IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated this the 13th day of July, 2026

SECURITIZATION APPLICATION No.492/2022

Between

1. Jaya Jose,
W/o.C.J. Glenny,
Orlarikkara,
Aranattukara Village,
Thrissur – 680 012.

2. C.J. Glenny,
S/o.Chemmannur Joseph,
Orlarikkara,
Aranattukara Village,
Thrissur – 680 012. …Applicants

And

1. State Bank of India,
Stressed Assets Recovery Branch,
R.S.Building, M.G. Road,
Ernakulam, Kochi – 682 011,
Represented by its Chief Manager.

2. The Authorised Officer,
State Bank of India,
Stressed Assets Recovery Branch,
7th Floor, Vankarath Towers,
Palarivattom By-Pass Junction,
Ernakulam – 682 024. …Defendants

3. V.V.Francis,
S/o.late V.F.Varuthunni,
Vazhappilly House,
Konthuruthy, Thevara,

Elamkulam Village,
Kanayannur Taluk,
Ernakulam District – 682 013.

4. Thressiamma Francis,
W/o.V.V.Francis,
Vazhappilly House,
Konthuruthy, Thevara,
Elamkulam Village,
Kanayannur Taluk,
Ernakulam District – 682 013. …Additional defendants

[Additional defendants 3 and 4 were impleaded as per order dated 14.03.2023 in IA No.805/2023]

This Securitization Application having been heard on 19.06.2026 in the presence of Advocate Sri.P.Shrihari for the applicants, Advocate Sri.Rajesh Rajagopala Pillai for defendants 1 and 2 and Advocate Sri.Mathew Kuruvila, representing counsel for Advocate Sri.Varghese C. Kuriakose for additional defendants 3 and 4 and stood over to this day for consideration, the Tribunal delivered the following:

F I N A L O R D E R

Challenging the securitization proceedings initiated by the defendants 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 borrowers filed this SA under S.17(1) of the SARFAESI Act seeking relief to set aside sale notice dated 12.08.2022 issued by the 2nd defendant and to declare all the securitization measures initiated by the defendants are illegal.

Brief facts of the case:

2.1 The applicants availed a term loan of Rs.130 lakhs and cash credit limit of Rs.170 lakhs on 29.05.2015 for conducting business of wholesale rice and wheat. The tenure of the cash credit limit was 12 months but the same was not renewed thereafter which expired on 29.05.2016. The applicants claimed in the SA that they signed some blank forms and the duly filled up forms were not supplied to them. So also, they disputed about creation of any valid mortgage of the secured asset. It is further stated that OA No.143/2019 was filed by the defendant bank in which they appeared and disputed the mortgage. The defendants also proceeded with the securitization measures and obtained order dated 27.03.2018 from the CJM, Thrissur in Crl.MP No.2145/2018 to take physical possession of the secured assets. The applicants challenged the same in W.P.(C) No.14369/2019 which was disposed permitting the 1st applicant to avail alternative remedy before the Tribunal. Subsequently, physical possession of the secured assets was taken.

2.2 The 2nd defendant issued sale notice dated 12.08.2022 putting three items of properties for e-auction by fixing the sale date on 27.09.2022. It is claimed by the applicants that there was no clear 30 days' notice before putting the property for sale. Hence the sale notice is invalid and illegal. It is also claimed by the applicants that reserve price was fixed without taking proper valuation. The applicants obtained valuation reports from a Chartered Engineer showing the real valuation of the subject matter properties marked Annexures-A5 and A6. Hence the SA is filed by the applicants praying to set aside Annexure-A2 sale notice and other securitization measures taken by the defendants.

2.3 During pendency of the SA, the auction purchasers voluntarily appeared in this case who are impleaded as additional defendants 3 and 4.

3.1 The defendants no.1 and 2 filed written statement denying the averments in the SA and claimed *inter alia* that the applicants availed various loans from the defendant on 29.05.2016 by creating equitable mortgage over the subject matter properties and a letter confirming the deposit of title deeds with the intention to create equitable mortgage is also submitted by them. Now raising dispute against creation of mortgage is not sustainable.

3.2 In the securitization proceeding, step was taken under S.14 of the SARFAESI Act before the CJM, Thrissur which was challenged by the applicants in W.P.(C) No.14369/2019 but they did not get any relief in the said writ proceeding. Subsequently, physical possession of the secured assets was taken and now the claim in respect of the same is barred by limitation.

3.3 The defendants issued sale notice dated 12.08.2022 in putting three items of secured assets for sale. The sale notice was sent to the address which was furnished by the applicants at the time of availing the loans. The service of sale notice on the applicants at a different address cannot be a ground in challenging the sale. In the said sale proceeding, additional defendants 3 and 4 became the successful bidders in respect of item No.1 property of an extent of 8.09 Ares at a consideration of Rs.1,00,10,000/- and item No.2 property of an extent of 7.39 Ares at a consideration of Rs.65,84,000/- and the sale was confirmed in their favour. They deposited 25% of the total bid amount. It is submitted in the written statement that additional defendants 3 and 4 remitted EMD of Rs.16.58 lakhs on 26.09.2022 and also remitted Rs.68 lakhs on 28.09.2022, Rs.24.50 lakhs on 29.09.2022 and Rs.9.50 lakhs on 14.10.2022, in total Rs.1,18,58,000/- and balance amount

Rs.47.36 lakhs to be remitted by them. Valuation of the secured asset was obtained from an approved valuer and thereafter reserve price was fixed. Hence the applicants have no right to challenge the sale proceeding and the SA, being devoid of any merit, may be dismissed.

4. Additional defendants 3 and 4 filed written statement stating that they are the bonafide purchasers in respect of item Nos.1 and 2 properties of the sale notice. They have remitted the entire sale consideration and sale certificate was also issued in their favour. There is no procedural illegality in the sale proceeding. In absence of the same, the SA may be dismissed.

5. From the respective case of the applicants and the defendants, the following points emerged for adjudication:

(i) Whether the applicants have right to challenge the securitization proceeding and taking of physical possession of the secured assets after lapse of the statutory period?

(ii) Whether the sale held in favour of additional defendants 3 and 4 suffers from any illegality?

(iii) Whether the applicants are entitled to get any relief?

FINDINGS:

Point No.(i):

6. In the SA the applicants raised various contentions regarding the securitization measures initiated by the defendants and also claimed that they signed blank forms for creating loan documents and there was no valid mortgage. To counter the same, the defendants produced letter of arrangement marked Annexure-B1 in which the applicants duly signed by affixing their passport size photographs. Now disputing the loan is totally unfounded and cannot be accepted. Due to default in repayment of loan, securitisation measure was initiated which was not challenged by the applicants. In the proceeding under S.14 of the SARFAESI Act, physical possession of the secured asset was taken, which is not challenged by the applicants within the statutory period of 45 days from the date of accrual of cause of action. Raising any dispute against such proceeding in this SA is not legally sustainable and entertainable and also barred by limitation. Hence point No.(i) is answered against the applicants.

<u>Point Nos.(ii) & (iii)</u>:

7. The applicants challenged the sale notice dated 12.08.2022 in putting three items of secured assets for public auction to be held on 27.09.2022. In the SA, the applicants have raised the following contentions:

(i) That before putting the properties for sale, market value of the properties was not duly ascertained and hence fixation of the reserve price is improper and against the interest of the applicants.

(ii) That the sale notice was not duly served on the applicants and there was no clear 30 days of service of notice before the date of sale and hence the sale is vitiated.

(iii) All the statutory measures in putting the properties for sale are not duly complied and also consideration/bid amount was not tendered within the statutory period which renders the sale invalid.

8. *Per contra*, learned counsel for the defendants no.1 and 2 would contend that before putting the properties for sale, valuation was taken from an approved valuer on 25.11.2021.

Notices were sent to the address furnished by the applicants at the time of availing the loans which was duly served. After compliance of the statutory requirements, three items of properties were put to sale and first item of property of an extent of 8.09 Ares with building comprised in Sy.No.145/4 part of Pullazhy Village, Thrissur at a reserve price of Rs.1 crore, item No.2 property of an extent of 7.39 Ares comprised in Sy.No.145/4 part of Pullazhy Village, Thrissur at a reserve price of Rs.65.74 lakhs and item No.3 property of an extent of 14.97 Ares comprised in Sy.No.591/1 part of Pullazhy Village, Thrissur at a reserve price of Rs.1.57 crores. The sale was held in respect of item Nos.1 and 2 properties and additional defendants 3 and 4 became the successful bidders. Item No.1 was sold at a consideration of Rs.1,00,10,000/- and item No.2 at a consideration of Rs.65,84,000/-. The sale was confirmed on deposit of 25% of the bid amount of Rs.42 lakhs on 27.09.2022 vide Annexure-B6. In respect of 3rd item of property, the sale did not fructify. Subsequently, the bidders remitted the balance consideration amount and sale certificate was issued to additional defendants 3 and 4. In absence of any illegality, the SA may be dismissed.

9. The learned counsel for the additional defendants 3 and 4 also contended in the similar line stating that they are the bonafide purchasers of the properties having paid the entire consideration amount. The sale was confirmed in their favour and sale certificate was issued and registered. Possession of the secured assets was also given, for which mutation was effected and they are remitting the tax. In absence of any procedural violation, interference with the sale proceedings is not warranted and hence the SA may be dismissed.

10. Before considering the contentions raised by both sides, it is essential to quote relevant provisions relating to sale of the secured assets as contained in R.9(3) and R.9(4) of the Security Interest (Enforcement) Rules, 2002 which reads as follows:

> *(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again.*
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> *(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.*

As per R.9(3), for every sale of immovable property, the purchaser shall deposit 25% of the bid amount either on the same day or not later than next working day. As per R.9(4), balance amount of purchase price shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.

11. Here in this case, after the auction sale, the applicants remitted Rs.42 lakhs including the earnest money deposit which is 25% of the total bid amount of Rs.1,65,94,000/- in respect of both the items of properties. As per Annexure-B6, sale confirmation letter was issued on 27.09.2022 wherein the auction purchasers were specifically directed to remit the balance 75% of the bid amount on or before 12.10.2022. Along with the written statement, the defendants have produced Annexure-B7 statement showing the remittance of bid amount by the auction purchasers as follows:

26.09.2022	EMD deposited	Rs.16,58,000/-
28.09.2022	Subsequent remittance	Rs.68,00,000/-
29.09.2022	Subsequent remittance	Rs.24,50,000/-
14.10.2022	Subsequent remittance	Rs.9,50,000/-
Total remittance		Rs.1,18,58,000/-
Balance remittance pending		Rs.47,36,000/-

The statement indicates that 75% of the bid amount was not deposited by defendants 3 and 4 within the statutory period of 15 days i.e. on or before 12.10.2022.

12. During argument, learned counsel for the defendants submitted that there was an interim order passed by the Tribunal on 27.09.2022 directing the defendants not to take further action in pursuance to sale held on 27.09.2022. As such, the sale consideration was not accepted within time and there is no illegality in the sale proceeding.

13. On perusal of the said proceeding dated 27.09.2022, it is ordered that for the interest of justice till 11.10.2022 the defendants shall not take further action in pursuance to the sale held on 27.09.2022. There is no specific direction not to accept the bid amount as per the statutory provision. After passing this order, the defendants accepted some of the bid amount from the auction purchasers vide Annexure-B7 but the entire amount was not accepted on or before 12.10.2022. The direction to the defendants not to take any further action in the sale does not amount to non-acceptance of the bid amount which can be construed as a direction for non-issuance of sale certificate till consideration of the stay application on merit. On 28.12.2022, a specific order was passed

permitting the defendant bank to collect the remaining amount from the highest bidders but admittedly the same was not deposited by the auction purchasers immediately. As per the account statement produced by the defendant bank, the last amount was paid by the auction purchasers on 17.02.2023. Thereafter sale certificate was issued despite a specific order not to issue sale certificate. The balance consideration amount was not remitted within 15 days period from the date of confirmation of sale. So also, there is no material showing that the defendant bank and the auction purchasers agreed in writing in extending the period of deposit and also the amount was not deposited within the outer limit of three months from the date of sale in violation of R.9(4) of the Security Interest (Enforcement) Rules,2002. The contention of the learned counsel for the defendant is that due to interim order dated 27.09.2022 directing defendants no.1 and 2 not to take further step in the sale proceeding, the balance consideration amount was not accepted by them from the auction purchasers. Even though such contention is accepted for a moment, the sale cannot be held valid due to non-deposit of balance consideration amount by the auction purchasers within 15 days from the order dated 28/12/2022 permitting the defendants no.1

and 2 to accept the balance consideration amount from the auction purchasers. So also, no material is produced showing any written agreement between the secured creditor and auction purchasers in extending the outer limit to deposit the balance bid amount after over of period of 15 days from the order dated 28.12.2022. Acceptance of balance bid amount from the auction purchasers after statutory period would not validate the sale, which is in contravention of the statutory provisions. Either way the sale is not valid due to violation of Rule 9(4) of the Security Interest (Enforcement) Rules, 2002.

14. Recently in a 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 paragraphs 28 and 36 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.*
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> *xxxxxxxxxxxxxxxxx*
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> *36. While it is trite that the rights of an auction purchaser and the sanctity of a confirmed sale ordinarily merit due protection, such protection is by no means absolute. It must yield where the very*

process engendering the sale is demonstrated to be legally infirm or to be incongruous with the statutory framework. The object of proceedings 17 under the SARFAESI Act is not the mere culmination of a sale in a mechanical manner, but the lawful realisation of the secured asset through a process that is fair, transparent and strictly compliant with the prescribed rules. In the present case, the non-adherence to the timeline that the SARFAESI Rules contemplate constitutes a material irregularity going to the root of the matter. The mere factum that the sale stood confirmed cannot, therefore, foreclose judicial scrutiny."

In view of this ratio, if the sale consideration amount is not deposited by the auction purchaser within the statutory period and in absence of any written extension by agreement between the secured creditor and the auction purchasers, the sale is not valid. The ratio decided by the Hon'ble Apex Court is squarely applicable to the facts of this case. Even though the applicants have raised such contention at the stage of argument based on the judgment of the Hon'ble Apex Court as quoted earlier without any specific challenge in the SA, their claim cannot be ignored as the point of law can be raised even without pleading. Since the statutory requirement is not complied, the sale is vitiated. By issuance and registration of the sale certificate, invalid sale cannot be validated and no absolute right is accrued in favour of additional defendants 3 and 4 to claim right over the secured assets.

15. It is also apparent from the record that the defendants obtained valuation report from an approved valuer marked

Annexure-B8 dated 25.11.2021 in respect of first item of property of an extent of 8.09 Ares. The valuation in respect of the second item of property of an extent of 7.39 Ares is also produced by a memo dated 20.05.2026. Whether fixation of the reserve price is proper or not and whether the sale notice was duly served on the applicants are not required for adjudication in view of the finding that the sale is invalid due to non-compliance of the statutory requirements as contained in R.9(4) of the Security Interest (Enforcement) Rules, 2002 as discussed earlier. The applicants are entitled for the relief in setting aside the sale. Hence both the points are answered accordingly. It is further clarified that defendants 1 and 2 may proceed afresh in putting the secured assets for sale in accordance with law keeping the ratio decided by the Hon'ble Apex Court as stated earlier. Since the auction purchasers deposited the entire consideration amount, the defendants 1 and 2 shall return the same to them together with interest at the prevalent rate for fixed deposit of nationalized banks during the period the money retained by them within a period of one month of passing of this judgment.

Hence it is ordered:-

ORDER

16. In view of the foregoing reasons and with the above observation, SA is allowed in part. Consequently, the auction sale held on 27.09.2022 is hereby set aside but in the circumstance without cost.

(Dictated to my PA, corrected and pronounced by me in the open Tribunal on this the 13th day of July, 2026)

[SOVAN KUMAR DASH]
PRESIDING OFFICER

Documents on the part of the applicants

Annexures	Date	Particulars of documents
Annexure-A1	…	Copy of written statement filed by the applicants in OA No.143/2019.
Annexure-A2	12.08.2022	Copy of sale notice issued to the applicants by the 2nd defendant.
Annexure-A3	…	Copy of postal envelope addressed to the 2nd applicant.
Annexure-A4	…	Copy of postal track report in respect of Annexure-A2 sale notice.
Annexure-A5	20.09.2022	Copy of valuation report in respect of 37.98 cents obtained by the applicants.
Annexure-A6	21.09.2022	Copy of valuation report in respect of 37 cents obtained by the applicants.

Documents on the part of the defendants

Annexure-B1	29.05.2015	Copy of letter of arrangement issued by the defendant bank.
Annexure-B2	30.05.2015	Copy of letters executed by the applicants confirming the creation of mortgage by deposit of title deeds.
Annexure-B3	19.09.2015	Copy of receipt evidencing registration of security interest with Central Registry.
Annexure-B4	13.08.2022	Copy of publication of sale notice in Mathrubhumi daily.
Annexure-B5	13.08.2022	Copy of publication of sale notice in The New Indian Express daily.
Annexure-B6	27.09.2022	Copy of sale confirmation advice issued by the defendant bank to the auction purchasers.

Annexure-B7	...	Details of remittance made by the auction purchasers.
Annexure-B8	25.11.2021	Copy of valuation report obtained by the defendant bank in respect of 8.09 cents of land.

Documents on the part of additional defendants 3 & 4

Annexure-R3(1)	04.06.2019	Copy of judgment in W.P.(C) No.14369/2019 of the Hon'ble High Court of Kerala.
Annexure-R3(2)	30.03.2023	Copy of sale certificate in respect of 8.09 Ares of land issued to additional defendants 3 and 4.
Annexure-R3(3)	21.03.2024	Copy of sale certificates registered as document Nos.746/2024 and 747/2024.
Annexure-R3(4)	29.09.2025	Copy of possession certificate along with location map.
Annexure-R3(5)	26.06.2024	Copy of tax receipt issued by Village Officer, Pullazhi.
Annexure-R3(6)	14.07.2025	Copy of tax receipt issued by Village Officer, Pullazhi.
Annexure-R3(7)	27.02.2024	Copy of judgment in W.P.(C) No.3575/2024 of the Hon'ble High Court of Kerala.

PRESIDING OFFICER

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PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated the 13th July, 2026

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