IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated this the 14th day of July, 2026

**SECURITIZATION APPLICATION No.187/2025**

Between

1. Rajan P.S.,
S/o.Sankaran,
Puthethu House,
Mankulam P.O.,
Virinjapara Kara,
Mankulam Village,
Devikulam Taluk,
Idukki District – 685 561.

2. Valsamma Rajan,
W/o.Rajan P.S.,
Puthethu House,
Mankulam P.O.,
Virinjapara Kara,
Mankulam Village,
Devikulam Taluk,
Idukki District – 685 561. …Applicants

And

1. The Kerala State Co-operative Bank Ltd,.
(KERALA BANK) Represented by its
Managing Director &
Chief Executive Officer,
COBANK Towers,
Palayam,
Thiruvananthapuram – 695 033.

2. The Authorised Officer & Area Manager,
The Kerala State Co-operative Bank Ltd.,
(KERALA BANK), Credit Processing Centre,
Idukki Colony P.O.,
Idukki Taluk,
Idukki district – 685 602.

3. The Kerala State Co-operative Bank Ltd.,
(KERALA BANK),
Mankulam Branch,
Rep. by its Manager,
Mankulam Village,
Devikulam Taluk,
Idukki district – 685 561. …Defendants

This Securitization Application having been heard on 18.06.2026 in the presence of Advocate Mr.George Mathew for the applicants and Advocate Mr.Ahsan Najeeb representing counsel for Advocate Arunkumar for the defendants 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 applicants/borrowers have filed this SA under S.17(1) of the SARFAESI Act seeking relief to set aside the securitization proceeding.

**Brief facts of the case**:

2.1 The applicants, being husband and wife, availed financial assistance from the first defendant for agricultural activities by mortgaging property of the 2nd applicant. The father of the applicant No.1 stood as a guarantor to such loan accounts. Due to default in repayment, the defendants issued a demand notice u/s.13(2) of the SARFAESI Act on 07.12.2018 calling the applicants to repay the outstanding. It is claimed in the SA that the demand notice was not duly served on them. An Advocate Commissioner appointed in M.C.No.32/2022 has issued a notice to take physical possession of the secured assets. The applicants approached the Hon'ble High Court of Kerala in WP(C)No.4341/2022 challenging the securitization proceeding which was subsequently withdrawn. Thereafter, the applicants filed S.A.131/2022 before this Tribunal in challenging the proceeding initiated before the Chief Judicial Magistrate Court, Thodupuzha. The defendants initiated fresh proceeding before the CJM, the applicants had withdrawn the SA.

2.2 The applicants have challenged the fresh proceeding initiated before the CJM in M.C.No.8/2025 u/s.14 of the SARFAESI Act in this SA. They claim that the secured asset is an agricultural land exempted under the SARFAESI Act. Security interest was not registered in the CERSAI portal at the time of issuance of the demand notice. Hence the securitization proceeding is vitiated. Further it is contended that the father of the applicant No.1,who expired earlier, was impleaded as a party in the proceeding u/s.14 of the SARFAESI Act, which renders the order of the learned Chief Judicial Magistrate void and based upon the same the securitization proceeding cannot be initiated. Hence the applicants prayed to set aside the securitization proceeding.

3. The defendants filed written statement denying the averments and claimed that the security interest was duly registered in the CERSAI portal after commencement of Section 26(D) of the SARFAESI Act. Further secured asset is not agricultural land. Hence the claim of the applicants is not sustainable. The father of the 1st applicant is a personal guarantor to the loan. His property was not mortgaged to secure the loan. Even he was shown as a party in the application u/s.14 of the SARFAESI Act, the order passed by the learned Chief Judicial Magistrate cannot be treated as void. In absence of any illegality, interference with the securitization proceeding is not at all warranted and hence the SA, being devoid of any merit, may be dismissed.

4. From the respective case of the applicants and defendants, the following points emerge for adjudication in this case:

(i) Whether secured asset is agricultural land exempted under SARFAESI Act?

(ii) Whether the securitization proceedings initiated by the defendants suffer from any illegality to intervene with the same?

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

## FINDINGS:

**Point No.(i):**

5. In the SA, the applicants claim that the secured asset is agricultural land extensively cultivated with many crops. Hence the same is exempted under the provision of SARFAESI Act. The proceeding is not sustainable in respect of agricultural land. The applicants relied on a certificate dated 08.03.2022 issued by Agricultural Officer marked Annexure A5 stating that the applicants cultivate cocoa, banana, coconut, arecanut, pepper etc. over the subject matter property relating to Sy. No.509/4 and Sy. No.510/4 of Mankulam Village. The certificate does not indicate the status of

the land at the time of availing the loan in the year 2005 and at the time of subsequent execution of promissory note on 01.11.2013. No material is placed by the applicants establishing agricultural nature of the land at the time of availing the loan or they were depending on agricultural source derived from such land. Mere cultivation of pepper and other agricultural produce and plantation of some trees would not change the nature of the land as agricultural land seeking exemption under the SARFAESI Act. Cultivation of cocoa, pepper, arecanut etc. and plantation of coconut, rubber etc. is very common in the land adjacent to the residential building or commercial building in the State of Kerala. In absence of proof of intention to retain the secured asset as agricultural land, the secured asset cannot be treated as agricultural land.

6. The law is well settled on the point that when a person claiming exemption u/s.31(i) of the SARFAESI Act, burden lies on him to establish the same. The Hon'ble Apex Court in the judgment reported in *2023 KHC 6012* in the case of ***K.Sreedhar v. M/s.Raus Constructions Pvt. Ltd. & others*** held as follows:-

> "*When it was the case on behalf of the borrowers that in view of Section 31(i) of the SARFAESI Act, the properties were agricultural lands, the same were being exempted from the provisions of the SARFAESI Act, the burden was upon the*

> *borrower to prove that the secured properties were agricultural lands and actually being used as agricultural lands and/or agricultural activities were going on."*

In view of this ratio, the applicants have to establish that the secured asset was agricultural land at the time of availing the loan which is exempted under the provision of the SARFAESI Act. In absence of such proof, the contention raised by the applicants claiming the secured asset as agricultural land exempted under the provision of the SARFAESI Act cannot be accepted. Hence point No.1 is answered against the applicants.

**Points No.(ii) and (iii):**

7. The learned counsel for the applicants contended that the security interest is registered in the CERSAI Portal after issuance of the demand notice on 06.08.2021. Hence the securitization proceeding is illegal. The demand notice was issued in the year 2018. At that time it was not mandatory to register the secured asset in the CERSAI portal. Section 26-D of SARFAESI Act was inserted by Act 44 of 2016 in Chapter IVA and the same was commenced w.e.f. 24.01.2020. After registration of the security interest in the CERSAI Portal, the defendant filed proceeding under section 14 of the SARFAESI Act before the CJM Court, Thodupuzha for taking physical possession of the secured asset. Hence, there is

no illegality in filing such application before the CJM and the contention of the learned counsel for the applicants on this aspect has no force.

8. Lastly, it is contended by the learned counsel for the applicants that a dead person is shown as respondent No.3 in the application bearing M.C.No.8/2025 filed u/s.14(1) of the SARFAESI Act. The order passed against the dead person by the Chief Judicial Magistrate, being illegal and void, cannot be executed. On the other hand, the learned counsel for the defendants contended that the secured asset belongs to applicant No.2. No relief is claimed against the respondent No.3 in M.C.No.8/2025 and hence the order of the learned Chief Judicial Magistrate cannot be treated as void.

9. Admittedly, the applicant No.2 created mortgage in respect the subject matter property to secure the loan. The respondent No.3 in M.C.No.8/2025 stood as a personal guarantor to the loan availed by the applicant No.1. He is neither a borrower nor mortgagor of the secured asset. Mere showing his name in the proceeding u/s.14 of the SARFAESI Act, the order of the learned Chief Judicial Magistrate cannot be treated as void to ignore the same. No other illegality is pointed out by the learned counsel for the applicants to interdict. In absence of proof of any illegality in

the securitization proceedings, both the points are answered against the applicants and they are not entitled to get any relief in this SA.

Hence it is ordered:-

**ORDER**

10. In view of the foregoingreasons, the SA, being devoid of any merit, is hereby dismissed but in the circumstances without costs.

*(Dictated to my steno, corrected and pronounced by me in the open Tribunal on this the 14th day of July, 2026)*

**[SOVAN KUMAR DASH]**
**PRESIDING OFFICER**

## Documents on the part of the applicant

| Annexures | Date | Particulars of documents |
|---|---|---|
| A1 | 01.11.2005 | Copy of loan agreement. |
| A2 | 01.11.2013 | Copy of promissory note. |
| A3 | 07.12.2018 | Copy of notice issued by 2nd defendant u/s.13(2) of SARFAESI Act 2002 with its English translation. |
| A4 | 17.01.2022 | Copy of Order in M.C.No.32 of 2022 of the CJM, Thodupuzha. |
| A5 | 08.03.2022 | True copy of certificate No.MKM-21/2021 issued by Agricultural Officer, Krishi Bhavan, Mankulam. |
| A6 | 30.05.2022 | True copy of Judgment in WP(C)No.4341 of 2022 of the Hon'ble High Court of Kerala. |
| A7 | 30.12.2024 | True copy of M.C.No.8 of 2025 filed before the Chief Judicial Magistrate Court, Thodupuzha. |
| A8 | 16.12.2024 | True copy of affidavit filed before the Chief Judicial Magistrate Court, Thodupuzha accompanying Ext.A7 sworn. |
| A9 | 10.01.2025 | True copy of Order in M.C.No.8 of 2025 of the CJM Court, Thodupuzha. |
| A10 | 05.02.2025 | True copy of notice issued by advocate commissioner. |
| A11 | 06.08.2021 | True copy of extract showing CERSAI Registration. |

## Documents on the part of the defendants

| Annexures | Date | Particulars of documents |
|---|---|---|
| D1 | 15.10.2013 | True copy of the application forms submitted by the applicant. |
| D2 | - | True copy of the acknowledgement card signed by the parties. |
| D3 | - | True copy of the CERSAI Registration. |

**PRESIDING OFFICER**

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated the 14th July, 2026

**SA No.187/2025**

Between

Rajan P.S.,
S/o.Sankaran,
Puthethu House,
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Virinjapara Kara,
Mankulam Village,
Devikulam Taluk,
Idukki District – 685 561
and another ...Applicants

And

The Kerala State
Co-operative Bank Ltd,
(KERALA BANK)
Represented by its
Managing Director &
Chief Executive Officer,
COBANK Towers,
Palayam,
Thiruvananthapuram – 695 033.
& Others ...Defendants

**F I N A L  O R D E R**