Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 13th DAY OF JULY, 2026

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

SA No. 546/2024

1. D. Mugeshkumar,
   S/o N. Devadoss
   Door No. 2/20A(1) Market Street
   Rameswaram – 623 526 **--- Applicant**

-Vs-

1. The Authorized Officer,
   M/s Shriram Transport Finance Company Limited
   No. 2/1244, Ist Floor, Saraswthi Complex
   Indian Bank Upstairs, Bharathi Nagar
   Ramanathapuram – 623 503

2. The Chief Judicial Magistrate
   District Court Complex
   Ramanathapuram **--- Defendants**

<u>Appearance of Advocates:</u>
Mr. M.V. Mani Babu ---- Counsel for the Applicant
1st Defendant Finance Company sets Ex-parte.
(The 2nd Defendant is none other than Ld. CJM, Ramanathapuram)

This SARFAESI Application was heard in the presence of Counsel for the Applicants and the 1st Defendant Finance Company for passing final order before me and upon hearing the arguments of the Counsel for the Applicants and having stood over for consideration till this day, this Tribunal delivered the following:

<u>O R D E R</u>

1. This application has been filed under Sec.17(1) of the SARFAESI Act 2002 by the Applicants, praying that this Hon'ble Tribunal may be pleased to set aside the order of Ld. CJM, Ramanathapuram passed under Section 14 of the SARFAESI Act order dated 29.07.2024 in Crl. M.P. No. 1277/2024 in respect of scheduled property and quash the same as illegal, perverse, arbitrary and against the principles of natural justice.

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

The Applicant submitted that the 1st Defendant Finance Company had sanctioned Term Loans of Rs.10,00,000/- (Rupees Ten Lakhs only) each to the following borrowers: 1. P. Vikneshwaran, S/o Thiru Poopandiyan 2. P. Pandiduari, S/o Pannerselvam 3. R. Numbuvinithan, S/o Ramaligam 4. S. Sethupanthiraja, S/o Selvaraj and 5. K. Jeevamuneeswaran, S/o Katheresan. It is submitted that the Applicant herein stood as guarantor for the due repayment of the loan amounts sanctioned to the aforesaid borrowers and, as collateral security for the said financial assistance, offered the schedule-mentioned property by creating an equitable mortgage in favour of the 1st Defendant. It is further submitted that the Applicant accepted all the terms and conditions governing the loan facilities and executed the necessary loan documents, including the Memorandum of Deposit of Title Deeds, thereby creating an equitable mortgage over the schedule-mentioned property.

The applicant submits that the 1st Defendant had sanctioned financial credit facilities to the borrowers as stated below:

Sl. No.	Name of Borrower	Term Loan No.	Loan Date	Loan amount in Rs.

1.	P. Vikneshwaran	RAWRMT805170003	17.05.2018	10,00,000
2.	p. Pandidurai	RAWRMT808170005	17.08.2018	10,00,000
3.	R. Numbu Vinithan	RAWRMT807100002	10.07.2018	10,00,000
4.	S. Sethupathiraja	RAWRMT806080005	11.06.2018	10,00,000
5.	K. Jeeva Muneeswaran	RAWRMT805070002	07.05.2018	10,00,000

a) The Applicant further submitted that, owing to the COVID-19 pandemic and the consequent nationwide lockdown, his financial condition was severely affected. Although the Government introduced various relief measures, including a moratorium for borrowers, the Applicant's requested to the 1st Defendant to grant additional time for repayment was not considered.

b) The Applicant further submitted that, due to the financial hardship caused by the pandemic, the borrowers were unable to remit the regular instalments, resulting in the loan account being classified as a Non-Performing Asset (NPA). The 1st Defendant declared the loan account as NPA on 28.10.2021 without adhering to the applicable Reserve Bank of India (RBI) guidelines and norms governing asset classification. The Applicant contends that such classification is contrary to the RBI's prudential norms and is therefore illegal and unsustainable.

c) Thereafter, the 1st Defendant issued a Demand Notice dated 29.10.2021 under Section 13(2) of the SARFAESI Act, calling upon the borrowers and the Applicant to pay a sum of Rs.71,35,207/- (Rupees seventy one lakhs thirty five thousand two hundred seven only), as outstanding as on 28.10.2021.

d) The Applicant submitted that the 1st Defendant thereafter issued a Possession Notice under Section 13(4) of the SARFAESI Act dated 26.04.2022 and initiated further recovery proceedings. The said Possession Notice was subsequently published in The Indian Express (English Daily) and Dinamani (Tamil Daily) on 30.07.2022.

e) The Applicant submitted that, on account of the prevailing pandemic situation, he was unable to clear the dues within the stipulated period. Nevertheless, he approached the officials of the 1st Defendant for an amicable settlement of the loan accounts, but the officials merely advised him to approach them at a later date, without extending any effective assistance.

f) The Applicant further submitted that the 1st Defendant obtained an order dated 29.07.2024 under Section 14 of the SARFAESI Act from the 2nd Defendant for taking physical possession of the schedule-mentioned property. Although the said order was passed on 29.07.2024, the Advocate Commissioner contacted the Applicant only on 01.08.2024 and informed him that the Criminal Miscellaneous Petition had been posted before the 2nd Defendant on 20.09.2024. Aggrieved by the illegal and arbitrary actions of the 1st Defendant, the Applicant has preferred the present Securitisation Application on the following, amongst other, grounds.

GROUNDS

- The order dated 29.07.2024 passed by the learned Chief Judicial Magistrate under Section 14 of the SARFAESI Act the for taking of physical possession of the schedule-mentioned property is arbitrary, unreasonable, contrary to law, and liable to be set aside.
- The 1st Defendant failed to adhere to the guidelines and directions issued by the Reserve Bank of India while classifying the loan account as a Non-Performing Asset (NPA). Consequently, the classification of the account as NPA is illegal and unsustainable.

- The impugned proceedings initiated by the 1st Defendant suffer from errors apparent on the face of the record and are liable to be quashed by this Hon'ble Tribunal.
- The 1st Defendant has failed to comply with the mandatory requirements and procedural safeguards prescribed under the provisions of the SARFAESI Act and the Rules framed thereunder.
- The Applicant submits that the 1st Defendant obtained the signatures of the borrowers and the guarantor on several blank forms and documents. In the interest of justice, the 1st Defendant may be directed to produce all original documents in its custody which it relies upon to establish the creation of the guarantee and the mortgage.
- The action of the 1st Defendant in clubbing five different Term Loan accounts and issuing a consolidated demand is arbitrary, illegal, and contrary to law. Consequently, all measures initiated under the SARFAESI Act on such basis are liable to be set aside.
- The 1st Defendant has failed to issue a valid Demand Notice under Section 13(2) of the SARFAESI Act in accordance with law.
- The amount demanded in the Demand Notice dated 29.10.2021 is incorrect, excessive, and unsupported by proper accounts. Therefore, the Demand Notice is invalid, illegal, and without jurisdiction.
- The 2nd Defendant ought to have satisfied himself that a valid sixty-day notice under Section 13(2) of the SARFAESI Act had been duly served upon the borrowers, as mandated under clause (vi) of the proviso to Section 14(1). Instead, the Demand Notice dated 29.10.2021 improperly called upon the borrowers to pay the entire outstanding amount of Rs.71,35,207/- (Rupees seventy one lakhs thirty five thousand two hundred seven only), as on 28.10.2021, immediately, thereby defeating the statutory requirement of granting sixty days' time.

- The Applicant submits that the averments made by the 1st Defendant in paragraph 7 at page 3 of the affidavit filed in support of the application under Section 14 contain false and incorrect statements. Consequently, the order obtained from the 2nd 1st Defendant on the basis of such incorrect averments is liable to be set aside.
- The 1st Defendant took symbolic possession of the secured asset on 26.04.2022, whereas the Possession Notice was published in the newspapers only on 30.07.2022. Under Rule 8(2) of the Security Interest (Enforcement) Rules, 2002, the Possession Notice is required to be published as soon as possible and, in any event, within seven days from the date of taking possession. The publication having been made after an inordinate delay is in clear violation of the statutory Rules, rendering the entire proceedings invalid.
- The order passed by the 2nd Defendant is contrary to the principles of natural justice and is therefore liable to be set aside.
- The secured asset mortgaged with the 1st Defendant is the residential house in which the Applicant and his aged parents are presently residing. The coercive measures initiated by the 1st Defendant would cause irreparable hardship and prejudice to the Applicant and his family.

DESCRIPTION OF THE IMMOVABLE PROPERTY

Ramanathapuram District, Rameswaram Sub register office, Thangachi madam village, Surey No. 524/1B, new Survey No. 524/1B1C extent 0.20.2 hec. Below mention property 50 cent, 21800 Square feet, 2025.26 Square metre, house site and east to west 50 feet, south to north 40 feet, 2000 square feet include south east to west 30 feet, south to north 8 feet, 240 square feet include total 2240 square feet 208.2 square meter metal set and well along with EB connection (05-307-009-2157) and latrine, bathroom including.

Boundaries:

North to	:	Kadhiresan land
South to	:	Dhamotharan malligai thottam
East to	:	North South pathway
West to	:	M.M. Abdul vahabu sahibu vaigaiyara thoppu

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

S.No.	Date	Description
1.	29.10.2021	Demand Notice issued u/s 13(2) by the 1st Defendant
2.	26.04.2022	Possession Notice u/s 13(4) by the 1st Defendant
3.	30.07.2022	Possession Notice Paper Publication English & Tamil Daily
4.	03.08.2024	Certified Copy of Proof Affidavit dated 26.07.2024 filed by the 1st Defendant in Crl. M.P. No. 1277/204 before the 2nd Defendant
5.	03.08.2024	Certified Copy of order dated 29.07.2024 passed under Sec. 14 Application filed by the 1st Defendant before the 2nd Defendant

3. On the other hand, the Counsel for the 1st Defendant Finance Company appeared before this Tribunal and undertook to file a Vakalatnama but failed to do so. Subsequently, he remained absent; despite being called in open court, he did not appear and was therefore set ex parte on 25.03.2026.

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

I. Whether the Applicant has been able to prove his case in his favour?

II. Whether the Applicant is entitled to get the reliefs as prayed for?

5. Having heard the parties and after going through the entire documents available on records, I find that the 1st Defendant Finance Company had sanctioned Term Loans of Rs.10,00,000/- (Rupees Ten Lakhs only) each to the following borrowers: 1. P. Vikneshwaran, S/o Thiru Poopandiyan 2. P. Pandiduari, S/o Pannerselvam 3. R. Numbuvinithan, S/o Ramaligam 4. S. Sethupanthiraja, S/o Selvaraj and 5. K. Jeevamuneeswaran, S/o Katheresan. The Applicant herein stood as guarantor for the due repayment of the loan amounts sanctioned to the aforesaid borrowers and, as collateral security for the said financial assistance, offered the schedule-mentioned property by creating an equitable mortgage in favour of the 1st Defendant. It is stated by the Applicant that, Initially, the Applicant is regular in repayment as agreed to the 1st Defendant Finance Company. It is admitted by the Applicants in their pleadings that due to heavy loss in the business and Covid - 19, they could not repay the loan amount properly and hence the 1st Defendant Finance Company classified the loan account as NPA on 28.10.2021 and proceeded under SARFAESI Act. Thereafter, the 1st Defendant Finance Company issued Demand Notice dated 29.10.2021 U/s. 13(2) of SARFAESI Act for a sum of Rs. 71,35,207/- (Rupees seventy one lakhs thirty five thousand two hundred seven only). Further, the 1st Defendant Finance Company has issued Possession Notice dated 26.04.2022 U/s. 13(4) of SARFAESI Act for a sum of Rs. 74,74,417/- (Rupees seventy four lakhs seventy four thousand four hundred seventeen only). Further, the 1st Defendant Finance Company has obtained order dated 29.07.2024 in Crl.M.P. No. 1277/2024 from the Ld. Chief Judicial Magistrate, Ramanathapuram under section 14 of the SARFAESI Act.

6. On the other hand, although the 1st Defendant Finance Company entered appearance, it did not adduce any oral or documentary evidence to rebut the contentions raised by the Applicants inspite of sufficient time given to him. I carefully perused the documents filed by the Applicants. On such perusal, I find that the certified copy of the Demand Notice dated 29.10.2021 does not contain the description of the schedule-mentioned secured property. I also examined the certified copies of the Possession Notice, the newspaper publications, the affidavit filed before the learned Chief Judicial Magistrate, Ramanathapuram, and the certified copy of the order dated 29.07.2024 passed by the learned Chief Judicial Magistrate, Ramanathapuram, in Crl.M.P. No.1277 of 2024. In the affidavit, particularly the "List of Documents filed by the Petitioner," it is evident that the 1st Defendant Financial Company failed to publish the Possession Notice in two leading newspapers within the time prescribed under Rule 8(2) of the Security Interest (Enforcement) Rules, 2002 … ***"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 newspapers, one in vernacular language having sufficient circulation in that locality, by the authorized officer"***. I further find that the 1st Defendant has not mentioned in the proof affidavit filed before the CJM that the Possession Notice dated 26.04.2022 was affixed on a conspicuous part of the schedule-mentioned property, as mandated under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 … ***"Where the secured asset is an immovable property, the authorised 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"***.

7. In this case, the 1st Defendant Finance Company has not produced any evidence to rebut the Applicants' contention that the mandatory provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002 were not complied with while issuing the Possession Notice.

Despite having full knowledge of the case and despite being afforded sufficient opportunity to rebut the allegations made by the Applicant, the Defendant failed to do so. It is well settle law that Defendant Finance company is entitle to recover the money from the borrower after initiating the proceeding under the SARFAESI Act and Rules without intervention of the court but they cannot take the Possession without following due process of law.

8. I also find that this Tribunal, by order dated 27.08.2024, granted a conditional stay subject to the Applicants depositing a sum of Rs.22,44,000/- (Rupees Twenty-Two Lakhs Forty-Four Thousand only) in three instalments to the Defendant Finance Company. The Applicants have produced proof of payment demonstrating due compliance with the conditional stay order, thereby establishing their bona fides. In view of the above facts and circumstances I find that applicant has been able to prove his case in his favour.

In the result,

S.A. No. 546 of 2024 is allowed.

1. The Possession Notice dated 26.04.2022 is hereby set aside. Consequently, the order dated 29.07.2024 passed by the learned Chief Judicial Magistrate, Ramanathapuram, in Crl.M.P. No. 1277 of 2024 under Section 14 of the SARFAESI Act is also set aside as not sustainable in the eye of law.

2. The 1st Defendant Finance Company is directed not to include the expenditure incurred towards the issuance of the Possession Notice, and the proceedings initiated under Section 14 of the SARFAESI Act before the learned Chief Judicial Magistrate, Ramanathapuram.

3. It is made clear that the 1st Defendant Finance Company is at liberty to initiate fresh proceedings against the Applicants for recovery of the outstanding loan amount, strictly in accordance with the provisions of the SARFAESI Act, 2002, and the Security Interest (Enforcement) Rules, 2002.

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

(Dictated to KKN taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 13th July, 2026).

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 23.07.2026