them.</p>
18	<p>Since the borrowers are not cooperating with the stock audit process, the Defendant Bank does not have the exact details of stock available in the unit. However, during their inspections, they have found that the activity level and stock level of the unit are very low. No gold ornaments were seen in the shop as per their last inspection. Hence, the story of the Applicant that the unit is running with 20 employees and that he is earning his livelihood from the unit is totally false.</p>
19	<p>The Applicant is trying to misinterpret Rule 8 sub-clause 5 of the Security Interest (Enforcement) Rules, 2002 in his favour. Reading the said Rule will clearly indicate that the Defendant Bank may, at liberty, sell the whole</p>

	or any part of the immovable secured asset. The word "may" used in the said Rule indicates that the said provision is not mandatory in nature. Moreover, several Sale Notices were issued to sell the other properties, but there were no bidders for the said properties. Since the Jewellery Shop is a valuable asset, the Defendant, in order to clear the outstanding dues, proposes to sell the said property. The Sale Notices enclosed in the Typed Set of Papers will clearly establish how many attempts the Defendant Bank has taken to sell the property. Since the Applicant is in possession of the property, the sale was not concluded for want of physical possession of the property.
20	The Court has all its power to decide for which property the order has to be made and for which property the order should not be made. The Learned CJM had passed the order on perusal of the records and documents.
21	The Applicant had lost his bona fides in the earlier occasions before the Defendant Bank and before this Hon'ble Court in S.A. No. 290 of 2023.

Therefore, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the Application with cost and thus render justice.

Typed set filed by the Defendant Bank

S.No.	Date	Particulars
1.	29.01.2021	Sanction intimation along with Terms and Conditions Acknowledged by the Borrower and Guarantor
2.	17.01.2023	Demand Notice under Section 13(2) of the SARFAESI Act sent to Borrower and Guarantor with AD and returned Cover
3.	17.01.2023	Email sent by the borrower to the 2 nd Defendant Bank

4.	13.02.2023	Reply given by the 2 nd Defendant Bank to the email sent by the Borrower and Guarantor with Acknowledgement
5.	22.02.2023	Representation given by the borrower seeking six month time to close the loan account
6.	23.02.2023	Reply given to the borrower's Representation dated 22.02.2023
7.	02.03.2023	Representation given by the Borrower
8.	08.03.2023	Reply given to the borrower's Representation dated 02.03.2023
9.	12.03.2023	Representation given by the Borrower
10.	20.03.2023	Reply given to the borrower's Representation dated 12.03.2023
11.	23.03.2023	Possession Notice given to the borrower and guarantor with AD
12.	23.03.2023	Photographs showing affixture of the Possession Notice
13.	28.03.2023	Paper Publication in Tamil Daily and English Daily for Possession Notice
14.	23.04.2023	Representation given by the borrower
15.	25.04.2023	Reply to the Representation dated 23.04.2023 given by the borrower
16.	29.04.2023	Emali Representation given by the Borrower
17.	03.05.2023	Representation given by the borrower
18.	16.06.2023	Impugned order passed by Chief Judicial Magistrate

Typed set filed by the Defendant Bank on 30.04.2025

S.No.	Date	Particulars
1.	29.01.2021	Letter of Arrangement along with Terms and Conditions Acknowledged by the Borrower and Guarantor
2.	08.12.2022	Letter given by the Firm expressing his willingness for not to have Revival & Rehabilitation of MSME and expressing willingness to close the loan account within 3 to 6 months
3.	17.01.2023	Demand Notice under Section under Section 13(2) of the SARFAESI Act Sent to Borrower and Guarantor with Acknowledgment Card and Returned Cover
4.	20.03.2023	Legal Notice issued to the Firm and its Partner calling upon them to defaulted amount with interest

5.	17.01.2023	Email Sent by the Borrower to the 2nd Defendant Bank
6.	13.02.2023	Reply given by the 2nd Defendant Bank to the Email sent by the Borrower and Guarantor Acknowledgment
7.	22.02.2023	Representation given by the Borrower seeking six month time to close the loan account
8.	23.02.2023	Reply given to the Borrower's Representation dated 22.02.2023
9.	02.03.2023	Representation given by the Borrower
10.	28.03.2023	Reply given to the Borrower's Representation dated 02.03.2023
11.	12.03.2023	Representation given by the Borrower
12.	20.03.2023	Reply given to the Borrower's Representation dated 12.03.2023
13.	23.03.2023	Possession Notice given to the Borrower and Guarantor with Acknowledgment card
14.	23.03.2023	Photograph showing affixture of the Possession Notice
15.	28.03.2023	Paper Publication in Tamil 91-92 Daily and English Daily for Possession Notice
16.	23.04.2023	Representation given by the Borrower
17.	25.04.2023	Reply to the Representation dated 23.04.2023 given by the Borrower
18.	29.04.2023	Email Representation given by the Borrower
19.	03.05.2023	Proof for furnishing the 98 Statement of account to the Borrower with acknowledgment Card
20.	19.02.2024	Sale Notice
21.	04.04.2024	Sale Notice
22.	30.04.2024	Sale Notice
23.	26.06.2024	Sale Notice
24.	13.08.2024	Sale Notice
25.	----	CERSAI Registration Certificate
26.	31.07.2023	Interim Order Passed in SA No 290 of 2023
27.	09.11.2023	Order extending the payment of Instalment in SA No. 290 of 2023
28.	30.11.2023	Order extending the payment of Instalment in SA No. 290 of 2023
29.	13.12.2023	Order passed to Vacate the Interim Stay in SA No.290 of 2023
30.	20.05.2024	Order passed to dismiss the Interim Injunction Petition in SA No 290 of 2023

Additional Typed set filed by the Defendant Bank on 13.06.2025

S.No.	Date	Particulars
1.	20.01.2023	Acknowledgment Card for the receipt of the Demand Notice
2.	24.03.2024	Acknowledgment Card for the receipt of the Possession Notice
3.	23.03.2023	Photograph showing the affixture of the Possession Notice in the mortgaged premise

Memo filed by the Defendant Bank with Original Documents on 11.03.2026

S.No.	Particulars
1.	Demand Notice dated 17.01.2023 issued to Shri Subramanian, Shri Sankar and Shri Nagarajan (As Borrower) with Acknowledgment Card
2.	Demand Notice dated 17.01.2023 issued to Smt Visalakshi Lekshmi (As Guarantor) with Acknowledgment Card
3.	Demand Notice dated 17.01.2023 issued to Sri Krishnan (As Guarantor) with Acknowledgment Card
4.	Demand Notice dated 17.01.2023 issued to Shri Subramanian (As Guarantor) with Acknowledgment Card
5.	Demand Notice dated 17.01.2023 issued to Shri Sankar (As Guarantor) with Acknowledgment Card.
6.	Demand Notice dated 17.01.2023 issued to Shri Nagarajan (As Guarantor) with Acknowledgment Card.
7.	Postal Receipt for booking of Demand Notice
8.	Possession Notice dated 23.03.2023 sent to Subramonian, Visalakshi, Krishnan, Sankar, Nagarajan and Firm Sriram Jewellers
9.	Colour Photograph dated 23.03.2023 showing the affixture of the Possession Notice in the Mortgaged Premise
10.	Possession Notice Published in Tamil Daily News Paper DHINATHANTHI on 28.03.2023
11.	Possession Notice Published in English Daily News Paper THE HINDU on 28.03.2023

4. ON THE BASIS OF ABOVE PLEADINGS THE POINT WHICH ARISES FOR CONSIDERATION IS:-

WHETHER THE APPLICANTS ARE ENTITLED TO GET THE RELIEFS AS PRAYED FOR?

5. Having heard the parties, perused the entire documents available on record, and considered the arguments advanced by all the learned counsel, I find that it is an admitted fact that the Applicants had availed themselves of several credit facilities from the Defendant Bank amounting to several crores of rupees. The Borrowers had repaid the loan amounts as agreed. However, it is admitted by the Applicants in their pleadings that, due to the COVID-19 pandemic, demonetisation, the implementation of GST, and the huge losses suffered in their business, they were unable to repay certain loan dues to the Defendant Bank. Consequently, the Defendant Bank classified the loan account as NPA on 06.12.2022 and initiated proceedings under the SARFAESI Act.

6. Thereafter, the Defendant Bank issued a Demand Notice under Section 13(2) of the SARFAESI Act on 17.01.2023 to the borrowers, demanding a sum of **Rs.7,86,54,927/- (Rupees Seven Crore Eighty-Six Lakh Fifty-Four Thousand Nine Hundred and Twenty-Seven only)** as on 16.01.2023. The Defendant Bank has produced the original Demand Notice along with the acknowledgment card, which are annexed at pages 01 to 44 of the Bank's typed set of papers. I also find that the Applicants submitted Reply/Representations dated 07.02.2023, 22.02.2023, 02.03.2023, and 12.03.2023 under Section 13(3A) of the SARFAESI Act in response to the Demand Notice. The said representations were duly considered and replied to by the Defendant Bank vide its letters dated 13.02.2023, 23.02.2023, 08.03.2023, and 20.03.2023 (pages 53 to 71 of the Bank's typed set of papers). During the course of arguments, the learned counsel for the Applicants contended that the Defendant Bank had issued the Demand Notice dated 17.01.2023 on a public holiday (Uzhavar Thirunal) and filed a supporting document in support of the said contention. Upon considering the said document, I find that 17.01.2023 was indeed declared a public holiday (Uzhavar Thirunal) and that the Demand Notice bears the same date. The Defendant Bank has not placed any material on record to explain or rebut this discrepancy. On the other

hand, the Applicant has also not shown any provision or rules in Indian Banking Laws or the SARFAESI Act which explicitly prohibit secured creditor for issuing or serving statutory notices on Sunday or Public Holiday.

7. Thereafter, the Defendant Bank issued a Possession Notice dated 23.03.2023 under Section 13(4) of the SARFAESI Act to the borrowers, demanding a sum of **Rs.8,14,27,051/- (Rupees Eight Crore Fourteen Lakh Twenty-Seven Thousand Fifty-One only)** as on 23.03.2023. The Defendant Bank has produced the original Possession Notice dated 23.03.2023 along with the acknowledgment cards evidencing service upon the Applicants, which are annexed at pages 46 to 61 of the Bank's typed set of papers. I also find that the Defendant Bank has produced the original newspaper publications of the Possession Notice in two newspapers, one in English and the other in Tamil (pages 68 to 83 of the Bank's typed set of papers). Further, the Defendant Bank has filed original photographs at pages 62 to 67 of the Bank's typed set of papers evidencing that the Possession Notice was affixed on a conspicuous part of the secured asset. Upon perusal of the said records, I find that the Defendant Bank has complied with the mandatory requirements prescribed under Section 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002, while issuing and serving the Possession Notice upon the Applicants.

8. Thereafter, the borrowers filed W.P.(C) No. 12431 of 2023 before the Hon'ble High Court of Kerala at Ernakulam challenging the Possession Notice dated 23.03.2023. By order dated 05.04.2023, the Hon'ble High Court directed the borrowers to approach the Defendant Bank within three weeks with a proposal for closure of the loan account (pages 58 to 61 of the Applicants' main S.A.). I find that, pursuant to the said order, the borrowers submitted a representation dated 23.04.2023 proposing a settlement. The Defendant Bank, by its reply dated 25.04.2023, informed

the borrowers that the settlement proposal was not acceptable (pages 69 to 70 of the Applicants' main S.A.). Thereafter, the Applicants again submitted representations through e-mails dated 29.04.2023 and 03.05.2023 (pages 90 to 91 of the Bank's typed set of papers). However, the Defendant Bank has not produced any material on record to establish that the said representations were considered or replied to. I further find that the notice dated 03.05.2023 issued by the Defendant Bank appears to be incomplete as he has only given the statement of outstanding amount of the Applicant.

9. Since the Applicant himself has admitted that he failed to comply with the conditional stay order passed by this Tribunal in S.A. No. 290/2023, the stay granted was vacated and the Defendant Bank had obtained the impugned Chief Judicial Magistrate's Order dated 16.06.2023 passed by the 1st Defendant for taking physical possession of the property in CrI.M.P. No. 7284/2023. I do not find any irregularities in passing the said orders. So, I find that the Defendant Bank has fully complied with the provisions mentioned under Section 14 of the SARFAESI Act.

10. Thereafter, the Defendant Bank issued Sale Notices dated 04.04.2024 and 30.04.2024. Challenging the said Sale Notices, the Applicants filed S.A. No. 329 of 2024 before this Tribunal. However, as the sale was not conducted, the said S.A. was closed as infructuous. Subsequently, the Defendant Bank issued another Sale Notice dated 26.06.2024. However, the sale did not take place pursuant to the said notice. In the meantime, when Cr.M.P. No. 7284 of 2023 was listed for hearing on 31.07.2024, the learned Chief Judicial Magistrate closed the petition, granting liberty to the Defendant Bank to file a fresh petition, if so advised.

11. Thereafter, the Defendant Bank subsequently obtained the impugned order dated 29.03.2025 passed by the learned Chief Judicial

Magistrate in CrI.M.P. No. 802 of 2025 for taking physical possession of the secured asset. Since the Possession Notice was issued by the Defendant Bank following the rules strictly as prescribed in the SARFAESI rule. I do not find any irregularity in the passing of the said order. Accordingly, I find that the Defendant Bank has duly complied with the requirements of Section 14 of the SARFAESI Act.

12. The Applicant further claimed that the Defendants Bank have not registered the mortgaged property in Central Registry of CERSAI established under section 20 of the Act. I also find that the Defendants Bank has produced the certification duly registered the property with CERSAI (Page nos. 113 to 118 of Bank's Typed Set of paper) to rebut the allegation of the Applicant.

13. The Applicants further contended that, since their business falls under the MSME sector, the Defendant Bank ought to have conducted a viability study before classifying the loan account as NPA. On the contrary, the Defendant Bank, in its reply dated 13.02.2023, stated that the Applicants had not produced the Udyam Certificate evidencing the firm's registration as an MSME. The Defendant Bank further stated that the Applicants had not submitted any request for rehabilitation or revival of the MSME under the Reserve Bank of India framework. I find that, in the subsequent reply dated 22.02.2023, the Applicants did not make any reference to or produce the Udyam Certificate in support of their claim.

Under the above facts and circumstances of the case, this Tribunal is of the considered view that Applicant has failed to prove his case and on the other hand, I find that the Defendant Bank has followed the procedures for recovery of loan amount under SARFAESI Act as such I do not find any merit in the above SARFAESI Application.

In the result, **S.A. No. 290 of 2023** and **S.A. No. 271 of 2025** stands dismissed with no costs. Consequently, all pending IAs (if any) are also disposed of. No costs

Dictated to LDC (KK), taken down, transcribed, typed by him, corrected and pronounced by me, in the Open Court in this the 25th June 2026.

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER