

**DEBTS RECOVERY TRIBUNAL PATNA**

Presiding Officer : **Shri Kaushalendra Yadav**

**SA- 10 of 2025**

1. **M/s Pallavi Pharma**, situated at BP Complex 1<sup>st</sup> Floor Saraiyaganj Muzaffarpur Bihar 842001 represented through its Proprietor, Shri Keshav Kumar .... (**Borrower Firm**)
2. **Keshav Kumar**, S/o Shri Yugal Kishore Singh, Village – Patahi Roop, Muzaffarpur Bihar 843113. (**Borrower**)
3. **Shravan Kumar Thakur**, S/o Late Siya Ram Thakur at Nitu Homeo Hall, Patahi Roop, Muzaffarpur, Bihar 843113. (**Mortgagor**)
4. **Anish Kumar**, S/o Shri Harishankar Mishra at Jagdishpur, Sakra, Muzaffarpur, Bihar 843113. (**Guarantor**)

.....Applicants

Versus

1. **The Authorized Officer, Union Bank of India**, Asset Recovery Branch, 1<sup>st</sup> Floor Steel House, Near Police Check Post, Boring Road, Patna – 800001.
2. **The Authorized Officer, Union Bank of India**, Regional Office, Samastipur, Panchwati Complex, Mohanpur Road, Samastipur, Bihar 848101.
3. **The Branch Manager, Union Bank of India**, Muzaffarpur Main Branch Motijheel, Daudi Market, Muzaffarpur Bihar 842001.

--respondents

Present:

**For the Applicants** : Dr. Binay Kr. Singh, Advocate

**For the Respondent Bank** : Sh. Prashant Kumar, Advocate

**Dated: 30.06.2026**

JUDGMENT

1. Present application has been filed with a prayer to quash the Demand Notice dated 22.01.2024 as well as Possession Notice dated 10.04.2024 issued in the matter.
2. During pendency of the SA, the applicant filed IA 705/2025 for restoration of

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physical possession of the property taken on 26.11.2025 by the respondent bank.

3. The brief fact of the case is that the applicants availed Cash Credit facility to the tune of Rs.1,50,00,000/- and Term Loan facility to the tune of Rs.30 lacs from the respondent bank. To secure the loan facility, the applicant no.3 mortgaged his properties in favour of the respondent bank. Due to default in repayment of outstanding dues of the bank, the accounts were classified as NPA on 16.01.2024. In order to recover the outstanding dues, the respondent bank initiated SARFAESI action against the borrowers and guarantors by issuing Demand Notice dated 22.01.2024 u/s 13(2) of the act calling upon the borrowers to make the payment of Rs.1,64,33,478.07. Thereafter, the respondent took possession of the property by issuing Possession Notice dated 10.04.2024 u/s 13(4) of the SARFAESI Act. Further, the property was put on auction sale by issuing e-auction sale notice dated 20.12.2024 fixing the date of auction sale on 10.01.2025. Aggrieved from the auction sale notice, the present SA has been filed by the applicants.
4. It is submitted by the Ld. Counsel of applicant that without prior information about the impending classification of account as NPA, the respondent bank issued Demand Notice dated 22.01.2024 but no kind of default has been disclosed in above said demand notice. The respondent bank has also not provided the break-up of Principal, interest as well as rate of interest charged in the Demand Notice which is violation of mandatory provision under section 13(3) of the SARFAESI Act. The demanded amount also does not match with the statement of account annexed with S. application. Further, the respondent bank issued Possession Notice dated 10.04.2024 but not individually served on the applicants. The description of property has also not been mentioned in possession notice. Further, the respondent bank put the property on auction sale without obtaining the valuation of the property. However, the property could not be auctioned, hence, the sale notice became infructuous. The respondent bank took the physical possession of the only residential house on 26.11.2025 even when the applicants had already deposited Rs.81 lacs against the Demand Notice's amount of approx. ₹1.64 Crores. The applicants have also

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submitted an offer of Rs.90 lacs alongwith upfront amount of Rs.9 lacs for settlement of account under OTS but the same was rejected by the bank and took physical possession of the property.

It is further submitted that the loan was sanctioned under MSME Subidha Scheme but the bank did not comply with the notification of Ministry of MSME, Govt. of India dated 29.05.2015 whereby and whereunder the bank have been directed to take ameliorative steps under their Corrective Action Plan in the case of stressed MSMEs before classifying their account as NPA. The RBI in its Circular dated March 17, 2016 has issued directions to banks not to classify the accounts as NPA before having taken steps for their revival and rehabilitation.

5. On the contrary, Id. Counsel of the respondent bank submits that the borrowers after availing the loan facilities, failed to pay interest against the loan amount, hence, the accounts were classified as NPA on 16.01.2024. In order to recover outstanding dues, the respondent bank issued demand notice dated 22.01.2024 u/s 13(2) of the Act and sent to the applicants through Speed/Registered post on 24.01.2024 which was validly delivered to the applicants. Despite receiving the demand notice, the applicants neither repaid the dues nor submitted any objection/representation against the demand notice. Hence, the respondent bank proceeded further and took possession of the property by issuing possession notice dated 10.04.2024. The said Possession Notice was sent to the applicants through Speed Post on 12.04.2024 and the same was validly delivered upon applicants as appear from its tracking report. The Possession Notice was affixed on secured assets on 10.04.2024 and also got published in "Indian Express" and "Prabhat Khabar" on 14.04.2024. Thereafter, valuation of the property has been obtained by the respondent bank from its registered valuer and the property was put on auction sale by issuing auction sale notices dated 20.12.2024 but the sale could not be taken place due to want of a bidder.
6. I have heard Id. Counsel for the parties and gone through the record.
7. It has been alleged that the Demand Notice dated 22.01.2024 issued without

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disclosing the kind of default made by the borrower as the account was under limit on the date of NPA. The respondent bank has also not provided the break-up of Principal, interest as well as rate of interest charged in the Demand Notice as required under section 13(3) of the SARFAESI Act. The Possession Notice dated 10.04.2024 was not individually served on the applicants. Even after deposit of Rs.81 lacs against the Demand of approx. ₹1.64 Crores, the respondent bank took the physical possession of the only residential house on 26.11.2025. It is also alleged that the respondent bank did not take ameliorative steps for revival and rehabilitation of account before classification as NPA as per direction and guidelines for MSMEs account.

8. As per the case of respondent Bank the accounts were classified as NPA on 16.01.2024. The respondent did not file any statement of account. However the applicant has filed at page 33-36. At page 35, If we add up every single interest debit from September through December, the numbers show:

- Total Interest Charged (Sep - Dec 2023):
  - i. September {₹37} + {₹912} + {₹3,880} + {₹227} = {₹5,056}
  - ii. October {₹7,075} + {₹137} = {₹7,212}
  - iii. November {₹6,891} + {₹286} = {₹7,177}
  - iv. December: {₹ 7,147}
  - v. Total Cumulative Interest = ₹26,592
- Total Verified Deposits (Dec 2023 - Jan 2024):
  - i. 29 December 2023: {₹50,000} + {₹35,000} = {₹85,000}
  - ii. 16 January 2024: {₹284} + {₹448} + {₹2,631} + {₹6,891} + {₹7,147} + {₹2,360} = {₹19,761}
  - iii. Total Cumulative Deposits = ₹1,04,761

9. As such, the account is highly active and mathematically "Standard". It is not a case of respondent that it exceeded the limit.

10. The respondent bank issued demand notice dated 22.01.2024 u/s 13(2) of the Act and sent to the applicants through post on 24.01.2024 which was delivered to the applicants as evident from postal tracking report filed with counter affidavit as annexure – I series, page 12-15. Further, the respondent bank

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issued possession notice dated 10.04.2024 and the same was affixed on secured asset. The said Possession Notice was sent to the applicants through Speed Post on 12.04.2024 and the same was delivered upon applicants as appear from its tracking report filed with counter affidavit as annexure – 2 series, page 18-21. So far as publication of Possession Notice is concerned, the respondent filed the copies of publication as annexure – 3, page 23-24 but said publications do not clearly disclose the name of the newspaper and its date of publication. Therefore, strict compliance of Rule 8(2) of the Security Interest (Enforcement) Rules, 2002 has not been satisfactorily established.

11. So far as the issue raised by the applicant regarding valuation is concerned, since the auction sale could not take place, hence, this issue becomes infructuous.

12. It has been alleged that the details of dues, rate of interest account has not been mentioned in the said Demand Notice which is a violation of section 13(3) of the Act. In this regard it is important to mention here that on perusal of the demand notice dated 22.01.2024, it appears that the notice merely mentions the nature of facilities, sanctioned limit and total outstanding amount as on the date of NPA. The notice does not disclose the detailed break-up of principal amount, accrued interest, penal interest, applicable rate of interest or calculation of the dues.

13. The provision of Section 13(3) of the SARFAESI Act is reproduced here under:

*"13(3). The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower."*

12. Hon'ble Justice Vikram Nath the then CJ of Hon'ble High Court of Gujarat, in the matter of Punjab National Bank vs M/S Mithilanchal Industries Pvt. Ltd. on 17 August, 2020 observed as under-

*"29. Insofar as the first part is concerned i.e. regarding the amount payable by the borrowers, if the intention of the Legislature was only to provide the total outstanding amount or the aggregate amount*

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*outstanding and payable by the borrowers, the language would have been different. It would not have been necessary to incorporate Sub-Section (3) in Section 13 of the SARFAESI Act. In Sub-Section (2) of Section 13 of the SARFAESI Act, it is also mentioned that the Secured Creditor may require the borrower by notice in writing to discharge in full his liabilities to the Secured Creditor. The said liabilities would be mentioned in view of the provisions of Sub-Section (2) itself. But, consciously, Sub-Section (3) was incorporated so as to ensure that the details of the amount payable are provided in the notice. Such details would include the relevant calculations made by the Bank under different heads which had become due and payable at the end of the borrower.*

*30. There is another reason for incorporating Sub-Section (3). Sub-Section 3(A) gives the right to the borrower to make a representation or raise an objection against the notice under Sub-Section (2). Unless the borrower has the details of the amounts found due and payable by the Secured Creditor and being demanded as such under a notice under Sub-Section (2), the borrower would not be in a position to make any representation or raise any objection. It is only when the amounts under different heads are provided to the borrower that it could raise an objection under any of the heads where the borrower finds that the amount quantified is not correct. Without there being any details mentioned in the notice, the very purpose of Sub-Section 3(A) would also be lost to a large extent.*

*31. From a perusal of the material on record and as also discussed not only by the Tribunal but also the learned Single Judge there was an issue raised earlier and pending between the parties regarding the rate of interest at which the Secured Creditor was calculating. According to the borrower, the rate of interest was higher as was being applied by the Secured Creditor than what actually it could claim under the agreement. The learned Single Judge had referred to such facts in paragraphs 5.1 to 6.1 of the judgment. The learned*

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*Single Judge had also placed reliance upon the view taken by the Patna High Court as also the High Court of Calcutta while interpreting the provisions of Sub-Sections (2) and (3) of Section 13 of the SARFAESI Act. ”*

13. Furthermore, the applicants have specifically pleaded that the loan account falls within the MSME category and was sanctioned under MSME Suvidha Scheme. The Ministry of MSME Notification dated 29.05.2015 and RBI Circular dated 17.03.2016 relating to Framework for Revival and Rehabilitation of MSMEs contemplate consideration of corrective action plan and rehabilitation measures before classification of a stressed MSME account as NPA.
14. The respondent bank has not produced any document to show that any committee was constituted or any corrective action plan for revival or restructuring of the MSME account was considered before classifying the account as NPA. No material has been placed on record to establish compliance of the aforesaid RBI and MSME guidelines.
15. In view of the above discussion, the present application succeeds.


ORDER

The application SA 10 of 2025, is allowed. SARFAESI Action under challenge against the applicants is hereby set aside with costs. The respondent will also not be entitled for the expenses and the recovery or any other charges for the action under challenge. The respondent bank is directed to restore the possession of the applicant over the property in question within 30 days, failing which the compensation of Rs.1000/- per day will be payable to the applicant for the delayed period.

  
[KaushalendraYadav]

Presiding Officer  
Debts Recovery Tribunal, Patna

Judgment signed, sealed, dated and pronounced in the open court on this 30<sup>TH</sup> Day of June, 2026.

  
[KaushalendraYadav]

Presiding Officer  
Debts Recovery Tribunal, Patna