Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI
DATED THIS 23RD DAY OF JULY 2026
PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No. 376/2024

1. E. Theresiamma
   W/o Late T Mathias
   Door No. 9/C/205
   Therkuvilai, Kadamalaikuntu
   Meekkamandapam Post
   Kanyakumari District ..... **Applicant**

Vs

1. The Authorised Officer
   Indian Bank
   Thuckalay Branch
   17/63, V.M.K. Complex
   Trivandrum Road
   Near old bus stand
   Kanyakumari District ...... **Defendant**

Appearance of Advocates:
M/s C.R. Nimal ---- Counsel for the Applicant
Mr. R. Pandivel ---- Counsel for the Defendant Bank

This Application was heard in the presence of M/s C.R. Nimal, Counsel for the Applicant and Mr. R. Pandivel, 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 18.05.2024 issued by the Defendant Bank under section 13(4) of the SARFAESI Act, 2002.

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

A. It is submitted that the Applicant is carrying on a textile business under the name and style of M/s. Sherlo Tex, situated at Door No. 9/205, Therkuvilai, Kadamalaikundu, Meekkamandapam Post, Kanyakumari District. The Applicant has been maintaining a loan account with the Defendant Bank. During the course of the banking relationship, the Defendant Bank sanctioned a Secured Overdraft Facility of Rs.15,00,000/- on 31.08.2010 and an NP FITL Facility of Rs.1,08,000/- on 23.03.2020**.**

B. It is further submitted that the Applicant had been regularly repaying the loan and had not committed any default in repayment. However, the Defendant Bank issued a Demand Notice dated 02.02.2024 under Section 13(2) of the SARFAESI Act, 2002**,** calling upon the Applicant to pay a sum of Rs.15,97,800/- (Rupees fifteen lakhs ninety seven thousand eight hundred only) within sixty days, failing which it proposed to take measures under Section 13(4) of the Act in respect of the secured assets:

C. It is further submitted that the Demand Notice stated that the Applicant's loan account had been classified as a Non-Performing Asset (NPA) on 09.01.2024 due to alleged default in repayment.

Thereafter, alleging non-payment within the stipulated period, the Authorised Officer of the Defendant Bank took symbolic possession of the aforesaid secured assets on 18.05.2024 under Section 13(4) of the SARFAESI Act, 2002, and issued the impugned Possession Notice.

D. It is further submitted that the Possession Notice dated 18.05.2024 issued by the Defendant Bank is illegal, arbitrary, contrary to law, and liable to be set aside on the following, among other:

GROUNDS

a) The impugned Possession Notice is illegal, arbitrary, and violative of the principles of natural justice.

b) The Demand Notice dated 02.02.2024 does not clearly specify the particulars of the loan transaction. It fails to disclose the relevant terms and conditions of the loan, the mode of repayment, and the nature of the secured assets. Consequently, the Demand Notice does not satisfy the mandatory requirements of Section 13(2) of the SARFAESI Act, 2002.

c) The Applicant had been regularly paying the loan account. Despite such regular repayments, the Defendant Bank arbitrarily classified the account as a Non-Performing Asset and initiated proceedings under the SARFAESI Act.

d) The classification of the Applicant's loan account as a Non-Performing Asset is contrary to the norms and guidelines issued by the Reserve Bank of India and is therefore unsustainable in law.

e) The Defendant Bank failed to comply with the mandatory procedure prescribed under Rule 8(1) and Rule 8(2) of the Security

Interest (Enforcement) Rules, 2002, inasmuch as the Possession Notice was neither affixed at a conspicuous place on the secured property nor published in two leading newspapers, including one in the vernacular language having sufficient circulation in the locality.

f) The Defendant Bank failed to furnish a proper and accurate statement of account explaining the basis on which the outstanding amount claimed from the Applicant was arrived at.

SCHEDULE OF PROPERTY

Property - I

21 cents of land in RS No. 459/18 (Old Survey No. 347), Veyanoor Village, Kalkulam Taluk, Kanyakumari District, Marthandam Registration district, Verkilambi Sub Registration district, Kanannoor desom belonging to Mrs. E. Theresiamma.

Boundaries:

East	:	Property belongs to Bright & others
South	:	Property belongs to Lalitha Ambika
West	:	Road
North	:	Property belongs to Sahayam

Property – II

5(202.341 Sq.m) cents of land in RS No. 459/13 (old survey No. 361 A) Veyanoor Village, Kalkulam Taluk, Kanyakumari District, Marthandam Registration district, Kanannoor desom belonging to Mrs. E. Theresiamma.

Boundaries:

East	:	Property belongs to Sivakumaran Nair
South	:	Property belongs to Renuka Devi
West	:	Property belongs to Theresiamma
North	:	Property belongs to Ragavan Thampi

Documents filed by the Applicants:

Sl.No.	Date	Documents particulars
1.	18.05.2024	Possession Notice

3. On the other hand, the Defendant bank appeared and filed Vakalath, Reply Statement along with type set of papers wherein it has been submitted that the allegations contained in the Securitisation Application, except those specifically admitted herein, are false, incorrect, and therefore denied. The Defendant Bank submits as follows:

- That the allegation of the Applicant that she was regular in repayment of the loan is false and denied. The Applicant committed persistent defaults in repayment in violation of the terms and conditions of the loan documents. Consequently, the loan account became irregular and was rightly classified as a Non-Performing Asset (NPA).
- It is further submitted that the allegation that the Possession Notice is illegal, arbitrary, erroneous, or violative of the principles of natural justice is specifically denied. The Defendant Bank has strictly complied with the provisions of the SARFAESI Act, 2002, and the Security Interest (Enforcement) Rules, 2002.
- It is also submitted that the Demand Notice issued under Section 13(2) of the SARFAESI Act clearly specifies the loan particulars, the amount due, and the details of the secured assets. There is no statutory requirement to incorporate the detailed terms and conditions of the loan agreement or the repayment schedule in the Demand Notice. The notice fully complies with the mandatory requirements of the SARFAESI Act. The loan account was classified as a Non-Performing Asset strictly in accordance with

the prudential norms and guidelines issued by the Reserve Bank of India. The classification is legal, valid, and in conformity with the applicable statutory provisions.

- It is further submitted that the Possession Notice was duly served on the Applicant, affixed on a conspicuous part of the secured asset, and published within the prescribed time in one English daily and one Tamil daily newspaper having sufficient circulation in the locality, in compliance with Rule 8 of the Security Interest (Enforcement) Rules, 2002.
- The Defendant Bank furnished the statement of account to the Applicant whenever requested, clearly reflecting the outstanding dues. The allegation to the contrary is false.
- The Defendant Bank further submitted that the Demand Notice issued under Section 13(2) of the SARFAESI Act was duly served upon the Applicant. The Applicant was afforded sufficient opportunity to discharge the outstanding liability before the Defendant Bank proceeded to take measures under Section 13(4) of the Act.
- The Applicant has failed to comply with the conditional order passed by this Hon'ble Tribunal. Having failed to comply with the said order, the Applicant is not entitled to seek discretionary relief or to prosecute the present proceedings on merits without first complying with the conditions imposed by this Hon'ble Tribunal.
- The Defendant Bank submitted that the Applicant has categorically admitted, in the Securitisation Application under the heading "Facts of the Case," the receipt of both the Demand Notice and the Possession Notice. The Applicant is therefore estopped from disputing the service of the said notices.
- The Applicant did not submit any representation or objection to the Demand Notice under Section 13(3A) of the SARFAESI Act

within the statutory period. Having failed to avail the statutory remedy, the Applicant cannot subsequently challenge the recovery proceedings on grounds that could have been raised earlier.

- The Defendant Bank submitted that every action, including the issuance of the Demand Notice, taking of symbolic possession, and issuance of the Possession Notice, was undertaken strictly in accordance with the provisions of the SARFAESI Act, 2002, and the Security Interest (Enforcement) Rules, 2002. The allegations of procedural irregularity are factually incorrect and legally untenable. Any interference with the recovery proceedings would seriously prejudice the Defendant Bank in recovering public money, whereas no comparable prejudice would be caused to the Applicant. The balance of convenience is therefore entirely in favour of the Defendant Bank.
- The Defendant Bank submitted that the Applicant is a chronic defaulter who has wilfully failed to discharge his contractual obligations despite repeated opportunities. The present Securitisation Application has been filed solely to delay the lawful recovery proceedings initiated by the Defendant Bank. The outstanding dues constitute public money, and the Applicant is legally bound to repay the same together with applicable interest, costs, and other charges. A person seeking equitable relief must himself act equitably. Accordingly, the Applicant is not entitled to any discretionary relief.

Documents filed by the Defendants:

Sl. No.	Date	Particulars
1.	02.02.24	Demand Notice with Postal Receipts & AD Cards & Return covers
2.	02.02.24	Demand Notice Original Paper Publication in English Daily "The New Indian Express" Published on 16.02.24
3.	02.02.24	Demand Notice Original Paper Publication in Tamil Daily 'Dinamani' published on 16.02.24
4.	16.02.24	Original photography showing affixture of Demand Notice
5.	18.05.24	Possession Notice with Postal Receipts & AD cards & return covers
6.	18.05.24	Possession Notice Original Paper Publication in English Daily 'The New Indian Express' published on 23.05.24
7.	18.05.24	Possession Notice Original Paper Publication in Tamil Daily 'Dinamani' published on 23.05.24
8.	18.05.24	Original photography showing affixture of Possession Notice

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

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 the records, this Tribunal find that there is no dispute between the parties with regard to the availment of loan facilities. In this case, I find that the Applicant is carrying on textile business and the applicant maintains an account with the Defendant Bank, the banker extended secured overdraft facility to the tune of Rs. 15,00,000/- and NP FITL facility to the tune of Rs. 1,08,000/-. It is alleged that the applicant was regular in repayment loan dues, while so the Defendant Bank has classified his loan account as NPA and, then the Bank has issued Demand Notice dated 02.02.2024 u/s. 13(2) of SARFAESI Act for a sum of Rs. 15,97,800/- (Rupees fifteen lakhs ninety seven thousand eight hundred only). Thereafter, a Possession Notice dated 18.05.2024 u/s. 13(4) of SARFAESI Act was also issued by the Defendant Bank. Challenging the same, the Applicant has filed this SA No. 376 of 2024.

6. On the other hand the bank has denied that applicant was regular in payment of loan amount rather it is stated by the Defendant Bank that when the applicant defaulted in repayment of EMI then the Defendant Bank issued a Demand Notice dated 02.02.2024 under Section 13(2) of the SARFAESI Act for a sum of Rs.15,97,800/-(Rupees fifteen lakhs ninety seven thousand only) to the borrower by registered post with acknowledgment due. I perused the documents filed by the 1st Defendant Bank and I find that, the Bank has produced a copy of the Demand Notice **(annexed at pages 01 to 04 of the Bank's typed set of papers)** along with the copy of postal acknowledgment (AD) cards as proof of service served on Applicant and legal heirs of deceased guarantor Shri T. Mathias, the Defendant Bank also placed unclaimed postal cover **(annexed at pages 05 to 14 of the Bank's typed set of papers).** Further I find that due to unclaimed postal AD card received from the applicant, the Defendant Bank has published the Demand Notice in two leading news papers one in English and the other in Tamil and placed original paper publications of the Demand Notice **(annexed at pages 15 & 16 of the Bank's typed set of papers)** Further I find that, Defendant Bank has affixed the Demand Notice on the conspicuous part of the property and also produced photographs evidencing such affixture on the conspicuous part of the property **(annexed at page 17 of the Bank's typed set of papers)**. Thus, I find that the Defendant Bank has followed the SARFAESI procedures, while issuing the Demand Notice. Further, I find that the Applicant did not send any reply to the Demand Notice under Section 13(3A) of the SARFAESI Act and failed to make any representation to the Defendant Bank.

7. Thereafter, the Defendant Bank issued a Possession Notice vide dated 18.05.2024 under Section 13(4) of the SARFAESI Act for a sum of Rs.17,18,520/- (Rupees seventeen lakhs eighteen thousand five hundred twenty only). On perusal of the records, I find that the Defendant Bank has filed the copy of the Possession Notice **(annexed at pages 18 & 19 of the Bank's typed set of papers)**, along with the copy of postal acknowledgment (AD) cards as proof of service served on Applicant and legal heirs of deceased guarantor Shri T. Mathias, the Defendant Bank also placed unclaimed postal cover **(annexed at pages 20 to 27 of the Bank's typed set of papers)**, and original paper publications of the Possession Notice in two leading newspapers, one in English and the other in Tamil **(annexed at pages 28 & 29 of the Bank's typed set of papers)** Further I find that, Defendant Bank, stated in its Reply Statement that, the Possession Notice was affixed on the conspicuous part of the property and also produced photographs evidencing such affixture on the conspicuous part of the property **(annexed at pages 30 & 31 of the Bank's typed set of papers)**. Thus, I find that the Defendant Bank has followed the SARFAESI procedures, while issuing the Possession Notice.

8. Further, the Applicant has not placed any material evidence before this Tribunal to substantiate her contention that the classification of the loan account as NPA was erroneous or that the rate of interest charged was contrary to the guidelines issued by the Reserve Bank of India. Further, the Applicant has not produced any document or proof to show that she had made any representation to the Defendant Bank seeking a copy of the statement of account.

9. In this case though the Defendant Bank has denied that Applicant has complied the conditional order in their statement but from perusal of order dated 03.09.2024 I find that applicant has complied the conditional order dated 13.06.2024 directing payment of Rs.6,02,000/- (Rupees six lakhs two thousand only) in two instalments. The Applicant complied with the order, which has been admitted by the Defendant Bank, thereby demonstrating bona fides.

10. In view of the above facts and circumstances, this Tribunal finds that the Applicant has failed to establish any illegality or irregularities in the measures taken by the Bank. On the other hand, the Bank has followed the procedure prescribed under the SARFAESI Act for recovery of its dues. Hence, the Securitisation Application is devoid of merit.

In the result, **SA No.376/2024 is dismissed** without costs. However, considering the Applicant's compliance with the conditional order and demonstrated bona fides, the Bank may consider an amicable settlement in accordance with law.

(Dictated to KKN taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 23rd July, 2026).

Sd/-

(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 30.07.2026