IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated this the 30th day of June, 2026

TSA No.131/2016 (SA No.302/2010)

Between

A.V.Syamkumar,
Proprietor,
M/s.Ahalya Constructions,
Azhikkakathu, Purakkad P.O.,
Alappuzha District. …Applicant

And

1. The Authorised Officer,
Union Bank of India,
Alappuzha Branch,
P.O.Alappuzha.

2. The Branch Manager,
Union Bank of India,
Alappuzha Branch,
P.O.Alappuzha.

3. Thampi Narayanan **(dead)**,
Swathi, Bharanikkavu,
Alappuzha District. …Defendants

4. Anitha Kumari,
W/o.late Thampi Narayanan,
Swathi, Bharanikkavu,
Pallikkal P.O.,
Alappuzha District – 690 503.

5. Praveen Thampi,
S/o.late Thampi Narayanan,
Swathi, Bharanikkavu,
Pallikkal.P.O.,
Alappuzha District – 690 503. …Additional defendants 4 & 5

[Additional defendants 4 and 5 are impleaded as per order dated 21.11.2017 in IA No.1951/2017]

This Securitization Application having been heard on 08.06.2026 in the presence of Advocate Sri.Sreevinayakan K.V. for the applicant and Advocate Ms.Sreedevi B., representing counsel for Advocate Sri.A.S.P.Kurup for defendants 1 and 2 and stood over to this day for consideration, the Tribunal delivered the following:

FINAL ORDER

Challenging the securitization proceedings initiated by defendants 1 and 2 under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), the applicant/borrower has filed this SA under S.17(1) of the SARFAESI Act seeking relief to set aside the sale of the secured asset held on 30.12.2009.

Brief facts of the case:

2.1 In the SA the applicant has pleaded that he availed a cash credit loan of Rs.70 lakhs and a term loan of Rs.30 lakhs from the defendant bank by mortgaging 30 cents of property with a residential building in Re-Sy.No.240/10 of Purakkad Village in Alappuzha District which he derived title by a gift deed executed by his father.

2.2 Due to irregular repayments, the loan account was classified as NPA, followed by issuance of demand notice under S.13(2) of the SARFAESI Act. It is claimed in the SA that the demand notice was not duly served and publication of the demand notice was not made in widely circulated newspapers of the locality.

2.3 It is claimed that the possession notices under S.13(4) of the SARFAESI Act was not issued to the applicant. The 1st defendant filed application under S.14 of the SARFAESI Act before the CJM, Alappuzha to take physical possession of the secured asset. Accordingly, in pursuance of the order passed by the CJM, possession of the secured asset was taken by the Advocate Commissioner. The applicant claims that taking of such possession of the secured asset is illegal. Thereafter the property was put to sale. He received a communication from the defendant that the sale has been conducted on 30.12.2009 for an amount of Rs.60 lakhs. It is claimed that the sale held is illegal and vitiated as the statutory requirements are not duly complied. Hence the SA is filed to set aside the sale dated 30.12.2009 with some ancillary relief.

3.1 The defendants filed written statement denying the averments in the SA and claimed *inter alia* that the SA is barred by limitation as the same having not been filed within the statutory period of 45 days from the date of sale. It is further claimed that there is no illegality in issuing the demand notice and the same was sent by registered post with acknowledgement due to the address of the applicant. The postal acknowledgement card signed by the applicant is produced in this case as Annexure-R1A. Hence there is no necessity for publication of the demand notice. The proceeding under S.13(4) of the SARFAESI Act was taken in accordance with law and the possession notice was published in two widely circulated newspapers of the locality i.e., in 'Mathrubhumi' in vernacular language and in 'New Indian Express' in English language and the same was also served on the applicant vide Annexure-R1D. In pursuance to the order passed by the CJM, physical possession of the secured asset was taken which is also not challenged within the statutory period. Hence raising any issue against such measures is not sustainable.

3.2 After obtaining valuation report marked Annexure-R1E dated 06.03.2009, property was put to public auction after compliance of the statutory requirements and the sale was conducted in a transparent manner. There is no illegality or irregularity in the sale proceeding. The applicant impleaded the auction purchaser as 3rd defendant and his legal heirs were impleaded as additional defendants 4 and 5 but they have not filed any written statement nor contested the case.

4. From the respective case of both sides, the following points are emerged for adjudication in this case:

(i) Whether the claim of the applicant is barred by limitation?

(ii) Whether there is any illegality or defect in the securitization proceeding and the sale proceeding held on 30.12.2009?

(iii) Whether the applicant is entitled to get any relief?

FINDINGS:

Point No.(i):

5. In the SA, the applicant has challenged the measure initiated by the defendant under S.13(4) of the SARFAESI Act and the proceeding under S.14 of the SARFAESI Act. He has also challenged the sale held in respect of the secured asset on 30.12.2009. Admittedly, symbolic possession of the secured asset under S.13(4) of the SARFAESI Act was taken on 05.12.2008 and subsequently physical possession of the said property was taken in

pursuance to the order passed by the CJM which is not challenged within the prescribed 45 days as per S.17(1) of the SARFAESI Act. The claim in respect of such measure under S.13(4) of the SARFAESI Act and the proceeding under S.14 of the SARFAESI Act by which physical possession of the secured asset was taken by the secured creditor is statutorily barred and the claim of the applicant against such proceeding is not legally sustainable.

6. Besides challenging such measures, the applicant has also challenged the sale held on 30.12.2009. The SA was filed on 15.02.2010 vide ID No.2597 i.e., after 45 days from the date of sale on 30.12.2009. The learned counsel for the applicant contended that 45 days falls on 13.02.2010 but the SA could not be filed as there was a holiday for the Tribunal due to second Saturday and 14th February, 2010 was Sunday. Accordingly, the SA was filed on the next working day on 15.02.2010. Hence the SA is within time.

7. On the other hand, learned counsel for the defendants would contend that under the SARFAESI Act, the Tribunal has no jurisdiction to extend the period of filing of the SA i.e., beyond 45 days from the date of accrual of the cause of action. Hence the SA is barred by limitation and it is liable to be dismissed summarily.

8. There is no dispute that 45 days form the date of accrual of cause of action falls on 13.02.2010 which was a holiday on account of 2nd Saturday and 14.02.2010 was Sunday and the applicant has filed the SA on the reopening of the Tribunal on 15.02.2010.

9. Rule 21 of the Debts Recovery Tribunal (Procedure) Rules, 1993 prescribes that when the last day for doing any act falls on a day which the office of the Tribunal is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which that office opens. Such provision in the statue is similar to the provision contained under S.4 of the Limitation Act, 1963. When the statute permits for filing of the case on reopening of the Tribunal, it cannot be said that the SA is barred by limitation due non-filing of within 45 days from the date of accrual of cause action. Hence point No.(i) is answered accordingly.

Point Nos.(ii) & (iii):

10. In view of the bar of challenge to the measures taken under S.13(4) of the SARFAESI Act and S.14 of the SARFAESI Act, there is no necessity to consider the claim advanced by the applicant in the SA. In respect of the sale held on 30.12.2009, the applicant has raised a contention in the SA that the bank has not

obtained valuation from an approved valuer before putting the property for sale. The reserve price was fixed arbitrarily without calling any objection from the borrower. The sale notice has not been published in accordance with law. The survey number of the property differs from the security interest created over the property. Hence the sale is vitiated.

11. On the other hand, learned counsel for the defendants in the written statement and also during argument contended that reserve price for the property was fixed based on the valuation report dated 06.03.2009 obtained from an approved valuer marked as Annexure-R1E. The sale notice was published in two leading newspapers on 27.11.2009 i.e., in 'Indian Express' and 'Malayala Manorama' and there is no illegality in issuing the sale notice. So also, there is no difference in the survey number of the property. In absence of any dispute to the identity of the subject matter property, the applicant has no valid ground to raise dispute about the survey number of the property as mentioned in the sale notice. In absence of any illegality in the sale proceeding, the sale is not vitiated and the SA may be dismissed.

12. Except the valuation report marked Annexure-R1E, the defendant has not produced any material showing compliance of

the statutory requirements before putting the property for sale on 30.12.2009. R.8(6) of the Security Interest (Enforcement) Rules prescribes that the Authorised Officer shall serve to the borrower a notice of thirty days for sale of the immovable secured asset put for sale under R.8(5) of the above rules. It is also required that the secured creditor shall cause a public notice in two leading newspapers, one in vernacular language having sufficient circulation in the locality by setting out the terms of sale. As per R.8(7) of the Security Interest (Enforcement) Rules, every notice of sale shall be affixed on the conspicuous part of the immovable property. R.9(1) of the Security Interest (Enforcement) Rules prescribes the time of sale, issue of sale certificate and delivery of possession etc. R.9(3) of the Security Interest (Enforcement) Rules stipulates that the purchaser shall deposit 25% of the bid amount immediately after sale and as per Rule 9(4), balance amount of purchase price shall be paid on or before the 15th day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties which is mandatory in nature.

13. Here in this case, the defendant has failed to produce any material showing service of the sale notice on the applicant, publication of the sale notice in two widely circulated newspapers both in English and vernacular language and affixture of the sale

notice as required under the statute. So also, no material is placed on record by the defendant when the consideration amount was deposited by the auction purchaser. In absence of any material produced by the defendant, it can be said that the statutory requirements in putting the property for sale were not duly complied in a transparent manner. In absence of giving mandatory notice to the borrower, selling the property by the secured creditor or the Authorised Officer is against the constitutional right of the borrower over the property mortgaged by him.

14. In a recent judgment of the Hon'ble Apex Court in the case of ***M.R.Vasumathi vs. The Authorised Officer & others*** *[judgment dated 09.06.2026 in Civil Appeal No.1606/2026]*, at paragraph 28 it is held as follows:

> *"28. Even upon a cursory perusal of Rule 9 of the SARFAESI Rules that existed at the time of the impugned sale, it is clear that these provisions are neither ornamental nor directory; they are couched in mandatory terms and go to the root of the validity of the sale. A conjoint reading of the relevant sub-rules of Rule 9 underscore the mandatory character of these provisions, particularly accentuating the requirement of balance deposit under sub-rule (4), which is integral to the sanctity and credibility of the auction mechanism. Any deviation therefrom, absent legally sustainable justification, would render the process vitiated."*

In view of this ratio decided by the Hon'ble Apex Court, non-compliance of the statutory requirements affects the root of sale conducted in favour of the 3rd defendant which is not sustainable.

15. It is true that the sale was held long back in the year 2009 i.e., on 30.12.2009 and possession of the secured asset was already given to the auction purchaser but the sale is found not as per the statutory requirements which is vitiated. It is also not known when the auction purchaser had deposited the bid amount. If the bid amount is deposited in time also, the sale cannot be held valid in absence of other mandatory statutory requirements as narrated above. So also, the auction purchaser has no fault in the matter and he should be compensated for the procedural illegality committed by the secured creditor in putting the property for sale. In such premises, the defendant bank shall return the entire consideration amount received from the auction purchaser with cumulative interest at the rate of 7% per annum from the date of deposit of the said amount till refund of the same but the said interest shall not be claimed from the borrower. Point Nos.(ii) and (iii) are answered in favour of the applicant and the applicant is entitled for the relief in setting aside the sale. The defendant has liberty to put the property for sale again in accordance with the law after obtaining fresh valuation report from the approved valuer. In the event of challenge to such sale, the matter already adjudicated in this SA shall not be reagitated.

Hence it is ordered:

ORDER

16. In view of the foregoing reasons and with the above observations, the SA is allowed in part. The sale held on 30.12.2009 in favour of the 3rd defendant is hereby set aside.

(Dictated to my PA, corrected and pronounced by me in the open Tribunal on this the 30th day of June, 2026)

[SOVAN KUMAR DASH]
PRESIDING OFFICER

Documents on the part of the applicant

Annexures	Date	Particulars of documents
Annexure-A1	08.08.2008	Copy of demand notice issued to the applicant.
Annexure-A2	26.03.2009	Copy of order in CMP No.861/2009 of the CJM, Alappuzha.
Annexure-A3	30.12.2009	Copy of intimation regarding sale of the secured asset issued to the applicant by the defendant bank.

Documents on the part of the 1st and 2nd defendants

Annexure-R1A	21.08.2008	Acknowledgement card signed by the applicant upon receipt of S.13(2) demand notice.
Annexure-R1B	16.12.2008	Copy of possession notice published in Mathrubhumi daily.
Annexure-R1C	15.12.2008	Copy of possession notice published in The New Indian Express daily.
Annexure-R1D	05.12.2008	Copy of possession notice served on the applicant.
Annexure-R1E	06.03.2009	Copy of valuation report prepared by the approved valuer of the bank.

Documents on the part of the 3rd defendant

Annexure-R3(1)	02.03.2010	Copy of sale certificate issued to the 3rd defendant.
Annexure-R3(2)	17.05.2010	Copy of tax receipt issued by Purakkad Village.

PRESIDING OFFICER

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The Authorised Officer,
Union Bank of India,
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P.O.Alappuzha
& 4 others. …Defendants & additional defendants

F I N A L O R D E R