Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI
DATED THIS 20th DAY OF JULY, 2026
PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No. 445/2023

Mrs. M. Subasini
W/o. Mr. Muthukrishnan,
No. 2/70, South Street,
Boothakudi Village,
Madurai - 625 017 .... Applicant

Vs

1.The Authorized Officer,
Bank of India,
Recovery Department, Madurai Zonal Office,
Sri Ram Complex, 4th Floor,
Uchaparambu Main Road,
Iyer Bungalow, Madurai - 625 014. .... 1st Defendant Bank

2.Bank of India,
Rep. by its Branch Manager,
S.S. Colony Branch,
A.V.A.R. Plaza,
Old No. 72, New No. 128,
Bye Pass Road, S.S. Colony,
Ponmeni, Madurai - 625 010. .... 2nd Defendant Bank

3.Mr.G.Ganesan,
S/o. Gurusamy,
No. 38/15, Vanchinathan cross street,
Anna Nagar, Alavandan,
Madurai – 625 020. .... 3rd Defendant/Auction Purchaser

Appearance of Advocates:
M/s. Vastlaw Associates ----- ***Counsel for the Applicant***
Mr. M.Senthil kumar ---- ***Counsel for the 1st & 2nd Defendant Banks***
Mr. C.Karthik ---- ***Counsel for the Defendant/Auction Purchaser***

This SARFAESI Application was heard in the presence of Counsels for the Applicant, 1st & 2nd Defendant Banks & 3rd Defendant/Auction Purchaser and fixed for passing final order before me and upon hearing the arguments of the Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

O R D E R

1. This Application has been filed under section 17 of the SARFAESI Act, 2002 by the Applicant praying that this Hon'ble Tribunal may be pleased to call for the records pertaining to the initiation of proceedings under the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002, ending up with the E-Auction Sale conducted on 25.08.2023, Sale Confirmation, issuance of the Sale Certificate, pursuant to the E-Auction Sale Notice dated 15.07.2023, against the applicant and the schedule property on the file of the Defendant Bank.

1.1 To set aside the Sale held on 25.08.2023 and the subsequent Sale Confirmation issued in favour of the 3rd Defendant/Auction Purchaser.

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

a) The Counsel for the Applicant submitted that, the Applicant is the borrower who availed the credit facility from the Defendant No. 2. The Defendant No. 1 is the Authorized Officer of the Defendant No. 2 under the SARFAESI Act, and the Defendant No. 2 is the secured creditor. In the year 2015, the Applicant approached the Defendant No. 2 Bank seeking a loan for a sum of Rs. 5.00 Lakhs for business development. The Branch Manager of the Defendant No. 2, at that point of time, introduced the applicant to one Mr. Mohammed Usain and told the applicant and her husband that he would assist the applicant by preparing the necessary documents to avail the credit facility from the Defendant No. 2.

b) The Applicant further submitted that, the Branch Manager of the Defendant No. 2 and the above said Mr. Mohammed Usain convinced the applicant and her husband to avail a Term Loan (Agri Allied Activity - Purchase of Farm Machineries) without actually purchasing the farm machinery. Taking note of the applicant's need for money, the Branch Manager of the Defendant No. 2 and the above said Mr. Mohammed Usain forced the applicant to submit an application for the purchase of a Harvester Machine for a sum of Rs. 15.00 Lakhs. Further, they told the applicant and her husband that they need not pay the entire loan amount and that they had to repay only half of the loan amount, and upon repayment of half of the loan amount, the balance loan amount would be waived and the title deeds of the mortgaged secured asset would be released.

c) The Applicant further submitted that, the applicant herein was left with no other option and believed the words of the Branch Manager of the Defendant Bank and signed all the English version documents. Accordingly, a term loan credit facility to the tune of Rs. 15.00 Lakhs was sanctioned and a mortgage was created. Further, the applicant was informed that the sanctioned loan amount would be disbursed directly to the dealer (the said Mr. Mohammed Usain), and it was paid to the said Mr. Mohammed Usain as the sale consideration for the harvester machine. In turn, the said Mr. Mohammed Usain gave nine cheques for Rs. 8.50 Lakhs (eight cheques for Rs. 1,00,000/- each and one cheque for Rs. 50,000/-) to the applicant.

d) It is further submitted that, the Defendant Bank classified the applicant's imaginary loan account as a Non-Performing Asset (NPA) on 30.04.2019 and proceeded under the SARFAESI Act.

e) It is further submitted that, the Defendant Bank invoked the SARFAESI Act and issued a Demand Notice under Section 13(2) and a Possession Notice under Section 13(4) of the SARFAESI Act. The applicant herein was not served with the Demand Notice and the Possession Notice.

f) It is further submitted that, it is learnt that the Defendant Bank also filed a suit for recovery for a sum of Rs. 22,73,613.14/- in O.A. No. 161 of 2020, and the same is pending adjudication. Even in the impugned Sale Notice under challenge, the 1st Defendant has failed to mention the particulars of the mandatory statutory notices issued under Sections 13(2) and 13(4) of the Act. The 1st Defendant has not strictly adhered to the Security Enforcement Rules, has not affixed the Possession Notice on the outer side of the house property, has failed to serve the same on all the parties concerned, and has failed to publish the same in two dailies within the prescribed time as per the Rules. The Authorized Officer has no authority to proceed further without issuing those statutory notices as stipulated under the Act and the Rules.

g) It is further submitted that, the 1st Defendant, without any basis, issued the E-Auction Sale Notice dated 15.07.2023 fixing the Auction Sale on 25.08.2023, which was affixed on the secured asset on 28.07.2023. In the meanwhile, in order to safeguard the applicant's residential property, the applicant took all earnest steps to settle the loan account directly and also through the Lok Adalat and, in the said process, paid an overall sum of Rs. 3.50 Lakhs. However, all the efforts ended in failure due to the indifferent and mala fide attitude of the Defendant Bank.

h) It is further submitted that, the Defendant No. 1, without considering the applicant's request for amicable settlement, proceeded to conduct the sale on 25.08.2023, and the applicant was kept in the dark regarding the sale proceedings. From the transaction message sent by the Bank, the applicant came to understand that the secured asset had been sold. All the requests made by the applicant seeking the particulars of the sale proceedings and the particulars of the auction purchaser were blindly declined by the officers of the Defendant Bank.

i) It is further submitted that, Now, the applicant, in order to save the residential property of the family, is left with no other option but to approach this Hon'ble Tribunal under Section 17(1) of the SARFAESI Act, challenging the E-Auction Sale conducted on 25.08.2023, the Sale Confirmation, and the issuance of the Sale Certificate, pursuant to the E-Auction Sale Notice dated 15.07.2023, before this Hon'ble Tribunal.

j) It is further submitted that the above matter was taken up for hearing on 15.09.2023, and the Respondent Counsel informed that the sale had already been conducted and was confirmed in favour of the successful bidder, the 3rd Respondent herein. In response, this Hon'ble Tribunal was pleased to direct the Respondent Bank to furnish the particulars of the E-Auction Sale held on 25.08.2023. Accordingly, the Respondent Bank Counsel mailed the Counsel for the Petitioner/Applicant the required particulars of the Auction

Purchaser and further informed the concluded sale price for which the property had been sold.

Main Grounds

- It is submitted that, the applicant never received the entire loan amount and also did not get possession of the harvester machine. Therefore, the entire SARFAESI proceedings ending with the Auction Sale held on 25.08.2023 are arbitrary, illegal, and against the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules.

- The Defendants failed to follow the procedures contemplated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and the Security Interest (Enforcement) Rules.

- The applicant neither received the loan amount nor the harvester machine, and as such, the notices issued under Sections 13(2) and 13(4) of the SARFAESI Act are liable to be set aside.

- The 1st Defendant has failed to furnish all the particulars as mentioned in the Act and the Rules in the impugned Sale Notice. Further, the person who issued the impugned notice is not an Authorized Officer as contemplated under the Act. The 1st Defendant is put to strict proof of the issuance of the Demand Notice, Possession Notice, and Sale Notice to all the parties concerned.

- The Defendants failed to publish the Possession Notice in two leading newspapers, failed to affix the same on the schedule properties, failed to serve the statutory notices on all the parties concerned, and failed to serve the Possession Notice through electronic modes on all the parties concerned.

- The Defendants, at the time of sanction, obtained the signatures of the applicant on various pre-filled forms and blank papers, and the applicant has been kept in the dark all along as to the purpose for which they would be used. Therefore, the applicant doubts that the above-signed documents have been misused by the Defendant Bank for the recovery proceedings.

- The 1st Defendant failed to serve the 30 days' Sale Notice on the applicant and all the parties concerned. Further, the 1st Defendant failed to publish the same in two leading newspapers, and failed to upload the Sale Notice on the Bank's official website as per the Rules. Further, the person who issued the Sale Notice is not an Authorized Officer as contemplated under the Act.

- The Defendants have undervalued the properties and brought the same for sale, which is against the principles of natural justice. The 1st Defendant, before bringing the properties for sale, ought to have obtained a fresh valuation as per the Rules, and the said valuation should reflect the best price in order to fetch a higher price. However, in the present case, the 1st Defendant failed to obtain a fresh valuation and failed to fix the best reserve price.

- The Defendants failed to consider the payments made by the applicant and the applicant's request for a One Time Settlement.

- The Defendants failed to register the alleged transaction with the Central Registry as required under Section 20 of the SARFAESI Act.

- The Defendants failed to publish the notice on the Bank's official website as required under the Rules.

- The 1st Defendant confirmed the auction sale of the property in favour of the 3rd Defendant herein immediately, in a fraudulent and collusive manner, for his personal enrichment.

- The 1st Defendant conducted and confirmed the auction sale of the property in favour of a single bidder without following the Rules and procedures contemplated under the Act.

SCHEDULE OF PROPERTY

All that part and parcel of land and building in Madurai District, Madurai South Registration District, Madurai Join No.4. Sub Registration District. Madurai North Taluk, Boothakudi Village, House situated in Natham R.S.No.82/1, now 123/3 to an extent of 726 Sq.ft in the name of Mrs. Subashini M and boundaries are as under.

North: 'B' schedule (Gopalakrishnan property, Chidambaram House,

Palanikumar vacant site)

South : East West Street

East : South North Pathway

West : Ponnaiah House, Vacant site

The Applicant has submitted the following List of documents in support of her claim in the SA, which are as follows:

S.No.	Date	Details of Documents
1.	23.05.2019	Demand Notice u/s. 13(2) (Enclosed in the OA)
2.	27.10.2022	Lok Adalat Notice
3.	09.11.2022	OTS offer made by the applicant
4.	30.01.2023	Lok Adalat Notice
5.	05.05.2023	Lok Adalat Notice
6.	-	Payment Receipts
7.	15.07.2023	E-Auction Sale Notices pertaining to some other accounts sent to the applicant
8.	15.07.2023	Impugned E-Auction Sale Notice Affixture

Additional Typed set of Paper

S.No.	Date	Particulars
1.	22.02.2020	Copy of Original Application No.161/2020
2.	-	Statement of Accounts filed in Original Application

3. On the other hand, the Counsel for the Defendant Banks appeared before this Tribunal and filed Vakalat, Reply Statement, Typed set, Additional Typed set alongwith Written Argument, in which the applicant also seeks to challenge the Possession Notice. However, the applicant cannot challenge the Possession Notice in this application, as the same is barred by limitation. The applicant failed to repay the entire loan amount and redeem the mortgaged property before the issuance of the Sale Notice. As such, the applicant has lost the right to redeem the mortgaged property.

a) It is further submitted that, the Applicant is making false allegations against the then Branch Manager only to cover up her default in loan repayment. The Branch Manager of the 2nd Defendant Bank did not introduce the dealer, Mr. Mohammed Usain, to the Applicant and her husband. The Applicant herself submitted the loan application along with the quotation obtained from the dealer, seeking a loan of Rs. 15,00,000/- for the purchase of a harvester machine. The allegation that the Branch Manager of the 2nd Defendant Bank forced the Applicant to avail a Term Loan of Rs. 15,00,000/- is wholly false. The Applicant, on her own, paid the margin money of Rs. 7,00,700/- for the purchase of the harvester machine. The then Branch Manager of the 2nd Defendant Bank informed the Applicant that she had to repay the entire loan amount together with interest to the Bank. Only after understanding all the terms relating to the loan repayment did the Applicant execute the loan documents. The Applicant herself obtained the legal opinion and valuation report and deposited the title deeds with the intention of creating an equitable mortgage. The Applicant also registered the Memorandum of Deposit of Title Deeds confirming the equitable mortgage. Thus, the Applicant availed the loan with full knowledge and created an equitable mortgage over the property. Hence, the allegation that the then Branch Manager of the 2nd Defendant Bank informed the Applicant that only 50% of the loan amount had to be repaid and that the balance would be waived is wholly false.

b) It is further submitted that, the loan amount was disbursed to the supplier for the purchase of the harvester machine as per the normal banking practice. The allegation that the supplier did not deliver the harvester machine to the Applicant is wholly false.

c) It is further submitted that, the Applicant has not repaid the loan instalments from the month of April 2018. Hence, the loan account of the Applicant was classified as a Non-Performing Asset (NPA) on 30.04.2019. Thereafter, the statutory notices were issued to the Applicant as per the following particulars:

SI.No	Date	Particulars	Remarks
1	23.05.2019	Demand Notice 13 (2)	Served on 26.05.2019

2	26.05.2019	Postal acknowledgment card	Proof of service for Demand Notice 13(2)
3	16.12.2019	Possession Notice 13 (4)	Served on 18.12.2019
4	18.12.2019	Postal acknowledgement card	Proof of service for Possession Notice 13(4)
5	21.12.2019	Paper Publication of Possession Notice on 21.12.2019 in "The Hindu" - English Daily Newspaper	
6	21.12.2019	Paper Publication Possession Notice 21.12.2019 in "The Tamil version"	
7	24.09.2022	Valuation Report	
8	15.07.2023	Sale Notice	Served on 17.07.2023
9	19.07.2023	Postal acknowledgement card for service of sale notice	Proof of service for the Sale Notice
10	20.07.2023	Paper Publication of Sale Notice in the "New Indian Express" English Daily	
11	20.07.2023	Paper Publication of Sale Notice in "Dinamani" Tamil Daily	
12	14.09.2023	Sale Certificate	

As such the 1st & 2nd Defendants have duly followed the procedures contemplated under law.

d) It is further submitted that, the Applicant failed to repay the loan instalments regularly as agreed by her. Hence, recovery proceedings were initiated against her. The Applicant received the Demand Notice, Possession Notice, and Sale Notice. The Applicant is making false allegations only to scuttle the recovery proceedings. The mortgage was duly registered with the Central Registry, and all the payments made by the Applicant were duly accounted for. The valuation of the property was obtained before fixing the upset price. The 1st Defendant submits that all the statutory notices were duly served on the Applicant and the other persons concerned. The 1st Defendant further submits that wide publicity of the E-Auction was given through widely circulated newspapers, and the sale was conducted on 25.08.2023 by following the provisions of law and the Rules. As such, there is no illegality in the entire recovery proceedings.

Therefore, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the Application with cost and thus render justice.

TYPED SET OF DOCUMENTS FILED BY THE DEFENDANT BANKS

S.No	Particulars
1.	Demand Notice dated 23.05.2019
2.	Acknowledgement of Demand Notice
3.	Possession Notice dated 16.12.2019
4.	Acknowledgement of Possession Notice
5.	Paper Publication Possession Notice in "Indian Express" dated on 16.12.2019
6.	Paper Publication Possession Notice in "Dinamani" dated on 16.12.2019
7.	Photographs of possession notice affixed at the secured assets
8.	Sale Notice dated 15.07.2023
9.	Acknowledgement of Sale Notice
10.	Paper Publication Sale Notice in "Indian Express" dated on 15.07.2023
11.	Paper Publication Sale Notice in "Dinamani" dated on 15.07.2023
12.	Cersai
13.	Valuation Report dated 24.09.2022
14.	Sale Certificate dated 14.09.2023

ORIGINAL DOCUMENTS OF THE TYPED SET FILED BY THE DEFENDANT BANKS

S.No	Date	Particulars
1.	28.05.2019	Postal Receipts of Demand Notice
2.	31.05.2019	Acknowledgement Card of Demand Notice of

		Mrs.M.Subashini
3.	07.01.2019	Acknowledgement Cards of Possession Notice issued to Mrs.M.Subashini
4.	07.01.2019	Acknowledgement Cards of Possession Notice issued to Mr.Muthukrishanan.
5.	16.12.2019	Photographs of Affixture of Possession Notice dated 16.12.2019
6.	21.12.2019	Paper Publication of Possession Notice in English Daily "The Hindu".
7.	21.12.2019	Paper Publication of Possession Notice in Tamil Daily "Hindu Tamil".
8.	19.07.2023	Acknowledgement of Receipt of Sale Notice dated 15.07.2023
9.	20.07.2023	Paper Publication of Sale Notice in English Daily "The New Indian Express".
10.	20.07.2023	Paper Publication of Sale Notice in Tamil Daily "Dinamani".

4. The 3rd Defendant/Auction Purchaser also appeared before this Tribunal and filed Vakalat, Reply Statement, Written Argument and Type Set in which he submitted that the Defendant purchased the mortgaged property in the E-Auction held on 25.08.2023 as the highest bidder, and the Authorized Officer of the Bank declared this Defendant as the No. 1 highest bidder for a bid amount of Rs. 13,88,000/-.

a) It is submitted that, in terms of the Sale Notice issued under the provisions of the SARFAESI Act, this Defendant was directed to deposit 25% of the bid amount immediately, but not later than 26.08.2023, in the concerned Branch Bank Account No. 826890200000033, and was further directed to deposit the balance amount of Rs. 10,41,000/-, being the remaining 75% of the bid amount, within 15 days, i.e., on or before 09.09.2023, in the above-mentioned account. This Defendant paid the entire bid amount within the stipulated time, and the Sale Certificate in respect of the property was issued by the Authorized Officer of the Bank to this Defendant on 14.09.2023. From that date onwards, this Defendant became the absolute owner of the property bearing R.S. No. 82/1

(Part), now R.S. No. 123/3, to an extent of 726 sq. ft. of house site situated at Boothakudi Village, Madurai North Taluk. However, on account of the case filed by the Applicant, possession of the property has not yet been handed over to this Defendant. The Authorized Officer brought the property for sale only after following the provisions of the SARFAESI Act for the recovery of the loan amount due to the Bank. Since an order of status quo was passed on 09.05.2024, the property purchased by this Defendant in the E-Auction has not yet been delivered. In any event, as on date, this Defendant is the absolute owner of the said property.

Hence, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the above SARFAESI Application with cost and thus render justice.

TYPE SET FILED BY THE 3rd DEFENDANT

S.No.	Date	Particulars
1.	14.09.2023	Sale certificate

5. On the basis of the above pleadings, now the points which arise for consideration are:-

i) Whether the Applicants are entitled to get the reliefs as prayed for?

ii) Whether the Applicants have been able to prove their case in their favour?

6. Having heard the parties and after going through the entire documents available on record, I find that the Applicant has availed Term Loan from the 2nd Defendant Bank by mortgaging the schedule-mentioned property. It is further stated that, the Applicant was unable to repay certain loan dues to the Defendant Bank. Hence, the Defendant Bank classified the loan account as NPA on 30.04.2019 and proceeded under the SARFAESI Act.

7. Thereafter, the Defendant Bank issued a Demand Notice under Section 13(2) of the SARFAESI Act on 23.05.2019 to the borrower for a sum of **Rs.20,23,384.50 (Rupees Twenty Lakhs Twenty-Three Thousand Three Hundred Eighty-Four and Fifty Paise only)** as on 29.04.2019. The Applicant contended that the Demand Notice was not served upon the borrower and the Guarantor. I have also perused the documents filed by the Defendant Bank. The Bank has submitted xerox copies of the Demand Notice along with the acknowledgement cards, which are annexed at Pages 1 to 5 of the Bank's Typed Set of Papers. However, the Bank has not produced the acknowledgement card in respect of Mr. S. Muthukrishnan (Guarantor). Further, the furnished Demand Notice bears the name of the borrower only. Hence, it appears that the Defendant Bank has not issued the Demand Notice to the Guarantor. In view of the above, the Defendant Bank has failed to prove that the Demand Notice dated 23.05.2019 was duly served upon the Guarantor in accordance with the provisions of the SARFAESI Act and the Rules.

8. I also find that the Defendant Bank issued a Possession Notice dated 16.12.2019 under Section 13(4) of the SARFAESI Act for a sum of **Rs.20,23,384.50 (Rupees Twenty Lakhs Twenty-Three Thousand Three Hundred Eighty-Four and Fifty Paise only)**, being the amount mentioned in the earlier Demand Notice. However, on perusal of the Statement of Account enclosed by the Applicant, the exact secured amount as on 31.12.2019 is shown as **Rs.22,13,450.99 (Rupees Twenty-Two Lakhs Thirteen Thousand Four Hundred Fifty and Ninety-Nine Paise only)**, which is annexed at Page No. 14 of the Applicant's Additional Typed Set of Papers. Thus, there is a discrepancy between the amount mentioned in the Possession Notice and the actual outstanding reflected in the Statement of Account. Further, I find that the exact secured amount payable as on the date of issuance of the Possession Notice has not been specifically mentioned in the Possession

Notice itself. The Bank has also filed xerox copies of the Possession Notice and the acknowledgement cards purportedly showing service of the Possession Notice on the Applicant. The Applicant contended that the Possession Notice was neither served nor affixed on the secured asset and was not published as required under the Rules. On comparing the original and xerox copies of the acknowledgement cards, I find that the original acknowledgement cards indicate that the notices were received and signed by M. Subasini, whereas the xerox copies bear the signature of another person, namely P. Prabhakaran. This creates a serious doubt regarding the service of the Possession Notice upon the borrower and the guarantor and, consequently, the genuineness and transparency of the Defendant Bank's records become untenable (Page Nos. 7 and 8 of the Bank's Typed Set of Papers and Page Nos. 4 to 7 of the Bank's Original Documents in the Typed Set of Papers). Further, in the original photographs produced to evidence the affixture of the Possession Notice dated 16.12.2019, no date is shown indicating when the notice was affixed on the conspicuous part of the schedule property, which are annexed at Page Nos. 8 and 9 of the Bank's Original Documents in the Typed Set of Papers. I also find that the Bank has produced the original copies of the newspaper publications of the Possession Notice, one in English and another in Tamil, which are annexed at Page Nos. 10 and 11 of the Bank's Original Documents in the Typed Set of Papers. Since there are material irregularities in the documents filed by the Defendant Bank with regard to the acknowledgement cards and the affixture of the Possession Notice, this Tribunal holds that the said Possession Notice is not sustainable in the eye of law. The Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, clearly says 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."

In view of the above provision, I find that the Defendant Bank has not complied with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, while issuing the Possession Notice.

9. Thereafter, the Defendant Bank issued the Sale Notice dated 15.07.2023 to the Applicant for a sum of **Rs.20,23,384.50 (Rupees Twenty Lakhs Twenty-Three Thousand Three Hundred Eighty-Four and Fifty Paise only)**, being the amount mentioned in the earlier Demand Notice, and proceeded to sell the impugned property in favour of the 3rd Defendant on 25.08.2023. Further, I find that the exact secured amount payable as on the date of issuance of the Sale Notice has not been specifically mentioned in the Sale Notice itself. I also find that the Defendant Bank has filed xerox copies of the Sale Notice, acknowledgements of receipt, and the original newspaper publications. The Bank has submitted xerox copies of the acknowledgements of receipt for having sent the Sale Notice to the Applicant, which are annexed at Page Nos. 12 and 13 of the Bank's Typed Set of Papers. Further, the Bank has produced the original copies of the newspaper publications of the Sale Notice, one in English and another in Tamil, which are annexed at Page Nos. 14 and 15 of the Bank's Original Documents in the Typed Set of Papers. Additionally, the Applicant contended that the Sale Notice was not affixed on the secured asset as required under the Rules. On the other hand, the Defendant Bank has neither filed any reply nor offered any explanation regarding this discrepancy. I find that the Bank has not filed any photograph evidencing the affixture of the Sale Notice on a conspicuous part of the secured property. Thus, I find that the Defendant Bank has not complied with Rule 8(7) of the Security Interest (Enforcement) Rules, 2002, which clearly provides that:

"Rule 8(7) in the Security Interest (Enforcement) Rules, 2002:-

"(7) *[Every notice of sale **shall be affixed on the conspicuous part** of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web- site of the secured creditor, which shall include;*

(a)the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b)the secured debt for recovery of which the property is to be sold;

(c)reserve price of the immovable secured assets below which the property may not be sold;

(d)time and place of public auction or the time after which sale by any other mode shall be completed;

(e)deposit of earnest money as may be stipulated by the secured creditor;

(f)any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.]"

10. The Applicant specifically contended that the secured asset had been undervalued and that the Defendant Bank had failed to comply with Rule 8(5) of the Security Interest (Enforcement) Rules, 2002. However, I find that the Applicant has not produced any proof or evidence in support of her claim. Further, the valuation report filed by the Defendant Bank does not establish that the valuation was carried out in consultation with the secured creditor, as required under Rule 8(5) of the Security Interest (Enforcement) Rules, 2002. Consequently, the valuation report filed by the Defendant Bank cannot be considered reliable. Rule 8(5) of the Security Interest (Enforcement) Rules, 2002, clearly provides as follows:

*"(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and **in consultation with the secured creditor**, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the methods provided therein".*

11. The contention of the 2nd Defendant/Auction Purchaser that he is a bona fide purchaser for valuable consideration has also been considered by this Tribunal. However, it is well settled that if the sale itself is vitiated on account of non-compliance with the mandatory statutory provisions, the sale cannot be sustained merely on the ground that the purchaser is a bona fide purchaser.

12. The Applicant, no doubt, being a defaulter, is liable to repay the loan amount to the Defendant Bank, and the Bank has been vested with ample powers to recover the outstanding loan amount from the borrower by invoking the provisions of the SARFAESI Act without the intervention of any Court. However, this does not entitle the Bank to take possession of or sell the Applicant's property without strictly following the due process of law.

13. In view of the above discussions, I find that the Defendant has proceeded under the SARFAESI Act and rules for recovery of money from the Applicants but they have not followed the procedure as mentioned in the SARFAESI Act & Rules strictly and failed to rebut successfully the allegations made by the Applicants. Therefore, this Tribunal holds that the Applicants are entitled to get the reliefs as prayed for in **SA No. 445/2023**.

In the result,

(a) **SA No. 445/2023** is allowed. The Sale Notice dated 15.07.2023 is hereby set aside. Consequently, Sale Certificate dated 14.09.2023 is also hereby set aside by this Tribunal.

(b) The Defendant is directed to refund the entire sale consideration amount paid by the Auction purchaser along with 4% of interest to the Auction purchaser from the date of deposit of money till the refund within one month from the date of receipt of copy of the Order.

(c) The Applicant is also directed to pay the interest at the rate of 4% of the sale price to the Defendant Bank from the date of payment of Sale price by the Auction Purchaser till the date of refund to the Auction Purchaser by the Defendant within one month from the date of receipt of copy of the Order.

(d) All the expenditures incurred in respect of Sale Notice shall not be included in the loan account of the Applicant.

(e) The Defendant is at liberty to initiate fresh action against the Applicant for recovery of loan amount following strictly the SARFAESI Acts & Rules.

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

Dictated to LDC (KK), taken down, transcribed, typed by him, corrected and pronounced by me, in the Open Court in this the 20th July 2026.

(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 25.07.2026