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. 308/2021

1. A. Kalirajan
   Porprietor
   M/s Krishnaraj Traders
   No. 55-K/16, Naidu South Street
   Chettiarpatti
   Rajapalayam – 626 122 **--- Applicant**

-Vs-

1. The Authorized Officer,
   Indian Bank
   Rajapalayam Branch
   No. 825, M.V. Bhimaraja Building
   Tenkasi Road, Rajapalayam – 626 117

2. Indian Bank
   Rep. by its Branch Manager
   Rajapalayam Branch
   No. 825, M.V. Bhimaraja Building
   Tenkasi Road, Rajapalayam – 626 117 **--- Defendants**

Appearance of Advocates:
M/s Vastlaw Associates ---- Counsel for the Applicant
1st & 2nd Defendant Banks sets Ex-parte.

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:

O R D E R

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 Possession Notice dated 05.05.2021 under Section 13(4) of the SARFAESI Act 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:-

It is submitted that the Applicant is carrying on the business of wholesale trading in rice as a proprietorship concern. For the purpose of developing and expanding his business, the Applicant approached the 2nd Defendant Bank and availed an OCC (Trade Finance) facility to the tune of Rs.42.00 lakhs, a Term Loan facility of Rs.2.55 lakhs, and a FITL facility of Rs.2.94 lakhs. As security for the aforesaid credit facilities, the Applicant created an equitable mortgage by offering the schedule-mentioned properties as collateral security.

A. It is further submitted that, at the time of sanction and documentation of the loan, the Defendants obtained the signatures of the Applicant and the guarantor on pre-filled printed forms and several blank papers. The Applicant and the guarantor were kept unaware of the purpose for which such signed forms and papers would subsequently be utilised.

B. It is also submitted that the Applicant was regular and prompt in repaying the loan instalments. However, owing to severe financial difficulties and circumstances beyond his control, the Applicant suffered substantial business losses, resulting in certain irregularities in the repayment of the loan dues.

C. It is further submitted that the Applicant's business came to a complete standstill due to the outbreak of the COVID-19 pandemic and the continuous lockdowns imposed by the Central Government and the State Government. Taking note of the unprecedented financial hardship faced by borrowers and the business community, the Ministry of Finance and the Reserve Bank of India issued various relief measures and regulatory directions relating to loan repayment and classification of loan accounts as Non-Performing Assets (NPAs). The Reserve Bank of India had also filed an affidavit before the Hon'ble Supreme Court of India concerning the measures to be adopted during the pandemic period.

D. Despite the above directions and relief measures, the 1st Defendant Bank, without duly considering the circulars and guidelines issued by the Reserve Bank of India and the Ministry of Finance regarding the adverse impact of the COVID-19 pandemic, arbitrarily classified the Applicant's loan account as a Non-Performing Asset (NPA) on 31.12.2020 and initiated proceedings under the SARFAESI Act.

E. It is submitted that the 1st Defendant thereafter issued a Demand Notice dated 12.01.2021 under Section 13(2) of the SARFAESI Act demanding payment of a sum of Rs.48,51,166/-. Upon receipt of the said Demand Notice, the Applicant approached the Defendants with a request to regularise the loan account by making payment of substantial amounts towards the outstanding dues. However, without considering the Applicant's genuine request, the Defendants proceeded further and issued a Possession Notice dated 05.05.2021 under Section 13(4) of the SARFAESI Act and took symbolic possession of the schedule-mentioned properties during the period when lockdown restrictions imposed by the State Government were in force.

F. Being aggrieved by the illegal and arbitrary action of the Defendant Bank in issuing the Possession Notice dated 05.05.2021, the Applicant has preferred the present Securitisation Application under Section 17 of the SARFAESI Act on the following, amongst other, grounds.

GROUNDS

a) The impugned Possession Notice dated 05.05.2021 issued by the Defendant Banks and the consequential measures initiated under the provisions of the SARFAESI Act are arbitrary, illegal, contrary to the provisions of the Act and the Rules framed thereunder, unsupported by valid evidence, and violative of the principles of natural justice. Hence, the same are liable to be set aside.

b) The Defendants have failed to comply with the mandatory procedures prescribed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Security Interest (Enforcement) Rules, 2002, thereby vitiating the entire SARFAESI proceedings.

c) Wrongful Classification of NPA**:** The Defendants have illegally and arbitrarily classified the Applicant's loan account as a Non-Performing Asset (NPA) without adhering to the prudential norms, guidelines, and circulars issued by the Reserve Bank of India, particularly those issued during the COVID-19 pandemic. The classification of the loan account as NPA is, therefore, unsustainable in law.

d) Non-compliance with Section 13(2) of the SARFAESI Act: The Demand Notice dated 12.01.2021 does not contain all the particulars required under Section 13(2) of the Act and the Rules framed thereunder. Further, the Demand Notice has not been issued by a duly authorised officer as contemplated under the Act. The Defendants are put to strict proof of the due service of the Demand Notice upon the Applicant, guarantor, and all other persons entitled to receive the same.

e) Non-compliance with Section 13(4) of the SARFAESI Act and Rule 8 of the Security Interest (Enforcement) Rules, 2002: The Defendants failed to serve the Possession Notice upon the Applicant and the guarantor in the manner prescribed under law. The Defendants are put to strict proof regarding the service of the Possession Notice on all the concerned parties. The Defendants further failed to establish that the Possession Notice was affixed on the secured asset and published in two leading newspapers, one of which should be in the vernacular language having sufficient circulation in the locality, within the prescribed statutory period. The Defendants have also failed to prove compliance with the provisions relating to electronic service, wherever applicable. Moreover, the Possession Notice has not been issued by a duly authorised officer as required under the Act.

f) The Defendants have failed to register the security interest with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) in accordance with the provisions of Section 20 of the SARFAESI Act. Such non-compliance renders the enforcement proceedings legally unsustainable.

g) The Authorised Officer appointed by the Defendants has failed to discharge the statutory duties cast upon him under the SARFAESI Act in a fair, impartial, and judicious manner. The powers conferred upon the Authorised Officer are quasi-judicial in nature, requiring strict adherence to the provisions of the Act and the Rules before proceeding against the secured assets of the borrower and guarantor. The impugned proceedings disclose non-application of mind and procedural irregularities.

h) The 1st Defendant proceeded with the issuance of the Possession Notice without taking into consideration the unprecedented financial hardship caused by the COVID-19 pandemic, the nationwide lockdowns imposed by the Central and State Governments, and the relief measures, circulars, and regulatory directions issued by the Reserve Bank of India and the Ministry of Finance relating to loan repayment and classification of loan accounts as NPAs during the pandemic period. The impugned action is therefore arbitrary and unreasonable.

i) At the time of sanction of the loan facilities, the Defendants obtained the signatures of the Applicant and the guarantor on blank papers and pre-filled printed forms without explaining their contents or purpose. The Defendants are therefore called upon to produce all the original loan documents, security documents, mortgage records, and other relevant records relied upon by them to establish the creation of a valid and enforceable security interest. In the absence of strict proof regarding the due execution of the security documents and creation of a valid mortgage, the Defendants are not entitled to invoke the provisions of the SARFAESI Act.

j) The amount claimed by the Defendant Bank in the Demand Notice and the subsequent Possession Notice is arbitrary, excessive, and unsupported by a proper statement of accounts. The Applicant disputes the correctness of the amount claimed and calls upon the Defendants to produce a true, correct, and duly certified statement of accounts.

k) The Defendants have levied interest at rates exceeding the contractual rate agreed between the parties and have also charged interest during the moratorium period announced by the Government and the Reserve Bank of India, contrary to the applicable guidelines. The levy of penal interest and other charges is arbitrary, excessive, and contrary to law. The Applicant is entitled to a proper reconciliation of accounts.

l) The Applicant craves leave of this Hon'ble Tribunal to urge such further or additional grounds as may become necessary at the time of hearing or upon disclosure of additional facts and documents by the Defendants.

DESCRIPTION OF THE IMMOVABLE PROPERTY

1. Virudhunagar District, Rajapalaym Taluk, Chettiarpatti Village, Naidu South Street (Samy & Co Rice Mill) S. No. 277/2A1 (part) Pata No. 868, Ward No. 5 site measuring 3700 Sq.ft (8.486 cents)

Boundary :

North- 16 feet width East West Street donated to Chetiarpatti Panchayat Union.
East - Site belonging to Shanmugaeswari Rajathy and Buwaneswari
South- Arivudurai ilk's site
West - Sankaralingam Partitioned site

2. Virudhunagar District, Rajapalaym Taluk, Chettiarpatti Village, Naidu South Street (Samy & Co. Rice Mill) S. No. 278/3B (part) Patta No. 868, Ward No. 5 site measuring 2193 Sq.ft. (5.029 cents).

Boundary :

North- Banumathy Teacher purchased site
East - 16ft. width North South Street
South- Sankaralingam Partitioned site
West - Arivudurai ilk's site

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.	12.01.2021	Demand Notice u/s 13(2)
2.	05.05.2021	Impugned Possession Notice u/s 13(4)

3. On the other hand, the Counsel for the Defendant Banks appeared before this Tribunal and undertook to filed a Vakalatnama but failed to do so. Subsequently, he remained absent; despite being given sufficient opportunities, he did not appear and was therefore set ex parte on 18.06.2025.

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 it is admitted fact that the Applicant is carrying on the business of wholesale trading in rice as a proprietorship concern. For the purpose of developing and expanding his business, the Applicant approached the 2nd Defendant Bank and availed an OCC (Trade Finance) facility to the tune of Rs.42.00 lakhs, a Term Loan facility of Rs.2.55 lakhs, and a FITL facility of Rs.2.94 lakhs. It is also an admitted fact that as security for the aforesaid credit facilities, the Applicant created an equitable mortgage by offering the schedule-mentioned properties as collateral security.

It is further stated that, initially the Applicant was regular in repayment as agreed to the 2nd Defendant Bank. But due to heavy loss in the business and Covid - 19, they could not repay the loan amount properly and hence the 2nd Defendant Bank classified the loan account as NPA on 31.12.2020 and proceeded under SARFAESI Act. Thereafter, the 1st Defendant Bank issued Demand Notice dated 12.01.2021 U/s. 13(2) of SARFAESI Act for a sum of Rs. 48,51,166/- (Rupees forty eight lakhs fifty one thousand one hundred sixty six only). Further, the 1st Defendant Bank has issued Possession Notice dated 05.05.2021 U/s. 13(4) of SARFAESI Act for a sum of Rs. 50,84,565.02/- (Rupees fifty lakhs eighty four thousand five hundred sixty five and two paisa only).

6. On the other hand, although the Defendant Banks entered appearance, it did not adduce any oral or documentary evidence to rebut the contentions raised by the Applicants. I carefully perused the documents filed by the Applicants. On perusal of the records, I find that the Demand Notice dated 12.01.2021 describes the secured asset without specifying its boundaries. Further, the schedule of the property mentioned in the Possession Notice dated 05.05.2021 does not correspond with the schedule of the property described in the Demand Notice. The description of the property in the two notices materially differs from each other, thereby creating ambiguity regarding the identity of the secured asset. Further, I find that, after receipt of the Demand Notice, the Applicant approached the Defendants with a request to regularize the loan account by remitting certain amounts towards the outstanding dues. But no proof has been filed that he has represented to the Defendant Bank u/s 13(3A) of SARFAESI Act, 2002. The applicants contended that the Defendants failed to publish the possession notice in two leading newspapers within the statutory period and failed to affix the same on the conspicuous part of the schedule mentioned properties. Further the applicant contended that the Defendants have failed to register the alleged transaction register with the Central Registry as per Secion20 of the SARFAESI Act.

7. On the other hand, the Defendant Banks 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 Bank 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 23.08.2021, granted a conditional stay subject to the Applicants depositing a sum of Rs. 15,26,000/- (Rupees fifteen lakhs twenty six thousand only) in two instalments to the Defendant Bank. I also find that the Applicant has failed to comply the conditional stay order. Thus, he has failed to show his bona-fie before the Court.

Under the above facts and circumstance of the case, this Tribunal is of the considered view to all the SARFAESI Application.

In the result,

S.A. No. 308 of 2021 is allowed.

1. The Possession Notice dated 05.05.2021 is hereby set aside.

2. The 1st Defendant Bank is directed not to include the expenditure incurred towards the issuance of the Possession Notice.

3. It is made clear that the Defendant Banks 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 20th July, 2026).

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 27.07.2026