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. 224/2015

1. **M. Sangameswari**
   W/o M. Sridhar
   Old No. 2/189, Ne No. 2/346
   Pallar Street, Thulayanatham Post
   Musiri Taluk, Trichy District

2. **Rep. by her Power of Attorney**
   M. Prabakaran
   S/o Maruthanayagam
   No. 437/3, Water Board Colony
   Block-5, Alagapuram Kaattur Road
   Salem – 636 016 **...... Applicant**

Vs

1. **The Authorised Officer**
   State Bank of India
   No. 34, Suppiah Pillai Towers
   Chinnakadai Street
   Trichy – 620 002 **...... Defendant**

Appearance of Advocates:
Mr. M. Saravanan ---- Counsel for the Applicant
Mr. P. Jayaraman ---- Counsel for the Defendant Bank

This Application was heard in the presence of Mr. M. Saravanan, Counsel for the Applicant and Mr. P. Jayaraman, Counsel for the Defendant

Bank in the aforesaid case and upon hearing the arguments of both sides Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

ORDER

1. This Application has been filed under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with a prayer to set aside the possession notice dated 16.04.2015 issued by the Defendant Bank under section 13(4) of the SARFAESI Act, 2002.

2. The brief facts of the applicant case is as follows:-

A. The Applicant has stated that, one M/s. Aditya Builders issued an advertisement for its housing project at Musiri, offering 100% loan assistance to prospective purchasers. The Applicant approached M/s. Aditya Builders at No. 9, S.V. Complex, 2nd Floor, Musiri. The builder directed the Applicant to pay the margin amount and informed her that, upon such payment, the land would be registered in her name. The builder also directed her to furnish copies of her income-related documents and informed her that she had to enter into a tripartite agreement with the Bank, namely, State Bank of India, and the builder. Accordingly, the Applicant paid the margin amount. Thereafter, she was taken to the State Bank of India, Chinnakkadai Veethi Branch, where an account was opened in her name and her signatures were obtained on various forms. Subsequently, a housing loan of Rs.30,00,000/- was sanctioned.

B. Thereafter, the Defendant Bank did not communicate any further information to the Applicant. She was not informed about the disbursement of the loan amount to the builder, nor was any stage completion report obtained from her. She was kept completely unaware of the subsequent developments. At this stage, the Applicant received a notice from the Central Bureau of Investigation, Anti-Corruption Branch, Chennai, requiring her to appear for an enquiry. Only then she came to know that one S. Kattabomman, Senior Manager, State Bank of India, Tiruchirappalli, and J. Mohan, Deputy Manager (Advances), had allegedly conspired with Suresh Thirumalai and Satheesh of M/s. Aditya Builders and fabricated several documents, including Income Tax Returns, to secure sanction of the loan, which was thereafter disbursed to M/s. Aditya Builders without execution of the corresponding construction work. In fact, more than Rs.25 lakhs was disbursed within a short span of three months without any substantial progress in construction.

C. The Deputy General Manager of the State Bank of India lodged an FIR in RC MA1 2014 A 0018 before the Central Bureau of Investigation, Anti-Corruption Branch, Shastri Bhavan, Chennai. In the complaint, it was categorically stated that, upon verification, 15 Income Tax Returns of various borrowers, including that of the Applicant, had been fabricated by a single person on the same date. The applicant further stated that the Bank's vigilance investigation revealed that its officials, namely, S. Kattabomman and J. Mohan, had conspired with M/s. Aditya Builders and created forged and fabricated documents. It was further revealed during the vigilance enquiry that the borrowers were not even aware of the fraud committed by the said officials and the builder and were innocent victims.

D. The Applicant submitted that the accused persons were arrested by the CBI and that the criminal case is pending. During the investigation, the accused persons allegedly confessed to their involvement in the offences. Suppressing these material facts, the Defendant Bank issued a notice under Section 13(2) of the SARFAESI Act dated 22.08.2014, alleging that the loan account had become a Non-Performing Asset (NPA). It is submitted that the Applicant had not even commenced repayment of the loan since the terms and conditions of sanction had never been communicated to her. The Defendant Bank thereafter proceeded to issue the possession notice under Section 13(4) of the SARFAESI Act. The Applicant contends that the mandatory statutory procedure was not followed and that no valid notice under Section 13(2) was served upon her. Hence, the present appeal challenging the possession notice under Section 13(4) has been filed on the following, among other:

MAIN GROUNDS

a) The Possession Notice dated 16.04.2015 is illegal, unsustainable both in law and on facts, and is liable to be set aside.

b) No reasonable opportunity was afforded to the Applicant, and the Defendant failed to follow the mandatory procedure prescribed under law.

c) The loan account could not have been classified as a Non-Performing Asset (NPA), and no prior notice regarding such classification was issued to the Applicant.

d) The terms and conditions of the loan sanction were never communicated to the Applicant. Therefore, the amount claimed in the possession notice is not legally recoverable from her.

e) The Possession Notice was not published in two leading newspapers, as mandated under the SARFAESI Act and the Rules framed thereunder.

f) The principles of natural justice have been grossly violated by the Defendant.

g) The mortgage allegedly created is invalid in law. Consequently, the provisions of the SARFAESI Act are not applicable.

h) The mandatory procedure of serving a valid notice under Section 13(2), which is a condition precedent for initiating action under Section 13(4), was not complied with.

i) The Defendant failed to consider that the Deputy General Manager of the Bank himself lodged an FIR stating that the Income Tax Returns and other documents had been fabricated and that the Bank officials, namely, S. Kattabomman and J. Mohan, had conspired with M/s. Aditya Builders to create forged documents. The vigilance investigation further revealed that the borrowers were innocent and were unaware of the fraud.

j) The Defendant Bank failed to consider that its official, S. Kattabomman, was involved in several similar acts of fraud and cheating, and that criminal cases had been registered against him, resulting in his arrest and remanded to judicial custody.

k) The Defendant Bank initiated proceedings under the SARFAESI Act by suppressing the above material facts, rendering the proceedings liable to be set aside.

l) The Defendant Bank failed to consider that the FIR itself records that the vigilance investigation established that the borrowers were unaware of the fabricated Income Tax Returns and statements created by the accused and kept in the loan files.

m) When the Bank's own officials, in collusion with the builder, committed fraud and disbursed the loan amount without the knowledge or consent of the borrower, the Bank ought to have proceeded against the wrongdoers instead of initiating recovery proceedings against the innocent borrowers.

n) The Defendant Bank is vicariously liable for the fraudulent acts committed by its officials in the course of their employment.

o) The Defendant Bank disbursed substantial portions of the loan directly to the builder within a short period without obtaining the Applicant's consent, without verifying the stage of construction, and without ensuring the end use of the funds, thereby resulting in unauthorized and excessive disbursements.

p) Copies of the loan documents and other relevant records were never furnished to the Applicant, in violation of the Fair Lending Practices Code.

q) The Applicant cannot be held liable for unauthorized debits made by the Defendant Bank.

r) The Defendant Bank did not fully disburse the sanctioned loan amount of Rs.30,00,000/-, and a sum of Rs.3,54,000/- still remains undisbursed. Consequently, the EMI could not have legally commenced.

s) The Defendant Bank released the loan amount in stages without following the prescribed procedure and without obtaining the Applicant's consent.

t) The Applicant did not submit any request for stage-wise release or certify the value of work completed. Therefore, the debits made towards stage-wise disbursements are unauthorized.

u) The Defendant Bank failed to safeguard the interests of the Applicant.

v) Although the Memorandum of Deposit of Title Deeds (MOD) was executed on 10.02.2013 and registered on 26.04.2013, the Defendant had already disbursed loan amounts to the builder on 18.01.2013, even before creation of the mortgage, and without the Applicant's consent. The Bank also failed to verify the end use of the funds before releasing the amounts.

w) The Defendant Bank failed to periodically inform the Applicant about the interest accrued, the principal outstanding, and the total amount payable.

x) The Defendant released the loan amount even before registration of the Memorandum of Deposit of Title Deeds.

y) The Possession Notice does not contain a proper break-up of the amounts allegedly due and payable.

z) The builder abandoned the project without completing the construction despite receiving substantial payments from the Defendant Bank.

aa) The Applicant cannot be held liable for the loan amount that was misappropriated by the Bank officials and the builder through fraudulent acts.

DESCRIPTION OF THE IMMOVABLE PROPERTY

Tiruchirappalli District, Musiri Sub Registration District, M.Pudupatti East Village, Patta No.1366, Ayan Punjai Survey No. 259/2-Hec. 0.84.5 Ares (M.Pudupatti Old Survey No.748/2) within the following four boundaries:

On North: land belonging to Shanmuganathan, On South: land measuring Hec. 0.05.5 Ares provided on southern west corner to Babu alias Ramu Mohan and land belonging to Arumugam, Chinnappa Gounder and Ganapathi Chettiar vagaiyara,

On East: 20 ft. wide North South common pathway and

On West: North South Thar Road leading to Thuraiyur.

Within this Hec. 0.79.0 Ares equivalent to Acre 1.95 cents punja lands. Out of this a plot bearing Plot No.15 (vide doc. No.155/2013, dated 18.01.2013 registered in the name of Mrs. S.Sangameswari) measuring East 45 ft, West 49'6" ft, North 38'9" ft, South 59'3" ft. admeasuring 2205 sq.ft. comprised in Survey No.259/2 situated at R.V.R. Nagar, M.Pudupatti East Village, Musiri Taluk, Tiruchirappalli District, bounded on

North by 20 feet road,

East by Plot No.16 and

South by Maheswari's land,

West by Chennai By Pass Road

List of Documents filed by the Applicants:

Sl. No.	Date	Description of Documents
1.	27.08.2008	Power of Attorney executed by the Applicant
2.	10.02.2013	Memorandum of Deposit of Title Deeds
3.	05.12.2014	Statement of Accounts
4.	16.04.2015	Impugned Possession Notice

3. On the other hand, the Defendant bank appeared and filed Reply Statement along with typed set of papers wherein it has been submitted that the applicant along with Sri Aaditya builder's proprietor namely Suresh approached the Defendant Bank and requested for availing the housing loan. After fulfilling all eligibility criteria, the Defendant Bank has agreed to grant a housing loan after entering into the agreement dated 04.03.2013.

- The Defendant Bank submitted that it was not aware of the advertisements issued by Sri Aditya Builders offering a 100% loan facility for its housing project. Any negotiations, agreements, or transactions between the Applicant and Sri Aditya Builders were entered into without the knowledge or involvement of the Defendant Bank and had taken place prior to the Applicant approaching the Defendant for availing the housing loan. The Defendant Bank was also unaware of the alleged payment of margin money made by the Applicant to the builder.
- It is further submitted that the Applicant, along with the proprietor of Sri Aditya Builders, namely Mr. Suresh, personally approached the Defendant Bank seeking a housing loan. Further, upon verification of the eligibility criteria, the Defendant Bank agreed to sanction the housing loan to the Applicant. Accordingly, the parties entered into a Loan Agreement dated 04.03.2013 containing the agreed terms and conditions. The Applicant voluntarily submitted the loan application, income tax returns, and other requisite documents, and executed the loan agreement and allied loan documents after fully understanding and accepting their contents. Based on the documents furnished by the Applicant, the loan was sanctioned. Therefore, the allegations made by the Applicant to the contrary are false, baseless, and denied in to.
- The Defendant Bank submitted that as per the terms of the Loan Agreement, the Applicant expressly authorised the Defendant Bank to

disburse the loan amount directly to the builder, and the Defendant accordingly disbursed the loan. The Applicant, being a resident of the same locality, was fully aware of the progress of construction. Had there been any irregularity, the Applicant ought to have immediately informed the Defendant Bank, however, no such complaint or information was ever received. The loan amount was disbursed only after verifying the respective stages of construction. Subsequently, when it came to the knowledge of the Defendant Bank that forged Income Tax Returns had allegedly been submitted for obtaining the loan, a complaint was lodged with the CBI, ACB. The Applicant had signed the Income Tax documents submitted to the Bank, demonstrating his knowledge of and involvement in the documents relied upon for sanction of the loan. The Defendant Bank had acted bona fide, relying on the documents produced by the Applicant, and had taken all necessary precautions while sanctioning and disbursing the loan in accordance with the sanction terms and the Tripartite Agreement.

- Further it is submitted that the complaint before the CBI, ACB was lodged only after the Defendant Bank discovered that forged Income Tax Returns and fabricated income statements had allegedly been submitted to artificially enhance the Applicant's loan eligibility. The Applicant's signatures on the Income Tax documents clearly establish his knowledge of the documents relied upon for obtaining the loan. A separate criminal complaint was lodged by the Defendant Bank before the CBI, ACB, Chennai, pursuant to which a case was registered and a charge sheet has been filed.
- It is also submitted that the criminal case registered by the CBI, ACB is presently pending trial. Neither the CBI nor the Defendant Bank had ever instructed the Applicant to discontinue repayment of the loan. The

loan was disbursed proportionately based on the stage-wise progress of construction, and the moratorium period having expired, the Applicant was liable to commence repayment of the Equated Monthly Installments (EMIs). However, the Applicant failed to pay even a single installment. Consequently, upon default, the loan account was classified as a Non-Performing Asset (NPA), and the Defendant Bank initiated recovery proceedings under the SARFAESI Act, 2002. Accordingly, a demand notice under Section 13(2) dated 17.11.2014 was issued calling upon the Applicant to discharge the outstanding dues. Despite repeated reminders, notices, and personal follow-ups, the Applicant failed to regularise the loan account or discharge his liability.

- The Defendant Bank submitted that an Original Application (O.A.) for recovery of the outstanding dues has already been filed before this Hon'ble Tribunal, which is pending adjudication. Simultaneously, the Defendant Bank initiated proceedings under the SARFAESI Act, 2002, in accordance with law.
- It is submitted that the Hon'ble Supreme Court has consistently held that, after issuance of a notice under Section 13(2) of the SARFAESI Act and upon compliance with the statutory requirements, the secured creditor is entitled to take possession of the secured assets in accordance with law.
- It is further submitted that the Applicant failed and neglected to repay the loan in terms of the Loan Agreement, the loan account was rightly classified as a Non-Performing Asset (NPA). The Applicant had borrowed a sum of Rs.30,00,000/- for construction of a residential house and had agreed to repay the said amount together with interest at the rate of 10.25% per annum in accordance with the agreed repayment schedule. The Applicant executed all necessary loan documents in favour of the Defendant Bank and created an equitable mortgage over

the schedule-mentioned property by depositing the title deeds with the Defendant Bank as security. Despite availing the loan, the Applicant failed to repay the EMIs for several years and has filed the present appeal solely to delay and obstruct the lawful recovery proceedings initiated by the Defendant Bank.

- The Defendant Bank submitted that the Applicant is a chronic and wilful defaulter. As on 08.04.2014, a sum of Rs.32,39,583/- was due and payable together with future interest at the contractual rate and costs. Since the Applicant failed to discharge the outstanding liability despite repeated opportunities, the Defendant Bank was constrained to issue the demand notice dated 17.11.2014 under Section 13(2) of the SARFAESI Act, calling upon the Applicant, as borrower and mortgagor, to repay the outstanding dues within the statutory period of sixty days.
- Further it is submitted that upon the Applicant's continued default, the Defendant Bank issued a Possession Notice under Section 13(4) of the SARFAESI Act on 16.04.2015. The said notice was thereafter published in one English daily and one Tamil daily newspaper in compliance with the provisions of the Act and the Rules framed thereunder.
- The Defendant Bank submitted that it is legally entitled to recover its outstanding dues by invoking the provisions of the SARFAESI Act, 2002. All measures undertaken by the Defendant Bank were strictly in accordance with the statutory procedure prescribed under the Act and the applicable Rules.
- Further it is submitted that the allegations levelled against the Defendant Bank are wholly unfounded and devoid of merit. The Defendant Bank has acted strictly in accordance with the terms of the Loan Agreement and the provisions of law, whereas the Applicant has committed repeated breaches of his contractual obligations by failing to repay the loan. Consequently, the Defendant Bank was left with no

alternative but to initiate recovery proceedings under the SARFAESI Act.

TYPED SET OF DOCUMENTS FILED BY THE DEFENDANT BANK

Sl. No.	Date	Particulars
1.	11.01.2013	Loan Application
2.	12.01.2013	Sanction letter
3.	12.01.2013	Agreement for loan
4.	18.01.2013	Sale deed
5.	10.02.2013	Memorandum of Deposit of Title Deeds
6.	17.11.2014	u/s 13(2) Notic
7.	12.10.2014	Statement of Accounts
8.	16.04.2015	Possession Notice u/s 13(4) paper publication

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

Whether the Applicants is entitled to get the reliefs as prayed for?

5. Having heard the parties and upon perusal of the entire records, I find that the Applicants availed a credit facility of Rs.30,00,000/- (Rupees thirty lakhs only) from the Defendant Bank. The Applicant mortgaged the schedule-mentioned property as security for the loan facility availed in favour of the Defendant Bank which is evident from perusal of loan agreement document **at page No. 11 to 17**.

6. I further find that a criminal case has been registered against the Chief Manager and Deputy Manager of the State Bank of India, Tiruchirappalli, along with three others, in RC MA1 2014 A 0018 dated 30.04.2014 on the file of the Central Bureau of Investigation, Anti-Corruption Branch, Shastri

Bhavan, Chennai, and that the said case is presently pending for trial. I further find that the Defendant Bank classified the Applicant's loan account as a Non-Performing Asset (NPA) on 18.07.2014. Thereafter, the Defendant Bank issued a Demand Notice dated 17.11.2014 under Section 13(2) of the SARFAESI Act, demanding payment of a sum of Rs.32,39,583/- (Rupees Thirty-Two Lakhs Thirty-Nine Thousand Five Hundred and Eighty-Three only). Upon perusal of the records, I find that the Defendant Bank has not produced any material to establish that the said Demand Notice was duly served upon the Applicants. On other hand the applicant has also not denied that he has received the Demand Notice but they have not produced any documentary evidence to show that they had submitted any objection or representation in response to the Demand Notice under Section 13(3A) of the SARFAESI Act.

7. Thereafter, the Defendant Bank issued the impugned Possession Notice dated 16.04.2015 under Section 13(4) of the SARFAESI Act. The Applicants contended that the Defendant Bank failed to publish the Possession Notice in two leading newspapers and to affix the same on a conspicuous part of the property. I also find that the Defendant Bank has not filed the impugned Possession Notice and the acknowledgment (AD) card to prove the service of the Possession Notice on the Applicants, viz., M. Sangameswari. Moreover, I find in the paper publication (xerox copy) filed by the Bank, the name of the newspaper, the date of publication, and the place of publication have not been mentioned **(Bank's typed set of papers, pages 43 & 44)**. The Defendant Bank has not filed the original documents for verification the reason best known to them.

Further, I find that the Defendant Bank has not produced any evidence to establish that the Possession Notice dated 16.04.2015 was affixed on the conspicuous part of the schedule-mentioned property. Since there are several irregularities in the documents filed by the Defendant Bank with regard to the issuance of paper publication and affixture of the Possession Notice, the said Possession Notice is not sustainable in the eye of law. Rule 8(1) and (2) of the Security Interest (Enforcement) Rules, 2002, clearly provide that

> ***"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 in two leading newspaper, one in vernacular language having sufficient circulation in that locality**, by the authorized officer.*

In view of the above Provision, I find that the Defendant Bank has not followed the above provision in issuance of Possession Notice.

9. The Applicants are no doubt being defaulter are liable to repay the loan amount to the Defendants Bank and the Bank has been given ample power to recover the outstanding loan amount from the borrower by invoking the SARFAESI Act and without the intervention of any Court. But, it shall not allow the Bank to take possession of the property without following the due process of law strictly, because property is the constitutional right of an individual and hence, Bank cannot take possession of the property without following the mandatory provisions of Act & Rules. In view of the above facts and circumstances of the case, I find that the Defendants Bank have not followed the due procedures for recovery of the loan amount under SARFAESI Act. As such, I find merit in the above SARFAESI Application. Therefore, this Tribunal holds that the Applicant is entitled to get the reliefs as prayed for in **SA No. 224/2015.**

In the result,

SA No. 224/2015 is allowed. No costs. Accordingly, the Impugned Possession Notice dated 16.04.2015 issued by the 1st Defendant Bank is hereby set aside and the Defendant Banks are directed not to include the expenditure incurred in issuance of Impugned Possession Notice dated 16.04.2015 in the loan account of the Applicants.

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

Further the Defendant Bank is directed to proceed under SARFAESI for recovery of the outstanding dues from the applicant by following the due process of law strictly.

Dictated to KKN 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