IN THE DEBTS RECOVERY TRIBUNAL – II AT CHENNAI

Dated this 21st day of July, 2026

PRESENT: **SHRI SHARANG DHAR UPADHYAY**
Presiding Officer

SA No.300 of 2023

Venu S.
Son of Srinivasan
No.46, 1st Main Road
Indira Nagar, Adyar
Chennai – 600 020 …**Applicant**

Versus

1. The Authorised Officer
Punjab National Bank
Circle Sastra Centre, Second Floor
Spencer Plaza, 769, Anna Salai
Chennai – 600 002

2. Kamalakannan Sundaravel
Son of Sundaravel
Plot No.5, 6 & 7 Joel Galaxy B-F3
Rajakilpakkam, Kancheepuram District
Tamil Nadu – 600 073
(Impleaded as per order of this Tribunal
Dated 17.02.2025 in IA No.1637/2023) **…Respondents**

Counsel on Record / Appeared

Applicant by	:	M/s R. Sugumaran, S. Parkavi & R. Padmesh
1st Respondent by	:	M/s R. Umasuthan & Mr. K. Bhaskar
2nd Respondent by	:	M/s P.G. Thyagu, K.U. Sale Murugan & I. Hemnaag

ORDER

1. This petition is filed under Section 17(1) of the SARFAESI Act challenging the measures initiated by the respondent bank pursuant to the Advocate Commissioner's notice dated 04.07.2023 in pursuance to the order

of the Learned Chief Metropolitan Magistrate, Egmore, Chennai in Crl. M.P. No.3853 of 2023 dated 10.04.2023.

Facts of the case as averred in the SA

2. The applicant along with his family members are carrying on the business in the name and style of "Leo Retail Concepts", which deals with the business of manufacture and sale of coffee seeds and powder under the brand name "Leo Coffee". Due to its supreme flavor, fragrance and aroma, the brand established substantial space of its own amongst coffee lovers.

3. The applicant approached the erstwhile Oriental Bank of Commerce, now amalgamated with the respondent and submitted a proposal seeking for credit facilities. Considering the same, the respondent sanctioned Cash Credit and Term Loans limit of Rs.1.56 crores. At the request of the applicant the limit was renewed from time to time.

4. All the above loans were regularly serviced till December 2019 regularly, however, due to reasons beyond the control of the applicant, the applicant could not maintain the repayment schedule. Consequent to the same, the account was classified as NPA on 28.2.2019 and immediately on the next day i.e., 1.3.2019 the respondent issued a notice calling upon the applicant to pay the dues within a period of 60 days from the date of receipt of the said notice.

5. Thereafter, the respondent issued Possession Notice dated 24.06.2019 claiming to have taken symbolic possession of the secured assets. The applicant made substantial payments and upgraded the account as a standard asset and the respondent dropped further proceedings.

6. The respondent once again classified the account of the applicant has NPA on 01.09.2019 and issued a demand notice dated 17.09.2019, wherein the liability was reduced from Rs.1.99 crores to Rs.1.51 crores. Consequent upon the second demand notice, the respondent issued yet another possession notice dated 18.10.2019 claiming to have taken symbolic possession of the secured assets.

7. Applicant made substantial payments and the same can be seen from the fact that when the sale notice was issued on 29.02.2020 scheduling the sale on 4.4.2020, the liability has come down to Rs.1.24 crores. Due COVID-19 pandemic the sale did not go ahead in view of the complete lockdown.

8. The respondent issued another sale notice dated 22.12.2021 for the sale on 28.01.2022 and the failed due for want of bidders. While so, the applicant received another sale notice dated 26.09.2022 scheduling the sale on 14.10.2022.

9. The applicant has been negotiating with the respondent for settlement. In pursuance thereof, the respondent accepted the offer made by the applicant and the same was communicated by letter dated 02.02.2022

informing the applicant that the respondent is willing to accept the offer of Rs.74 lakhs and after reckoning the upfront payment of Rs.10.05 lakhs called upon the applicant to pay the balance sum of Rs.63.95 lakhs in two tranches before 31.08.2022, however, the applicant could not honour the same despite best efforts.

10. While so, the respondent issued another sale notice dated 26.9.2022 scheduling the sale on 14.10.2022. On 13.10.2022, the applicant approached the respondent and informed that he has better offers from known sources, who are willing to purchase the property for an amount more than the amount mentioned in the sale notice and that he is ready and wiling to honour the OTS offer dated 02.02.2022 undertaking to pay the belated payment interest, to stop going ahead with the auction and to show his bonafides transferred a sum of Rs.10 lakhs. It is learnt that the sale had taken place and respondent identified the highest bidders for both the properties. The respondent has not divulged the details of the highest bidders to the applicant.

11. The sale notice is challenged before DRT-III Chennai in SA No.494 of 2022 and the same is pending. Even the sale notice suffers from various infirmities. The sale notice was fixed by the respondent before the expiry of 15 days from the date of receipt of the sale notice in as much as the sale notice dated 26.9.2022 was dispatched on 30.09.2022 and was received by applicant on 1.10.2022 for the sale on 14.10.2022.

12. The respondent having come to know of the fact that the sale conducted by the respondent would be set aside for the above violation, the respondent devised the present measure to not only dispossess the applicant but to tarnish the image and reputation among the business circle and staff. The applicant was shocked to receive a notice dated 04.07.2023 from the Advocate Commissioner appointed by the Ld. CMM, Egmore in Crl. M.P. No.3583 of 2023 intimating that he would take physical possession of the secured asset on 11.7.2023.

13. It is not proper on the part of the respondent to initiate a measure especially when the sale conducted by it is sub judice before DRT-III and the present measure is devised to make the applicant budge before it. On receipt of the above notice on 5.7.2023 the applicant engaged the services of his counsel and obtained certified copies of the required documents on 6.7.2023. Upon perusal of the petition filed by the respondent under Section 14 of the SARFAESI Act the applicant was shocked to learn that the respondent suppressed material facts in obtaining orders from the Ld. CMM.

Grounds raised in the SA

14. The action of the respondent is against law, weight of evidence and probabilities of the case. The respondent ought to have considered the bonafide efforts of the applicant to settle the account and ought to have

revived the settlement since it was less than a month before the impugned sale notice.

15. The respondent has not registered the creation of security interest with the Central Registry as contemplated under Section 26D of the SARFAESI Act and hence they are barred from initiating action under SARFAESI Act.

16. The petition under Section 14 was verified on 29.11.2022 i.e., after the sale on 14.10.2022 and sale certificate was issued, however, the same was not disclosed in the petitioner, which is a clear suppression of material fact.

17. The Respondent ought to have seen that having foreclosed the mortgage and allegedly sole the property, it is not proper on the part of the respondent to file the petition for taking physical possession. The respondent has not given the undertaking as contemplated under the proviso to Section 14 of the Act.

18. The respondent's action to take physical possession is a counter blast to its own mistake of not giving sufficient time in between sale notice and sale date and in order to cover up its mistake the petition under Section 14 is filed. The respondent cannot take advantage of its own wrong to budge the applicant to its whims and fancies. The SA is therefore liable to be allowed as prayed for.

Documents filed by the applicant

19. (i) Demand notice dated 1.3.2019 issued by Oriental Bank of Commerce.

(ii) Possession Notice dated 24.05.2019 issued by Oriental Bank of Commerce.

(iii) Recall notice dated 17.09.2019 issued by Oriental Bank of Commerce.

(iv) Possession Notice dated 18.12.2019 issued by Oriental Bank of Commerce.

(v) OTS Letter dated 22.02.2022 issued by the respondent bank.

(vi) OTS cancellation letter dated 01.09.2022.

(vii) Sale Notice dated 26.09.2022.

(viii) Letter dated 13.10.2022 send by the applicant to respondent.

(ix) Mail dated 17.10.2022 sent by applicant to respondent.

(x) Sale Certificates dated 31.10.2022 and 03.11.2022.

(xi) Petition dated 29.11.2022 filed by the respondent under section 14 of the SARFAESI Act.

(x) Order of the Ld., CMM, Egmore in Crl M.P. 3583/2022 Dated 10.04.2023.

(xi) Notice of the Advocate Commissioner dated 04.07.2023.

Counter by 1st Respondent Bank

20. The 1st Respondent filed its counter contending therein that the SA is liable to be dismissed. It is stated that the applicant has not chosen to

challenge the Possession Notice dated 18.12.2019, e-auction sale notice dated 26.09.2022, e-auction sale held on 14.10.2022 and the sale certificates issued in favour of the auction purchasers and therefore the applicant cannot be permitted to the measures taken by the respondent in taking physical possession of the secured asset, in pursuance to the order dated 10.04.2023 passed by Ld. Chief Metropolitan Magistrate, Egmore, Chennai in Crl. M.P. No.38353 of 2023 owing to the ratio held by the Hon'ble Supreme Court in the case of "ARCE Polymers Private Limited Vs. Alphine Pharmaceuticals and others reported in 2022 (2) SCC 221.

21. In as much as the secured creditor is bound to hand over vacant possession of the secured asset to the auction purchasers concerned, the applicant herein do not have any locus standi to question the measures taken by the bank for taking physical possession of the secured assets for the purpose of handing over the possession of the same to the auction purchasers. Having failed to question the 13(4) notice, e-auction sale notice, e-auction proceedings and the sale certificates registered in favour of the auction purchaser, the applicant herein does not have any bonafide cause of action to sustain the above SA both in law and facts and accordingly the above SA is liable to be dismissed at the threshold.

22. The respondent bank had also brought out the facts in issue and the sequence of events in the counter. It is submitted therein that the

respondent has scrupulously followed the provisions of the SARFAESI Act and the Rules made thereunder.

23. The applicant did not question the Section 13(2) notice dated 17.06.2019, the Possession Notice under Section 13(4) dated 18.12.2019 within the period of limitation. The applicant has waived his right of objection in this regard. While so, in questioning the Section 14 order, the applicant cannot question the measures initiated by the respondent since the issuance of Section 13(4) notice. Hence the allegation of the applicant as against the Section 13(2) and 13(4) notices issued by the respondent are liable to be rejected at the threshold.

24. The sale notice dated 26.9.2022 was duly served on the applicant by way of affixture on 26.9.2022. In view of the above, the auction scheduled on 14.10.2022 has been conducted after the expiry of 15 days time period from the date of service of / delivery of sale notice dated 26.9.2022. Hence the contention of the applicant is liable to be rejected in toto.

25. In the e[auction sale held on 14.10.2022, all the three items of the secured asset were sold, the 1st item for Rs.29,65,000/-purchased by Mr. Kamalakannan, the 2nd item was sold for Rs.42,40,000/-, purchased by Mr. Munna Anand in all aggregating to Rs.72,05,000/-. The auction

purchasers remitted the entire sale consideration and the respondent had also issued sale certificate in favour of the auction purchaser.

26. The security interest was duly registered by the secured creditors under Section 26(B) If the Act in the Central Registry under Ref. No.300005740571 and 400005740572 both dated 3.8.2013.

27. The applicant has failed and neglected to redeem the secured asset prior to issuance of sale notice. Hence the applicant has lost his right of redemption under Section 13(8) of the Act. The applicant did not also question the e-auction sale notice dated 26.09.2022 and the e-auction sale dated 14.10.2022.

28. The Ld. CMM, Egmore passed the impugned order after satisfying himself with regard to the fact that the respondent bank / secured creditor has strictly adhered to the provisions of the statute and the relevant rules made thereunder for the purpose of seeking the assistance of court for taking physical possession of the secured asset. Hence there is no legal infirmity to the order dated 10.04.2023 passed in Crl. M.P. No.3583 of 2023 and accordingly the SA is liable to be dismissed.

Documents filed by the 1st Respondent Bank

29. (a) Sanction letter of the respondent dated 2.8.2013 and 01.10.2015.

(b) Memorandum of Deposit of Title deeds dated 24.09.2013 registered as Doc. No.3788 of 2013, SRO, Purasawalkam.

(c) Memorandum of Deposit of Title deeds dated 24.09.2013 registered as Doc. No.5547 of 2013, SRO, Velacherry.

(d) Supplementary Memorandum of Deposit of Title deeds registered as Doc. No.7488 of 2014, SRO, Velachery dated 7.11.2014.

(e) Section 13(2) notice dated 17.09.2019 issued by respondent bank and photocopy of postal extract regarding proof of service.

(f) Section 13(4) notice dated 18.12.2019 issued by respondent along with proof of service.

(g) Affixture relating to 13(4) notice (two properties).

(h) Publication of 13(4) notice by the respondent.

(i) 1st e-auction sale notice dated 29.02.2020.

(j) 2nd e-auction sale notice dated 22.12.2021 along with AD cards

(k) 3rd e-auction sale notice dated 26.09.2022 along with affixture.

(l) Publication of e-auction sale notice in English and Vernacular dailies. AD cards towards proof of service of the same.

(m) Copy of CERSAI Registration Extract.

(n) Copy of the order passed by Ld. CMM, Egmore, Chennai in Crl. M.P. No.3583 of 2023.

30. The 2nd respondent did not choose to file its counter, however, filed its written submissions.

<u>Progression of the case</u>

31. This SA was initially taken up for hearing on 11.7.2023 and this Tribunal passed the order to the effect that "*dispossession of the applicant from the schedule property stand stayed till next posting date on condition that the applicant remitting an amount of Rs.2,00,000/- with the respondent on or before 21.07.2023"*. The auction purchaser filed IA Dy No.3908 of 2023 on 12.10.2023. The auction purchaser approached the Hon'ble High Court in W.P. No.18515 of 2024 and the Division Bench of the Hon'ble High Court was pleased to pass order dated 8.7.2024 (communicated to the Tribunal on 12.2.2025) directing the disposal of the unnumbered IA within 6 months from the date of receipt of the order. The said IA was numbered as IA No.1637/2023 and was allowed by this Tribunal on 17.02.2025 and the petitioner therein was impleaded as party respondent. The applicant filed amended memo of parties. The case came up for hearing on several dates. While so, the 2nd respondent filed a memo in Dy No.7193 of 2025 dated 28.10.2025 enclosing therewith the order of the Hon'ble High Court of Madras dated 25.9.2025 in W.P. No.36772 of 2025, whereby the Hon'ble High Court had directed this Tribunal to dispose of the SA No.300 of 2023 as expeditiously as possible without granting unnecessary adjournment to any of the parties. The applicant concluded his arguments on 29.1.2026, the 1st respondent bank concluded its arguments on 11.2.2026, the 2nd respondent concluded arguments on 2.3.2026 and the case was posted to 11.3.2026 for reply arguments, if any, by the

parties. When the case came up on 28.4.2026, the parties prayed time for filing written submissions and hence was adjourned to 20.05.2026 on which day the applicant again sought time for filing written submissions. Therefore, the Tribunal posted the case on 21.7.2026 for final orders and granted liberty to the parties to file their written submissions, if any.

Written Submissions of Parties

32. The applicant filed his written submissions reiterating the contentions made in the SA and the Memorandum of Grounds.

33. The 1st respondent did not choose to file its written submissions.

34. The 2nd respondent filed his written submissions. The 2nd respondent relies upon the judgment of Hon'ble Supreme Court in **ITC Limited Vs. Blue Coast Hotels Ltd., (2018) 15 SCC 99**; **Standard Chartered Bank vs. V. Noble Kumar (2013) 9 SCC 620; CELIR LLP vs. Bafna Motors (Mumbai) Pvt. Ltd., 2023 SCC OnLine SCC 1209** in support of his contentions. It is stated that while submitting the application under Section 14 before the Ld. CMM, the deponent sworn that no application under SARFAESI Act was pending. Admittedly no stay was there. Apart from that the said proceedings are belated one. As elicited from the authorities referred supra once the sale become final and the sale certificate was registered, the right of the borrower becomes forfeited. Once the Magistrate satisfied about the invocation of SARFAESI Act by

issuing notice under Section 13(2) and 13(4) in compliance to hold that the exercise of powers under Section 14 could not be limited to be exercised before sale or after sale. The exigency to seek for an order under Section 14 is not confined to post sale proceedings.

35. As per Section 13(2) and 13(4), the bank had the symbolic possession alone and it cannot be equated against the actual physical possession. The said contention is irrelevant. The symbolic possession is a statutory exercise under the Act and the Act nowhere stipulates that the symbolic possession and the sale in consequence, would make the sale incomplete and the transpose of title in faour of the auction purchaser is sham and nominal. By virtue of registration under the Registration Act, Section 17, it becomes a valid piece of instrument to transfer the title against the consideration passed on.

36. Despite registration and despite challenge against the sale, which was left to be dismissed earlier, the subject matter is revolving around the circumstances of making the possession at the hands of the auction purchaser. The remedy under Section 14 out flows from the end proceedings of sale and unless the sale declared as to its nullity, the contest against Section 14 is pointless and it is hopelessly barred by procedents.

37. The 2nd respondent has put his hard earned money in purchasing the property the process is being unnecessarily delayed causing great

prejudice to the 2nd respondent. The SA be dismissed as an abuse of process of court.

Point for consideration

38. The matter is heard. In the wake of available material on record, the following points arise for consideration in the present SA:

"Whether the impugned order of Ld. Chief Metropolitan Magistrate, Egmore, Chennai dated 10.04.2023 in Crl. M.P. No.3583 of 2023 suffers from any illegality or impropriety rendering it void in law?"

Answers to Point for Consideration

39. It is to be noted that the Hon'ble Supreme Court in "***NKGSB Co-operative Bank Limited Vs. Suber Chakravarty"*** and "***R.D. Jain and Company Vs. Capital First Limited CA 1755 of 2022 dated 27.07.2022***" ruled that no adjudicatory powers are vested while deciding the application under Section 14. In the matter of ***"Indian Bank Vs. Vishalakshi and Another CA 6295/2015 dated 23.09.2019"***, the Hon'ble Supreme Court had further held that the proceedings under Section 14 is a procedural step and purely an administrative order and there is no adjudicatory process involved. Keeping in mind the above rulings, this Tribunal can only examine whether there was compliance of the provisions by the defendant bank before the Learned CMM as mandated under Section 14(1) of the SARFAESI Act.

40. As per Section 14(1) of the SARFAESI Act, on a request being made by the by the secured creditor, the Chief Metropolitan Magistrate or the District Magistrate as the case be take possession of such asset and documents relating thereto and forward such assets and documents to the secured creditor. The financial institutions are to declare under the affidavit the aggregate sum of financial assistance and dues payable as on the date of the application. It should be averred that the borrower / guarantor having created security interest over the property and that the borrower had committed default; upon such default the account must have been classified as NPA. It is also mandatory to aver in the affidavit regarding the issuance of demand notice, the reply thereof and the response of the secured creditor and that the borrower had not made any repayment and therefore entitled to take possession and that the other provisions of the Act have been complied.

41. This Tribunal is aware of the Ruling of the Hon'ble Supreme Court **in "Authorised Officer, Indian Bank Vs. Vishalakshi and another CA No.6295/2015 disposed on 23.09.2019"** holding that the spirit of Section 14 of the SARFAESI Act is only a procedural step. It is purely an administrative order and no adjudication is involved. The orders of the Ld. CMM / DM is only an aid to the proceedings initiated u/s.13(4) of the Act.

42. It is only to be looked into whether the provision of section 14(1) of the Act is complied or not. From the impugned order it is seen the

necessary details to be furnished u/s.14(1) of the Act has been complied.

43. However, this Tribunal has also considered the documents filed by the defendant. This includes the documents produced at S. No. 6 and 7 which is the demand notice dated 17.09.2019 (Pages 33 to 36) and the postal acknowledgement (Pages 37 to 39), the same clearly reveals that the demand notice is duly served on the applicant.

44. As regards the compliance of Rule 8 (1) and 8(2) of the Security Interest (Enforcement) Rules, 2002 is concerned the respondent has filed the possession notice dated 18.12.2019 at Sl. No.8 (Pages 40-45), the proof of affixture of the possession notice at Sl. No.9 (Pages 46 & 47) and the proof of publication of the possession notice in two newspapers viz., Daily Thanthi and The Indian Express at Sl. No. 10 (Page 48 & 49) which clearly evidence that the possession notice has been served, published and affixed on the secured asset.

45. As regards the ground relating the non-registering of the security interest with the Central Registry is concerned, the respondent bank has produced the CERSAI Registration Extract at Sl. No.16 (Pages 68-69) and this ground raised by the applicant fails.

46. Further, the applicants have not urged any grounds with regard to non-compliance of provisions under Section 14(1) of the SARFAESI Act by the secured creditor. Further, the Ld. CMM, Egmore at Paragraph 5 of the order has observed that "*The petitioner has followed the procedures laid down u/s 13 & 14 of the Act and as a banking company, the petitioner is entitled to get the assistance of this Court…….*"

47. Therefore, in the absence of any allegations regarding non-compliance of the provisions of Section 14(1) of the Act and documentary evidence produced by the defendant bank, this Tribunal is unable to find any illegality, impropriety or otherwise to set aside the impugned order. Hence the following:

ORDER

(i) The SA stands dismissed. The orders of the Ld. Chief Metropolitan Magistrate, Egmore, Chennai dated 10.04.2023 in Crl. M.P. No.3583 of 2023 is hereby affirmed. All other pending IAs thus stand disposed of. Parties to bear their own costs.

(ii) A copy of this order be communicated to the parties concerned.

Sd/-
(SHARANG DHAR UPADHYAY)
PRESIDING OFFICER
DRT-II, CHENNAI

(Dictated to PS, who typed in the system directly, corrected, signed and pronounced by me in Open Court, on this 21st day of July, 2026)