IN THE DEBTS RECOVERY TRIBUNAL – II AT HYDERABAD

DATED THIS THE 06TH DAY OF JULY, 2026

PRESENT: SH. RAMESHWAR KOTHE, B.Com, L.LB. (Hons.), M.A.
PRESIDING OFFICER

Securitization Application No. 100 OF 2025

1. Om Narain Beria
S/o Late Satyanarain Beria,
Hindu, aged about 65 years,
Occ. Carrying Business in Shop
No.2 and 3 on Ground Floor bearing
M.No.5-1-374/380 situated at Old
Ghasmandi, Secunderabad

2. Smt. Meena Devi
W/o Om Narain Beria,
Hindu, aged about 62 years,
Occ. Carrying Business in
Shop No.2 and 3 on Ground
Floor bearing M.No.5-1-374/380
Situated at Old Ghasmandi, Secunderabad

3. Manoj Kumar Beria
S/o Late Satyanarain Beria,
Aged about 54 years, Occ.
Carrying Business in Shop No.2
And 3 on Ground Floor bearing
M.No.5-1-374/380 situated at
Old Ghasmandi, Secunderabad

4. Smt. Sanju Devi
W/o Manoj Kumar Beria,
Aged about 54 years,
Occ. Carrying Business in
Shop No.2 and 3 on Ground
Floor bearing M.No.5-1-374
to 380 situated at Old Ghasmandi,
Secunderabad ....Applicants

Versus

1. The Chief Manager & Authorized Signatory,
Bank of Baroda, Regional Stress
Asset Recovery Branch (ROSARB),

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Chennai Metro Region, 3rd Floor,
No.10, C.P. Ramaswamy Road,
Alwarpet, Chennai- 600 018

2. The Authorized Bank Officer,
Bank of Baroda,
Regional Stressed Assets-Recovery
Branch, Khairtabad, Hyderabad

3. M/s. Kavin Foundation Pvt. Limited,
Situated at Chandraok Complex,
A-12, Road No.2, Film Nagar,
Hyderabad-500033,

4. Mr. Pothula Srinivasa Rao,
R/o H.No.10-5-572, Tukaram Gate,
North lalaguda, Secunderabad-500003.

5. Shri P. Shiv Shankar
S/o Late Shri P. Sunder Rao,
Aged about 70 years, Occ. Private Service,
R/o H.No.5-1-380/2, Second Floor,
Old Ghasmandi, Secunderabad.

6. Shri P. Kalyan Vamshi Sunder
S/o Shri P. Shiv Shankar,
Aged about 38 years, Occ. Private Service,
R/o H.No.5-1-380/2, Second Floor,
Old Ghasmandi, Secunderabad. ...Respondents

Counsel for the Applicants : Sri. Narayandas Sanjay
Counsel for Respondent No.1 & 2 Bank : Mr. G. Venkat Sri Maithreya
Counsel for Respondent No.3 to 6 : Ex-parte

-: ORDER :-

1. The present Securitization Application is filed by the Applicants u/s.17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("Act" hereinafter for short) to set aside all the measures initiated by the Respondent Bank

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under the section 13(4) and 14 Act, including the action of taking physical possession of the SA Schedule Property via advocate commissioner notice dated 13.02.2025 as per orders in Crl.M.P.No.29 of 2025 and SR.No.168 of 2025 dated 10.01.2025 on the file of XXII Additional Chief Metropolitan Magistrate Court, Secunderabad.

2. The averments of the application, briefly, are that applicants are statutory tenants in respect of Shop Nos.2 and 3 of the schedule property since the year 2004 and contend that their tenancy was created much prior to the mortgage in favour of Respondent No.1 Bank and paid monthly rent of Rs. 3000/- which was increased w.e.f 01.07.2007 to Rs. 3,500/- per month. The applicants further contend that they had entered into an Agreement of Sale with Respondent Nos.5 and 6 for purchase of the tenanted premises and paid a substantial portion of the agreed sale consideration. It is averred that despite receipt of the consideration, the vendors failed to execute the sale deed and subsequently attempted to defeat the applicants' rights by entering into transactions with third parties. The applicants initiated various civil proceedings, including a suit for specific performance instituted in OS.No.76 of 2015 by the applicants and a partition suit in OS.No.41 of 2015 concerning the schedule property, are pending before the competent Civil Courts, wherein interim orders restraining alienation and directing maintenance of status quo are stated to be in force. According to the applicants, the said proceedings recognize their subsisting interest in the schedule property. The applicants further contend that Respondent No.1 Bank initiated proceedings under the SARFAESI Act without conducting proper due diligence regarding their possession and without issuing any notice to them, though they were in actual physical possession of a portion of the secured asset. It is averred that the applicants became aware of the proceedings only upon receipt of the Advocate

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Commissioner's notice issued pursuant to the order passed under Section 14 of the Act. Applicant asserts of their tenancy, being prior to the mortgage, is protected under the Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960, and that they cannot be dispossessed by invoking the provisions of Section 14 of the SARFAESI Act. With these contentions applicants pray for setting aside all the measures initiated by the respondent bank against the SA Schedule property.

3. Summonses served on Respondent 5 & 6 and were set exparte on 30.04.2025 as called absent and no representation. Summonses were also served on respondents 3 & 4 and they were also set exparte on 11.08.2025 as called absent and no representation.

4. The Respondent No.1 & 2 filed its reply statement along with documents. The submissions, inter-alia, are that the Respondent No.3 availed a cash credit facility from the 1st and 2nd respondent (hereinafter "Respondent Bank" for short) in the year 2018, which was secured by an equitable mortgage over the schedule property created by Respondent Nos.5 and 6 by deposit of title deeds, while Respondent No.4 stood as guarantor. Respondent bank averred that upon default in repayment, the loan account was classified as a NPA on 31.10.2019, where after respondent bank issued demand notice under Section 13(2), followed by a possession notice under Section 13(4), and thereafter obtained an order under Section 14 of the Act for taking physical possession of the secured asset. The Bank further avers that recovery proceedings are also pending in T.A. No.221 of 2023 before the DRT-III, Chennai. The Bank further contends that the applicants had earlier challenged the possession notice by filing S.A. No.77 of 2021 before this Tribunal, which came to be dismissed by order dated 02.02.2023 after holding that the applicants had failed

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to establish any legal right over the secured asset, as such the present SA, raising substantially identical issues, is liable to be dismissed. The Bank specifically disputes the applicants' claim of statutory tenancy and contends that the applicants have failed to produce any registered lease deed, partnership deed or other cogent documentary evidence to establish their tenancy or lawful occupation of the secured asset. Respondent bank further contended that the alleged tenancy was neither created prior to the mortgage nor with the consent of the secured creditor and, therefore, is not entitled to protection under the SARFAESI Act. In support of the said contention, reliance is placed on the judgment of the Hon'ble Supreme Court in *Harshad Govardhan Sondagar v. International Assets Reconstruction Company Ltd.*. Respondent bank asserts of applicant being the third party/ tenant, therefore respondent bank is not bound to serve notice to the third party and to support its contention it places reliance upon the judgment of the Hon'ble Supreme Court in *Kotak Mahindra Bank Ltd. v. Kew Precision Parts Pvt. Ltd.*. Accordingly, the Respondent Bank prays for dismissal of the S.A.

5. Heard both learned counsel for the applicant and learned counsel for the respondent bank. Perused the written arguments filed for the applicants as well as for the respondent bank and also perused the material brought on record.

6. During the course of arguments learned counsel for the applicant reiterated the contents of the application and would submit that applicant are statutory tenants in respect of a portion of the schedule property since the year 2005 and their tenancy was created much prior to the equitable mortgage created in favour of Respondent Nos.1 and 2. Learned counsel contends that they have

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been carrying on business in the premises by obtaining the requisite statutory registrations and have been paying refundable security deposits and monthly rents to Respondent Nos.5 and 6. The counsel further contends that Respondent Nos.5 and 6 had entered into an Agreement of Sale dated 30.08.2013 in their favour in respect of the schedule property after receiving a substantial portion of the sale consideration. Learned counsel also contend that despite receipt of the consideration, Respondent Nos.5 and 6 failed to execute the sale deed and, with an intention to defeat the Applicants' rights, created subsequent transactions in favour of third parties, resulting in institution of several civil proceedings, including O.S. No.76 of 2015 for specific performance and O.S. No.41 of 2015 for partition, wherein interim orders are stated to be operating. According to the learned counsel, the Bank has also been impleaded in the suit for specific performance. The learned counsel further avers that the mortgage created in favour of the Bank is subject to their pre-existing tenancy rights and equitable interest arising out of the Agreement of Sale. Learned counsel alleges that, being statutory tenants protected under the Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960, they cannot be dispossessed except in accordance with the procedure prescribed under the said Act and that the Bank could not invoke the provisions of Sections 13(2), 13(4) and 14 of the SARFAESI Act to evict them. The learned counsel further contend that the present SA is maintainable notwithstanding the dismissal of S.A. No.77 of 2021, as the present challenge arises out of the subsequent order passed under Section 14 of the SARFAESI Act and the Advocate Commissioner's notice, which constitute a distinct cause of action. In support of their contentions, the Applicants place reliance upon the judgments of the Hon'ble Supreme Court in *Harshad Govardhan Sondagar v. International Assets*

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Reconstruction Company Ltd., Vishal N. Kalsaria v. Bank of India, Bajarang Shyamsunder Agarwal v. Central Bank of India and Ulligappa v. S. Mohan Rao to contend that the rights of a bona fide statutory tenant cannot be defeated by proceedings under the SARFAESI Act and that possession cannot be taken except in accordance with the provisions of the Rent Control legislation. Accordingly, sought for allowance of the SA with exemplary costs.

7. Per contra, learned counsel for the respondent bank would deny the applicants contentions and would submit that applicant failed to adduce any documentary evidence to show that the tenancy was created prior to the mortgage of the secured assets. Learned counsel also asserts that as the applicant having filed previous SA.No.77 of 2021 and the same was dismissed, applicant has no right to re-agitate the issues that has already been adjudicated. Counsel places reliance upon the documentary evidence annexed with the reply to support their claim in regards to the compliance of the section 13(2), 13(4) and 14 of the Act. Accordingly, sought for allowance of the SA with exemplary costs.

8. The points for consideration are as follows : –

> *i) Whether the Applicants made out any valid ground for quashing the action of the Respondent Bank from taking the physical possession of the SA schedule property through Advocate Commissioner appointed under the provision of the Section 14 of the SARFESI Act?*
>
> *ii) To what relief?*

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Point No.(i):

9. It is an admitted position that Respondent No.3 had availed the credit facility from Respondent Nos.1 and 2 Bank, Respondent No.4 stood as guarantor and Respondent Nos.5 and 6, being the owners of the schedule property, created an equitable mortgage by deposit of title deeds in favour of the Respondent Bank. Upon default in repayment of the loan, the account of the borrower was classified as NPA, thereafter the Respondent Bank initiated measures under Sections 13(2), 13(4) and thereafter obtained an order under Section 14 of the SARFAESI Act for taking physical possession of the secured asset. The legality of the said measures is questioned in the present Securitization Application by the Applicants, who are admittedly neither borrowers nor guarantors to the loan transaction, but claim themselves to be possessing independent rights over a portion of the secured asset.

10. The first contention of the Applicants is that they are statutory tenants in respect of Shop Nos.2 and 3 of the schedule property premises since the year 2004 and that such tenancy was created much prior to the mortgage in favour of the Respondent Bank. The respondent bank relied upon the order dated 02.02.2023 passed by this Tribunal in S.A.No.77/2021 filed by the same Applicants on the same alleged tenancy and the said SA was dismissed on merits. Hence the self-same issue cannot be considered once again in the present SA under the principle of *Res Judicata*.

11. The principal contention of the Applicants is that they entered into agreement of sale with respondents 5 and 6 on 30.08.2013 in respect of Shop Nos.2 and 3 in the Ground Floor premises No.5-1-375/380 by paying some sale consideration and due to their failure to execute the sale deed, Applicants filed Specific Performance Suit

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O.S.No.76 of 2015 in the City Civil Court at Secunderabad wherein interim injunction had been granted in 2017. Applicants relied upon order dated 21.02.2023 passed in IA No.642/2022 in OS No.76/2015 on the file of learned XXVII Additional Chief Judge, City Civil Court, At Secunderabad. A perusal of the order gives clarification on the facts that Applicants herein file OS No.76/2015, temporary injunction was granted on 24.10.2017 against respondents 5 and 6 herein, subsequently Applicants filed IA No.642/2022 for impleadment of Bank of Baroda officials (respondent bank herein) as parties to the suit, that the Bank has been proceeding to enforce the mortgage created by respondents 1 and 2 therein (respondents 5 and 6 herein) vide MoDT dated 24.09.2018 although temporary injunction granted on 24.10.2017 was in force. Learned XXVII Addl. Chief Judge categorically observed that such charge is legally not permissible. He also rejected the plea of Bank that civil court has no jurisdiction to entertain the suit in view of Sec.34 of the SARFAESI Act as not tenable and acceptable as the suit was already filed in the year 2015. Learned Judge allowed the petition to implead the Bank as party to the civil suit. It is pertinent to note that in the entire averments of reply statement to the SA or in the written arguments, the respondent bank did not utter a single word about pending civil suit and its impleadment in the OS. Be that as it may. As per observations made in the order dated 21.02.2023, security interest was created during subsistence of temporary injunction order. Since the issue over the subject property is under active consideration before a competent court of law, this Tribunal is of the considered view that the respondent bank should not proceed further against the Shop Nos.2 and 3 of Ground Floor of application schedule property premises under the SARFAESI Act, 2002 till disposal of the civil suit OS No.76 of 2015.

12. Although the Applicants brought to the notice of the Tribunal about filing of OS No.41 of 2015 filed by Padukone Rani Soujanya Devi, daughter of 5th respondent herein for partition, it is held that the Applicants being third parties cannot seek any relief on behalf of a third party in respect of the entire premises of the property since their concern is only with regard to Shop Nos.2 and 3 in Ground Floor in M.No.5-1-374/380, Old Ghasmandi, Secunderabad.

13. In view of the above observations, the present Securitization Application deserves to be allowed with a direction to the respondent bank not to take further steps against the application schedule property i.e., Shop Nos.2 and 3 in Ground Floor in M.No.5-1-374/380, Old Ghasmandi, Secunderabad, till disposal of OS No.76/2015.

Point No.(ii):

14. In the result, the Securitisation Application is allowed with a direction to the respondent bank not to take further steps against the application schedule property i.e., Shop Nos.2 and 3 in Ground Floor in M.No.5-1-374/380, Old Ghasmandi, Secunderabad till disposal of OS No.76/2015.

10. However the respondent bank shall be at liberty to proceed against aforesaid Shop Nos.2 and 3, subject to outcome of OS No.76/2015.

11. It is made clear that this order shall not preclude the respondent bank to continue the SARFAESI measures in respect of remaining portions of the secured asset except Shop Nos.2 and 3 in Ground Floor.

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12. Consequently, Interlocutory Applications pending, if any, shall stand closed.

13. No order as to costs.

14. Communicate a copy of this order to the parties concerned and upload in the official website.

(Typed to my dictation by the PS, corrected, signed and pronounced by me in the open court on this the 06th day of July, 2026).

06.07.2026

(RAMESHWAR KOTHE)
PRESIDING OFFICER