Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 06th DAY OF JULY, 2026

PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No.89/2018

1. Mr. E.Satheeskumar,
No.644, 14th Cross Street,
Anna Nagar, Madurai 625 020.

2. Mr. V.Eswaran
No.644, 14th Cross Street,
Anna Nagar, Madurai 625 020. ..... Applicants

- Versus -

1. The Authorized Officer,
IDBI Bank,
Retail Asset Centre,
No.1/1, Karthikaraja Complex,
Vinayaga Nagar, Melur Road,
K.K.Nagar, Madurai-625 020.

2. IDBI Bank,
Rep. by its Branch Manager
Retail Asset Centre,
No.1/1, Karthikaraja Complex,
Vinayaga Nagar, Melur Road,
K.K.Nagar, Madurai-625 020. ..... Defendant Bank

<u>Appearance of Advocates :</u>

M/s J.Anandkumar & Co. ..... ***Counsel for the Applicants***

M/s B.Rajesh Saravanan & Co. ..... ***Counsel for the 1st & 2nd Defendant Bank***

This SARFAESI Application was heard in the presence of Counsels for the Applicants, 1st & 2nd Defendants Bank and fixed for passing final order before me and upon hearing the arguments of the Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

O R D E R

1. This Application has been filed under Section17 of the SARFAESI Act, 2002 by the Applicants praying that this Hon'ble Tribunal may be pleased to stay all further proceedings pursuant to the Possession Notice dated 07.02.2018 issued by the Defendant Bank under Section 13(4) of SARFAESI Act 2002.

2. The brief case of the Application filed by the Applicants are as follows:-

(a) The applicants have approached the 2nd respondent and availed Mortgage Loan for a sum of Rs.10.00 Lakhs on 29.01.2011. The applicants were regular in repaying the above loan amount and seeing the repayment schedule of the applicants the 2nd respondent bank further sanctioned a Home Loan facility for a sum of Rs.6.00 Lacs on 29.12.2012. The schedule mentioned property was given as collateral security for the above loan. The 2nd respondent at the time of sanction of loan obtained signatures from the applicants in various prefilled forms and blank papers and they were kept in dark for what purpose they have been used for.

(b) The applicants were regular in repaying the loan amount. But due to sudden hospitalization and expiry of the 1st applicant's mother, the applicants incurred heavy financial problems and further the reasons beyond their control, the applicants were little bit irregular in repaying the loan amount. Hence the 2nd respondent bank classified the applicant's loan account as Non Performing Asset (NPA) and initiated recovery proceedings under the SARFAESI Act.

(c) The applicants submitted that the 1st respondent issued notice of demand dated 21.10.2017 demanding a sum of Rs.14,36,287.95/- u/s. 13(2) of Act. The applicants after the receipt of the demand notice approached the respondents and requested to regularize the loan account and paid certain amounts to that effect. The 1st respondent without considering the applicant's request and the payments made, went on further and issued Possession Notice Dated 07.02.2018 u/s.13(4) of the Act in a hasty manner and took symbolic possession of the schedule property. The possession notice was published in The New Indian Express Daily on 10.02.2018. The possession notice was served on the applicants only on 14.02.2018. However, taking advantage of the precarious situation in which the applicant is faced with, the respondent is seeking to encash on the same. The respondents have now threatened to take actual physical possession of the property and also to bring the property for public action. Hence being aggrieved by the above said Possession Notice Dated 07.02.2018 received on 14.02.2018 the applicants prefer the above appeal for the following and among other grounds.

- The impugned Possession Notice Dated 07.02.2018 received on 14.02.2018 issued by the 1st Respondent and the entire measures initiated under the SARFAESI Act are arbitrary in nature, illegal, contrary to law, want for weight of evidence etc., and thus liable to be set aside.

- It is submitted that the respondents failed to follow the procedures contemplated in the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 and security interest rules.

- The impugned action of the Respondent in issuing the Possession Notice Dated 07.02.2018 under Sec 13(4) of the SARFAESI Act, seeking to proceed against the property of the applicants claimed to be the secured assets, is contrary to law, without jurisdiction, arbitrary and unreasonable, violative of the principles of natural justice, is a colorable exercise of power and the measures had been taken in a capricious manner.

- The Possession Notice is bad in law, arbitrary and unreasonable as the claims and demands made therein are erroneous and not tenable in law and on facts as stated hereunder.

- The classification of the accounts of the applicants as NPA is against the norms and guidelines of Reserve Bank of India and against the provisions of the Statute. Hence the Respondents violated the principles of natural justice. The account of the applicants is not a doubtful or loss or bad account in the books of the Bank and as such the Respondents could not have initiated the measures.

- The applicants submit that the Respondents have failed to register the alleged transaction registered with the Central Registry as per section 20 of the SARFAESI Act.

- It is submitted that at that time of loan sanction the Respondent bank has obtained various signatures from the applicants in blank papers and prefilled forms and the applicants was kept in dark for which they have been used for. Thus, in the interest of natural justice, the Respondent Bank be called upon to furnish the entire documents available at its custody which it alleges to rely upon confirming the creation of the mortgage. It is with due respect submitted that there is no secured assets in so far as the present case is concerned and the claim by the respondents in this regard is legally not sustainable unless and until there is a secured asset. The respondents herein cannot proceed under the provisions of the SARFAESI Act. The respondents seek to exercise right over a property in respect of which there is no proper mortgage.

- The Possession Notice is not in accordance with Rule 8 of the Security Interest (Enforcement) Rules. The Respondents failed to failed to affix the possession notice on the outer door or at such conspicuous place of the property. Further the respondents have failed to publish the

Possession Notice in two dailies newspaper within the statutory period.

- The claim of the Respondent Bank as reflected in the impugned possession notice is unimaginatively excessive and is seriously disputed. It is apparently clear from the account statement available with the applicants that the Respondent Bank has debited exorbitant excessive amounts on various heads including as penal interest, unrealized interest, penal charges for non submission of balance sheet etc. The above illegal practice adopted by the 2nd Respondent Bank vitiates even the notice issued u/s. 13(2) of the SARFASI Act and also the subsequent possession notice based on which all the action is initiated by the 1st Respondent Bank.

- It is submitted that the respondents have failed to mention the date of NPA, particulars of loan availment, particulars of guarantee and the documents executed and the name of the Authorized Officer in the 13(2) demand notice and possession notice.

- It is submitted that the respondents failed to consider the payments made by the applicants and the applicant's request for regularization the loan account.

- The applicants reserve their right to raise any additional grounds, if they come across during the pendency of the appeal.

<u>Description of the property</u>

(As mentioned in the Possession Notice dated 07.02.2018)

All that piece and parcel of land in the sanctioned plan of Ellis Nagar, Madurai area bearing Plot No.T.248 in Survey No.11/3 Part & 11/4 Part of Madakulam Village.

Boundaries:

On the North by : 20'0" Road

On the East by : 50'0" Road

On the South by : House No.T-247

On the West by : House No.288

Measuring on the North 47'0" on the East 20'0" + 10'0", on the South 53'0" + 10'0" and on the West 40'0" and Splay North East 14'0" in all measuring 1700 Square feet, with the building standing and erected thereon and situate within the Madurai South Join-IV, Sub-Registration Madakulam Village and Madurai District of Madurai and Registration District of Madurai South.

Together with all and singular the structures and erections thereon, both present and future.

The Applicants have filed the following List of documents in support of his claim in the SA, which are as follows:

S.No.	Date	Description of documents
1.	21.10.2017	Demand Notice u/s. 13(2)
2.	07.02.2018	Impugned Possession Notice u/s. 13(4)
3.		Statement of Accounts

In addition to this, the Applicants are filed written arguments.

3. On the other hand, the Counsel for the Defendant Bank appeared before this Tribunal and filed Vakalat, Reply statement and Typed set of papers.

a) It is submitted that the Appeal filed by the Applicants is not maintainable either in Law or on facts. The Applicants are not deserved for any relief as they prayed in the petition.

b) It is submitted that all averments in the Appeal are false and wrong except which are expressly admitted herein.

c) It is submitted that on 31.01.2011 and on 29.12.2012, the applicants had availed Mortgage Loan facilities to the extent of Rs.10,00,000/- and Rs.6,00,000/- respectively from the 2nd Defendant and mortgaged property mentioned under Schedule of Application in favour of this 2nd defendant.

d) It is submitted that the averments in the application that "the applicants were regular in repaying the above loan amount and seeing the repayment schedule of the applicants" are wrong.

e) It is submitted that the averments in the application that "the 2nd respondent at the time of sanction of loan obtained signatures from the applicants in various prefilled forms and blank papers and they were kept in dark for what purpose they have been used for" are totally wrong.

f) It is submitted that the averments in the application that "the applicants after the receipt of the demand notice approached the respondents and requested to regularize the loan account and paid certain amounts to that effect" are totally wrong.

g) It is submitted that the averments in the application that "the respondents have failed to register the alleged transaction registered with the Central Registry as per section 20 of the SARFAESI Act" are wrong.

h) It is submitted that in fact, the applicants were irregular in repayment of above loan amounts. As the applicants did not pay the loan amount in proper manner, the loan accounts had been classified as NPA on 05.09.2017 and duly informed to the Applicants.

i) It is submitted that the 1st Defendant has issued Loan Recall Notice dated 05.09.2017 and the same was served and acknowledged by the Applicants on 08.09.2017.

j) It is submitted that as the applicants did not come forward to regularize their loan accounts, Demand Notice under section 13(2) of SARFAESI Act had been issued on 21.10.2017, the same was served to the Applicants.

k) It is submitted that even thereafter, the applicant did not come forward to repay the loan amount. After statutory period of 60 days, possession notice under 13(4) of SARFAESI Act had been issued by this 1 Defendant on 07.02.2018 same was served and acknowledged by the Applicants on 15.02.2018 and 1st defendant had affixed Possession Notice on conspicuous place of the secured property also.

l) It is submitted that this 1st defendant also caused to publish the Possession Notice in English Newspaper "The New Indian Express" and in Tamil Newspaper "Dinamani" on 10.02.2018, which are having sufficient circulation in the locality.

m) It is submitted that thus the defendants had followed all procedure as contemplated in SARFAESI Act and the allegations of the applicants are wrong and which are made with *mala fide* indention to drag on the matter and prevent the defendants from taking actual possession of the property sold in auction.

n) It is submitted that if this appeal is allowed these defendants will be put into an extraordinary hardship.

In view of the above facts, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above application with cost of this 1st defendant and thus render Justice.

Typed set of papers filed by the Defendant Bank

S.No.	Date	Description of documents
1.	05.09.2017	Loan Recall Notice
2.	07.09.2017	Postal Receipts
3.	08.09.2017	Acknowledgement Card
4.	21.10.2017	Demand Notice
5.	07.02.2018	Possession Notice
6.	15.02.2018	Acknowledgement Card
7.		Photo Affixture
8.	10.01.2024	Possession Notice Paper Publication in "The New Indian Express"
9.	10.01.2024	Possession Notice Paper Publication in "Dinamani"

4. ON THE BASIS OF THE ABOVE PLEADINGS, THE POINT WHICH ARISES FOR CONSIDERATION IS:-

WHETHER THE APPLICANTS ARE ENTITLED TO GET THE RELIEF AS PRAYED FOR?

5. Having heard the parties and after going through the entire documents available on records, this Tribunal find that there is no dispute between the parties with regard to the availment of loan facilities by creating equitable mortgage over the Schedule mentioned property. However, the applicants have failed to repay the loan amount, hence, the defendant bank proceeded under SARFAESI Act for recovery of loan amount. The Defendant Bank issued Demand Notice U/s 13(2) of SARFAESI Act on 21.10.2017 demanding a sum of **Rs.14,36,287.95/- (Rupees Fourteen Lakh Thirty Six Thousand Two Hundred and Eighty Seven paise Ninety Five only)** (Page Nos.9 to 11 of the typed set of papers). I find that the applicants have though admitted that they have the knowledge of issuance of Demand notice, but they have not filed any **objections** or representation U/s 13(3-A) of the SARFAESI Act.

6. Thereafter, the Defendant Bank had issued Possession Notice U/s. 13(4) of SARFAESI Act on 07.02.2018 for an amount of **Rs.14,42,897.95/- (Rupees Fourteen Lakh Forty Two Thousand Eight Hundred and Ninety Seven paise Ninety Five only)** (Page No.15 of the typed set of papers). The Applicants in their averment stated that the Bank has failed to follow the procedure contemplated in the SARFAESI Act, viz., publication of possession notice in The New Indian Express Daily on 10.02.2018 and served to the applicants only on 14.02.2018. The Defendant Bank has filed the xerox copies of Paper Publication of Possession Notice vide dated 10.01.2024 which is after lapse of 5 years 11 months 3 days from issuance of Possession Notice and which also does not reveals the name of paper, date, locality and edition of publication (Page No.19 & 20 of the typed set of papers).

7. Further, I find that in typed set of papers, the Defendant Bank provided the xerox copies of AD cards at Page No.7, 8, 16 & 17 and affixture of

Possession Notice in the conspicuous part of the property at Page No.18. But, the copies provided do not exhibit the details, such as date and time of affixture. The Defendant Bank has not filed the original document inspite of specific direction the reason best known to him. Thus, I do not find that the Defendant Bank has strictly followed the SARFAESI procedures, while issuing Possession Notice to the Applicants. The Rule 8(1) (2) & (2-A) of the Security Interest (Enforcement) Rules 2002 clearly says:-

"*8. Sale of immovable secured assets.*

(1) Where the secured asset is an immovable property, the authorized 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, as soon as possible but in any case not later than seven day from the date of taking possession, in two leading newspaper], one in vernacular language having sufficient circulation in that locality, by the authorized officer.

(2-A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.] "

Hence, this issue is decided in favour of the Applicant.

8. I also find that during the pendency of the case, this Tribunal has granted a conditional stay order dated 07.03.2018 for a sum of Rs.3,60,000/- (Rupees Three Lakh Sixty Thousand only) to be paid in two installments by the Applicants, the Applicants have also complied with the conditional order and proved their bona-fide.

9. The Applicants have no doubt being a defaulter, are liable to pay the loan amount to the Defendant Banks and the Banks have been given ample power to recover the outstanding loan amount from the borrowers by invoking the SARFAESI Act and without the intervention of any Court.

10. In view of the facts and discussion made above, I find that the Banks have proceeded under the SARFAESI Act and rules for recovery of money from the Applicants but they have not followed the procedure as mentioned in the SARFAESI Act & Rules strictly and failed to rebut the allegations made by the Applicants successfully. Therefore, this Tribunal holds that the Applicants are entitled to get the reliefs as prayed for in SA No.89/2018.

In the result,

1. **SA No.89/2018** is allowed. The impugned Possession Notice dated 07.02.2018 is hereby set aside.

2. All the expenditures incurred in issuance of Demand Notice dated 21.10.2017 and the impugned Possession Notice dated 07.02.2018 shall not be included in the loan account of the Applicants.

3. The Defendant Bank is at liberty to initiate fresh action against the Applicants as per the SARFAESI Acts & Rules.

Consequently, all pending IAs (if any) are also disposed of. No costs.

(Dictated to Assistant, taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 06th July, 2026).

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 18.07.2026