

IN THE DEBTS RECOVERY TRIBUNAL – II AT CHENNAI

Dated this 30th day of June, 2026

PRESENT: SHRI SHARANG DHAR UPADHYAY
Presiding Officer

SA No.590 of 2024

Ahmed Thambi Maideen
No.81, Old No.35/1, Sait Colony
Second Street, Egmore
Chennai – 600 008

...**Applicant**

Versus

The Authorised Officer cum Chief Manger
Union Bank of India
Asset Recovery Branch
No.9, Elcanso Branch, Casa Major Road
Egmore, Chennai – 600 008

...**Respondent**

Counsel on Record / Appeared

Applicants by : Ld. Counsel M/s S. Feroz Khan
Respondent by : Ld. Counsel M/s R. Gowthama Narayanan &
V.P.Parivallal

ORDER

1. This petition is filed under Section 17(1) of the SARFAESI Act challenging the Possession Notice dated 25.11.2024 issued by the Respondent Bank under Section 13(4) of the SARFAESI Act.

Facts of the case as averred in the SA

2. (a) It is submitted that the Respondent bank has caused and committed gross violation of mandated rules and procedure laid down under SARFAESI Act; committed gross violation of guidelines of RBI; committed deficiency of service, mandated procedural lapses; caused

irreparable and irreversible loss of valuable time of borrower and caused financial losses, caused unwarranted harassment to the borrower and violated its own customer policy 2021-22 and 2022-23.

(b) It is evident on record that the applicant is made to run from pillar to post seeking justice for the wrong doing of the respondent bank since more than 7 long years and lost irreversible valuable time in life and the applicant has exhausted all available remedies but the respondent bank needs further authoritative intervention for following the rules, which they are mandated to follow. It is stated that the matter was before DRT-I, Chennai, DRAT, Chennai, Hon'ble Madras High Court, Back to DRAT, Chennai, Hon'ble High Court of Madras and now before this Tribunal.

(c) Respondent Bank sent a bankers' cheque bearing No.711137 dated 22.12.2022 for Rs.1,56,666/- and states that the bank is liable to pay a cost only and not compensation, which has not been accepted by the applicant.

(d) It is also submitted that the cost incurred throughout and interest accrued works out to Rs.3,82,12,438/-. It is stated that the said amount is only the cost incurred and not the compensation.

(e) It is further stated that the applicant's blocked amount has resulted in irreparable suffering, mental trauma, loss of more than 7 long years and valuable irreversible time in life.

(f) It is stated that in the possession notice dated 6.7.2018 the outstanding amount mentioned was Rs.86,66,870/- which itself is an disputed and contradictory figure which was challenged before the Courts. Before DRT-I and subsequently before Hon'ble DRAT the applicant has in total paid about 50% of claim amount in the form of pre-deposit. Even since 6.7.2018, for more than 6 years the secured asset was in the possession of the respondent bank due to illegal steps taken in contravention the provisions of the SARFAESI Act.

(g) In the demand notice dated 10.9.2024 respondent bank claims Rs.1,80,00,000/- as loan sanctioned, whereas only Rs.1,43,30,000/- was disbursed. Further, Rs.73,70,359.76p as outstanding plus interest as Rs.58,85,434/- and in total outstanding as Rs.1,32,54,743.76p. Since 6.7.2018 till date the secured asset is in the illegal possession of the respondent bank and appellant's money of Rs.2,13,40,056/- was blocked for the wrong doing of the respondent bank. Further, now in the possession notice dated 25.11.2024 the respondent bank claims Rs.1,32,54,743.76p which is bad in law and highly condonable.

(h) The applicant along with the SA had filed about 31 documents in support of his contention.

Counter of Respondent

4. Upon notice the respondent filed counter affidavit stating therein that the SA is liable to be dismissed.

5. It is stated that in the year 2015, the applicant was sanctioned a housing loan of Rs.1,80,00,000/- for purchase of house property and the same was repayable in 60 monthly installments. The entire loan amount was credited to the account, however, at the request of the applicant the limit was subsequently reduced to Rs.1,43,30,000/-. During post sanction inspection the bank found that the applicant, after purchase of the property availing housing loan, had demolished the property without informing the bank. On enquiry he informed that he had planned to promote an apartment complex on the land.
6. The applicant had availed a housing loan at concessional rate of interest and without using the property as a residence, he opted to promote the property, which is a commercial venture. In view of this the bank could not treat the loan as a housing loan but treated the same as a commercial loan and applicant commercial rate of interest. The respondent bank advised the applicant to submit a new proposal with details of the intended promotion to regularize the loan as a commercial one, but he refused to cooperate and did not submit the required loan application.
7. In view of the default committed by the applicant the respondent classified the account as NPA, invoked the provisions of SARFAESI Act and issued demand notice dated 9.5.2018 under Section 13(2) of the Act and subsequently the respondent issued Possession Notice dated 06.07.2018.

8. The Hon'ble DRAT vide order dated 17.6.2022 set aside the possession notice by allowing SA filed by the applicant. In view of the same the respondent withdrew the earlier notices and issued fresh demand notice under Section 13(2) of the Act. Since the amount due was not paid by the applicant the respondent took possession of the property by delivering possession notice dated 25.11.2024. The possession notice was received by the applicant, affixed on the property on 25.11.2024, published in newspapers one in English and another in Tamil on 26.11.2024. The respondent has duly complied with the provisions of the Act and the Rules made thereunder.
9. Since the earlier possession notice dated 06.07.2018 was set aside allowing SA No.101 of 2018 the respondent initiated fresh action and issued fresh demand notice and fresh possession notice, as such the earlier legal proceedings referred to by the applicant are irrelevant and hence not specifically traversed.
10. The Hon'ble DRAT ordered cost throughout and as per the order the respondent ank paid Rs.1,56,666/- towards costs. The claim of the applicant of Rs.2,86,32,370/- towards costs and compensation is imaginary and untenable. The writ petition filed by the applicant in this regard was dismissed by the Hon'ble High Court by order dated 2.8.2023.

11. The promotion of the property as Apartment Complex is a commercial activity and the applicant were guilty of breach of the terms of the loan. After having availed housing loan at concessional rate of interest he ought not to have ventured commercial activity. Though the bank offered to change the nature of loan, he refused to cooperate. The debit of Rs.9,51,742/- was the additional interest payable by him in view of converting the loan from housing loan to commercial one. Since the required loan application was not submitted the proposal for commercial loan could not be considered.
12. The calculation cost as claimed by the applicant totaling to Rs.3,82,12,438/- is imaginary. The respondent has paid a sum of Rs.1,56,666/- towards costs as per order of Hon'ble DRAT and the writ petition filed by the applicant in this regard was dismissed by the Hon'ble High Court.
13. The respondent has produced the statement of accounts and as per the same the amount payable by the applicant was Rs.1,32,54,743.76p when the demand was made.
14. The applicant has not made out any case for the purpose of getting relief which he prayed for. No tenable ground is made out touching the legality of the measures of possession taken by the respondent. The SA is therefore liable to be dismissed.

15. Alongwith the counter the respondent filed typed set viz., letter from the applicant dated 17.3.2015; demand notice dated 10.09.2024 along with acknowledgement; Representation of the applicant dated 6.11.2024; reply of the respondent dated 15.11.2024; Possession Notice dated 25.11.2024 alongwith postal acknowledgement; photograph evidencing affixture of possession notice, Publication of Possession Notice in “New Indian Express” and “Dinamani” both dated 26.11.2024.

Points for consideration

- 16 Having heard at length the arguments of the Ld. Counsels appearing on behalf of the parties and after going through the documents available on record, the following point arises for determination in these proceedings:-

Whether the impugned possession notice is in accordance with the Act and the Rules framed thereunder?

Answers to the point for consideration

17. At the outset, it is to be stated that while the secured creditor has been given the right to enforce the security interest without the intervention of the Court or Tribunal, the secured creditor while enforcing the same shall invariably comply the provisions of the SARFAESI Act and the Rules made thereunder, lest, the Tribunal can set aside the same if questioned.

18. Hon'ble Supreme Court of India, in re Mathew Vargheese Vs. M. Amirtha Kumar and others 2014 (5) SCC P-610(paragraph 24) held :

*“that a free hand is given to the SECURED CREDITOR for the purpose of enforcing any security interest created in favour of SECURED CREDITOR, without the intervention of the Court or Tribunal. The only other relevant aspect contained in the said sub- section is that **such enforcement should be in accordance with the provisions of this Act.** A reading of Section 13(1), therefore, is clear to the effect that while on the one hand any SECURED CREDITOR may be entitled to enforce the SECURED ASSET created in its favour on its own without resorting to any court proceedings or approaching the Tribunal, **such enforcement should be in conformity with the other provisions of the SARFAESI Act**”*

- 19 In so far as the case on hand is concerned, since the subject matter of challenge is Possession Notice issued in terms of Section 13(4) of the SARFAESI Act, the same shall be in conformity with Rule 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002, which are as follows:

“8. Sale of immovable secured assets.—

(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.”

20. The respondent bank, in its counter affidavit, have firmly asserted that they had complied with the required mandatory procedure and also filed documents in support of the said contention.
21. The applicant except for mentioning about the loss suffered and the damages and also the compensation to be paid, he had not raised any

ground questioning the validity of the action of the respondent. On the other hand, the respondent had filed the demand notice issued under Section 13(2) dated 10.9.2024 (at Page Nos.2 to 4), the representation of the applicant dated 6.11.2024 (at Page No.7); the reply of the respondent dated 15.11.2024 (at Page No.28); the Possession Notice dated 25.11.2024 along with postal acknowledgement at Page No.31, photograph evidencing affixture of possession notice on the secured asset (Page No.34), the publication of the possession notice in “The New Indian Express” and “Dinamani” both dated 26.11.2024 (at Page Nos. 36 & 27). Thus, there is compliance of mandatory provisions of the SARFAESI Act and the Rules made thereunder by the Authorised Officer while issuing the possession notice impugned in this application, hence, the same does not call for any interference by this Tribunal. Point is answered accordingly.

22. Therefore, for the aforesaid reasons, the Tribunal finds no merit or substance in the application and the measures as initiated by the respondent bank are in conformity with the provisions of the SARFAESI Act and the Rules made thereunder, as such, the same does not warrant any interference from the this Tribunal.

23. Hence the following:

ORDER

(a) SA No.590 of 2024 stands dismissed. All other pending IAs, if any, stands closed.

(b) Parties to bear their own costs.

24. A copy of this order be communicated to the parties concerned as per the rules.

**Sd/-
(SHARANG DHAR UPADHYAY)
PRESIDING OFFICER
DRT-II, CHENNAI**

(Dictated to PS, who typed in the system directly, corrected, signed and pronounced by me in Open Court, on this 30th day of June, 2026)