

Fair Order



IN THE DEBTS RECOVERY TRIBUNAL - 1 AT ERNAKULAM

DATED THIS 29th DAY OF JUNE, 2026

PRESENT: Su. WILLYAHM, B.Sc., M.L.
[DISTRICT JUDGE - Retd]
PRESIDING OFFICER

S.A No. 46 of 2013

Between

Punjab National Bank,
Branch Office,
South Bazar,
Kannur.

--- Applicant

And

1. The Kerala State Co-operative Bank Ltd.,
Kozhikode Regional Office,
Colombo Complex,
MM Ali Road, Kozhikode -673002
Represented by its
Authorised Officer/Regional Manager.
2. P.T. Babu, Proprietor,
Basco Rabbit Breeding Farm,
'Karthika', Near JTS,
Thottada Post,
Kannur - 670007.
3. C.K. Pushpalatha,
W/o.P.T.Babu,
'Kathika', Near JTS,
Thottada Post,
Kannur, Kerala - 670007.

--- Defendants

This Securitization Application coming on 09.09.2025 for final hearing before me in the presence of Mr. M.S. Kalesh Counsel appearing for the Applicants and Mr. Abhijith, Advocate appearing for the 1st defendant and defendants 2 and 3 having been set exparte and upon hearing arguments of learned Counsels for both sides' and upon perusing the material on records, this Tribunal delivered the following:

ORDER

1. This Securitisation Application was filed on 16.01.2019 seeking to set aside the measures initiated by 1st defendant under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against the application schedule property.

2. (i) The case of the applicant is as follows. The applicant bank is constituted under Banking (Acquisition and Transfer of Undertakings) Act 1970. The 2nd Defendant who is the proprietor of M/s. Basco Rabid Breeding Farm, availed term loan of Rs.6,00,000/- on 26.07.2006. The 3rd defendant stood as guarantor for the aforesaid credit facility by creating equitable mortgage over his immovable property as described in the schedule to the SA by deposit of title deed with the applicant bank. At the request of 2nd defendant, the applicant bank sanctioned an agricultural cash credit limit of Rs.1,34,000/- to the 2nd defendant on 04.12.2008. The mortgage created by the 3rd defendant was extended for the aforesaid credit facility also.

(ii) On 02.04.2011, the police conducted enquiry pursuant to the complaint lodged against the 2nd defendant by the Bank of Baroda, if came to light that the 2nd defendant has mortgaged the very same property with the 1st defendant bank, by depositing fabricated title deeds exactly similar to the original title deeds.

(iii) In the meanwhile the 1st defendant bank initiated measures against the defendants 2 and 3 u/s 13 (4) of the SARFAESI Act 2002 and approached the Chief Judicial Magistrate Court, Thalassery and filed application and affidavit u/s 14 of the SARFAESI Act 2002. Order came to be passed in CMP No.3625/2012 appointing Advocate Commissioner to take physical possession of the secured assets. Therefore, the applicant has filed this S.A seeking for the reliefs stated as supra.

3. Counsel appearing for the applicant bank submitted that the 2nd defendant who is the proprietor of M/s Basco Rabit Breeding Farm availed a term loan of Rs.6,00,000/- on 26.07.2006 and that the

3rd defendant executed letter of guarantee in favour of the applicant bank by creating equitable mortgage over his immovable property which is described in the schedule to the S.A by deposit of title deed with the applicant bank and that O.A. No.342/2011 filed by the applicant bank before this Tribunal was allowed and that as per Annexure-A1 final order, recovery certificate in DRC No.3503 was issued and that as per the above order the applicant bank is having charge over the SA schedule property.

4. Counsel appearing for the applicant bank submitted further that Annexure-A3 order passed in CMP No.3625/2012 by the Chief Judicial Magistrate Court, Thalassery for taking physical possession of the secured asset pursuant to the application filed u/s 14 (1) of the SARFAESI Act 2002 by the 1st defendant bank is not legally sustainable, since the mortgage created in its favour is first in point of time and that the mortgage if any created in favour of the 1st defendant bank is later in point of time and that therefore, the right of the 1st defendant bank over the secured asset shall be secondary and subservient to the mortgage created in favour of the applicant bank and that as per Annexure-A1 final order, the defendants 2 and 3 are liable to pay the outstanding loan due and other charges to the applicant bank and that therefore, the SA may be allowed as prayed for.

5. The Counsel appearing for the 1st defendant bank submitted that the S.A is not maintainable and that the 1st defendant bank sanctioned a mortgage loan of Rs.4,50,000/- on 15.09.2006 to the 2nd defendant and that the 3rd defendant has mortgaged his property as the collateral security for the aforesaid credit facility and that the 1st defendant came to know of avilment of financial assistance by the 2nd defendant from various institutions including the applicant bank by creating mortgage over the same property.

6. The Counsel appearing for the 1st defendant bank submitted further that even though mortgage created with the 1st defendant bank is subsequent to the disbursal of loan by the applicant bank by deposit of fabricated title deed similar to that of original documents which had been deposited with the applicant bank, the 1st defendant bank sanctioned credit facility after obtaining E.C for the required period, possession certificate, original tax receipt and original title deeds of the property and that therefore the right of the 1st defendant bank is fully secured and that since the defendants 2 and 3 failed to pay off their dues to the 1st defendant bank, it is entitled to sell the secured asset and that therefore, the S.A may be dismissed with cost to the 1st defendant bank.

7. Though summons was duly served on the 2nd defendant who is the borrower and the 3rd defendant who is the guarantor, they failed

to appear before this Tribunal. Hence, they were declared as ex-parte. It is not in dispute that the defendants 2 and 3 availed credit facility from the applicant bank on 26.07.2006 upon creation of equitable mortgage by deposit of original title deeds in favour of the applicant bank. It is also not in dispute that the defendants 2 and 3 availed credit facility from the 1st defendant bank on 12.09.2006 upon creation of equitable mortgage by deposit of alleged fabricated title deeds which are similar to the original title deeds deposited with the applicant bank, in favour of the 1st defendant bank.

8. A perusal of Annexure-A1 final order shows that O.A. No.342/2011 filed by the applicant bank herein against the defendants 2 and 3 herein was allowed and that recovery certificate in DRC No.3503 was issued to the applicant bank herein. The 1st defendant bank filed petition in IA No.2770/2014 in DRC No.3503 before the learned Recovery Officer of this Tribunal claiming right over the mortgaged property. The learned Recovery Officer after having heard both sides' counsels dismissed the above claim petition by holding that the Certificate Debtor No.1 executed equitable mortgage in favour of the Certificate Holder Bank on 26.7.2006 and that creation of charge/E.M alleged to have been executed in favour of the claim petitioner is on 12.09.2006 and that the execution of E.M after creation of the mortgage does not affect the right of Certificate Holder Bank.

9. It is pertinent to reproduce herein the provisions of Sec.11 of the SARFAESI Act 2002 which reads as follows:

“11. Resolution of disputes – Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the Bank, or financial institution, or securitisation company or reconstruction company or qualified institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.”

10. In ***Oriental Bank of Commerce Vs. Canara Bank and Ors. [MANU/DD/0101/2011]*** the facts of the case in brief is as follows.

(i) The Oriental Bank of Commerce had sanctioned a Housing Loan of Rs.18,50,000/- in the name of Mr. Vipin Kumar and Mrs. Rajni Gosain for the purchase of a house – first floor of the property bearing No.69, built over land admeasuring 90 Sq. Mtrs situated in

Pocket -9, Section -22, Rohini, Delhi-110085. The borrowers created equitable mortgage in respect of the said property and deposited the Original Sale Deed dated 8.2.2010 executed in their favour by Mrs.Monika Verma, wife of Mr. Sanchin Kumar and Original Sale Deed dated 8.10.2009 executed in favour of Mrs.Monika Verma by Mrs.Madhu Malti, wife of Mr. Ashok Jaiswal, previous owner of the property along with other documents. The borrowers, Mr.Vipin Kumar and Mrs. Rajni Gosain made default in the repayment of the loan right from the beginning itself. The Bank made efforts to contact the borrowers to enquire about their commitment regarding repayment of the loan and visited the mortgaged property. During the visit to the property, the officials of the bank came to know from a notice under Section 13 (2) of the SARFAESI Act, affixed on the property, that Canara Bank is intending to take the possession of the said property in respect of a loan sanctioned by it to Mr.Monika Verma who had sold the property to Mr. Vipin Kumar and Mrs Rajni Gosain. The appellant Oriental Bank of Commerce subsequently received a letter dated 30.7.2010 from Canara bank intimating the actual possession of the property in dispute had been taken over by it. Immediately thereafter, Oriental Bank of Commerce filed an appeal u/s 17 of the SARFAESI Act against Canara Bank and others. The DRT dismissed the appeal by order dated 15.11.2010. Aggrieved by the above order the Oriental Bank of Commerce had filed the first appeal before the Hon'ble Debt Recovery Appellate Tribunal, Delhi.

(ii) The Andhra Bank had sanctioned a loan of Rs.22,00,000/- to Mr. Sachin Kumar and Mrs. Monika Verma. Mr. Vipin Kumar was the co-obligant. Mortgage in respect of the property was created on 09.12.2009 by deposit of sale deed. It came to the knowledge of Andhra Bank that the Canara Bank initiated proceedings under the SARFAESI Act against the property in question for a loan granted to M/s Bhagwathi Enterprises through its proprietor Mr. Sachin Kumar on 12.02.2010 in which Mrs. Monika Verma had mortgaged the said property as owner on 12.02.2010. The Andhra Bank filed S.A before the DRT. The Oriental Bank of Commerce had also filed S.A with respect to the same property. Andhra Bank having aggrieved over the order passed by the DRT filed Second appeal before the Hon'ble Debt Recovery Appellate Tribunal, Delhi.

11. The Hon'ble Debt Recovery Appellate Tribunal Delhi by referring to the provisions of Sec. 11 of the SARFAESI Act 2002 held that since there is a dispute between the banks inter se the learned DRT did not have the jurisdiction to try the S.A under the SARFAESI Act. The above appeals were disposed of directing the parties to approach the Hon'ble High Court to appoint an Arbitrator for the adjudication of the case.

12. In ***Bank of India Vs. Sri Nangli Rice Mills Pvt. Ltd. and ors [MANU/SC/0774/2025]*** the facts of the case is as follows: Borrower had availed credit facility from Appellant bank by hypothecating stocks of paddy and other assets. While loan amount was outstanding, borrower by way of loan application proceeded to simultaneously avail one another credit facility from Respondent bank. Pursuant thereto, Agreement of Advance/Pledge Agreement was executed between borrower and Respondent bank, by which warehouse receipts of certain goods including stocks of paddy and rice, were pledged in favour of Respondent bank as security. Loan amount was sanctioned by Respondent bank against warehouse receipts in respect of goods as security. Since, borrower defaulted in repayment of loan amount sanctioned by Appellant bank, loan account was classified as Non-Performing Asset (NPA) and Appellant bank issued demand notice. Owing to failure of borrower in repaying outstanding amount, Appellant bank preferred application seeking assistance of District Magistrate for taking physical possession of secured assets of borrower. District Magistrate permitted Appellant bank to take physical possession of secured assets, save and except stocks of paddy and rice pledged with Respondent bank. Appellant bank filed securitization application before DRT challenging order passed by District Magistrate. DRT held that it had no jurisdiction to adjudicate the dispute, since controversy pertained to competing claims between two banks over same secured asset. Aggrieved, Appellant bank approached High Court by way of writ petition, which stand dismissed. Hence, appeal was preferred against the above order before the Hon'ble Supreme Court.

13. The Hon'ble Supreme Court highlighting the provisions of Sec.11 of the SARFAESI Act 2002 held that Sec.11 of the SARFAESI Act 2002 is mandatory in nature which provides for a statutory Arbitration for any dispute mentioned therein between any of the parties enumerated there under and that there is no need for an explicit written agreement to arbitrate between such parties in order to attract Sec. 11 of the SARFAESI Act 2002. Finally, the above appeal was disposed of by holding that there was no infirmity in the impugned order passed by the Hon'ble High Court, directing the appellant and the respondent bank to resolve the dispute by way of arbitration in terms of Sec. 11 of the SARFAESI Act 2002.

14. Indisputably, in the present case on hand, the dispute in this S.A is between the applicant bank and the 1st defendant bank in respect of the secured asset which is the S.A schedule of the property, belonging to the 3rd defendant who is the guarantor for the credit facilities availed by the 2nd defendant bank. Both the applicant and the 1st defendant bank claim priority of right of charge over the S.A scheduled property in order to sell the same for realization of the

outstanding loan due. As per the dictum laid down by the Hon'ble Supreme Court in the judgment cited supra, since the dispute pertains one between the two banks which are the applicant bank and the 1st defendant bank herein, both parties shall seek resolution of the dispute by way of Arbitration. Therefore, this S.A filed by the applicant bank is not at all maintainable.

15. In view of the forgoing reasons and discussions this Tribunal holds that the applicant bank is not entitled to get the relief sought for in the S.A.

In the result, S.A No.46/2013 stands dismissed. However, there shall be no order as to costs.

Dictated to Steno, taken down, transcribed, typed by him, corrected and pronounced by me in the open court on this the 29th day of June, 2026.

(Su. WILLYAHM)
PRESIDING OFFICER

Mj/

SCHEDULE OF PROPERTY

District	: Kannur
Sub District	: Kadachira
Taluk	: Kannur
Furka	: Kannur
Village	: Cembilode
Desom	: Koyyode
Survey	: 1/3A
Re-Survey	: 2/IC
Area	: 21.85 Ares.

Description

The North Eastern Section Land in Erankunnu Paramba Oramsam Paramba with everything thereon. Measurement in Links East-West Northern End 320, Southern End 360, North South Eastern End 159, Western End 159 (54 cents)

Boundaries

East : Land in the possession of Janardanan and Bhaskaran Nambiar

North : Land in possession of Rajeevan.

West : Land in possession of Bhavani Amma.

South : Land in the Possession of Madhavan Nambiar and Narayanan Nambiar

(Su. WILLYAHM)
PRESIDING OFFICER

List of documents filed by the Applicant along with the S.A.

Sl. No.	Date	Particulars	
1.	True copy of the final order in OA No.432 of 2011	Annexure-A1
2.	28.11.2012	True copy of the letter 28.11.2012 issued by the 1 st defendant to the applicant.	Annexure-A2
3.	True copy of the order in CMP 3625 of 2012	Annexure-A3
4.	5.12.2012	True copy of the interim report filed by the Advocate Commissioner.	Annexure-A4

(Su. WILLYAHM)
PRESIDING OFFICER

Mj/-