Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI
DATED THIS 03rd OF AUGUST 2026
PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No. 197/2024

1. Babu
S/o Kandhasamy
No. 190(2), Nochipatti
D. Gudalur
Dindigul District ..... **Applicant**

Vs

1. The Authorised Officer
Aptus Finance India Private Limited
8B, Doshi Towers, 205 Poonamallee High Road
Kilpauk, Chennai – 600 010
Having Branch Office at
No. 6/1044, Ground Floor,
K.B.S. Arcade, Kovai Main Road
Karur – 639 002

2. The Chief Judicial Magistrate
Madurai ...... **Defendants**

Appearance of Advocates:
M/s P. Samuel Gunasingh ---- Counsel for the Applicant
M/s V. Sukumar ---- Counsel for the 1st Defendant Finance Company
(2nd Defendant is non other than Ld. CJM, Madurai)

This Application was heard in the presence of M/s P. Samuesl Gunasingh, Counsel for the Applicant and M/s V. Sukumar, Counsel for the 1st Defendant Finance Company 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 order of the Chief Judicial Magistrate, Madurai passed in Cr. M.P. No. 23452 of 2023 dated 19.02.2024 under section 14 of the SARFAESI Act, 2002.

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

A. The Applicant submitted that he approached the 1st Defendant Finance Company for availing a loan facility by submitting the prescribed loan application along with the requisite documents. Upon scrutiny of the application and supporting records, the 1st Defendant sanctioned a loan of Rs.6,78,079/- (Rupees six lakhs seventy eight thousand seventy nine only). Pursuant thereto, the Applicant deposited the original title deeds and other relevant documents, thereby creating an equitable mortgage over the secured asset in favour of the 1st Defendant.

B. The Applicant further submitted that he had been regularly repaying the loan in accordance with the agreed terms and conditions. However, owing to unforeseen financial difficulties, a few Equated Monthly Instalments (EMIs) could not be paid on time. Despite such temporary default, the Applicant had already repaid a substantial portion of the loan and was making sincere efforts to regularise the account.

C. The Applicant submitted that, without duly considering his repayment history and financial circumstances, the 1st Defendant classified the loan account as a Non-Performing Asset (NPA) and issued a Demand Notice under Section 13(2) of the SARFAESI Act claiming a sum of Rs.7,81,872/- (Rupees seven lakhs eighty one thousand eight hundred seventy two only) as outstanding as on 11.07.2022. Thereafter, the 1st Defendant issued a Symbolic Possession Notice dated 21.12.2022 under Section 13(4) of the SARFAESI Act, claiming an outstanding amount of Rs.8,43,160/- (Rupees eight lakhs forty three thousand one hundred sixty only).

D. After receipt of the possession notice, the Applicant personally approached the officials of the 1st Defendant and requested them not to initiate coercive measures against the secured asset. The Applicant expressed his willingness to settle the dues and sought reschedulement of the loan account. The officials of the 1st Defendant assured the Applicant that his request would be considered.

E. However, without informing the Applicant or providing any opportunity of hearing, the 1st Defendant approached the 2nd Defendant under Section 14 of the SARFAESI Act and obtained an order in Cr.M.P. No.23452 of 2023 dated 19.02.2024 for taking physical possession of the secured asset through an Advocate Commissioner.

F. The Applicant submitted that no notice whatsoever was issued to him in the proceedings before the 2nd Defendant. The Applicant came to know about the order only upon receipt of the communication issued by the Advocate Commissioner. The secured asset is the Applicant's residential property and the only shelter available to him and his family.

The Applicant is therefore under imminent threat of dispossession without having been afforded an opportunity to present his case.

G. The Applicant submitted that the impugned proceedings initiated by the Defendants are arbitrary, illegal, contrary to the provisions of the SARFAESI Act and violative of the principles of natural justice. Hence, the present Securitisation Application.

GROUNDS

a) The order dated 19.02.2024 passed by the 2nd Defendant in Cr.M.P. No.23452 of 2023 is illegal and liable to be set aside, as the same was passed without issuing any notice or affording an opportunity of hearing to the Applicant, in violation of the principles of natural justice.

b) The application filed before the 2nd Defendant under Section 14 of the SARFAESI Act was not made by the duly authorised officer contemplated under Section 13(12) of the SARFAESI Act but by the Branch Manager. Therefore, the application itself was not maintainable in law and ought to have been rejected.

c) The Defendants failed to follow the mandatory procedure prescribed under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002 while initiating and continuing the recovery proceedings, thereby vitiating the entire proceedings.

d) The 2nd Defendant failed to satisfy himself regarding compliance with the statutory requirements before passing the order under Section 14 of the SARFAESI Act, rendering the impugned order unsustainable in law.

e) The Applicant had approached the 1st Defendant expressing his willingness to settle the outstanding dues and sought reschedulement of the loan account. Without considering the Applicant's genuine request, the Defendants proceeded with coercive measures for taking physical possession of the secured asset.

f) The secured asset is the Applicant's residential property and the only shelter available to him and his family. The Defendants failed to consider the serious consequences of dispossession and acted in an arbitrary and unreasonable manner.

g) The interest charged by the 1st Defendant is excessive and contrary to the applicable guidelines issued by the Reserve Bank of India and the law laid down by the Hon'ble Supreme Court of India.

h) The outstanding dues claimed by the 1st Defendant have been incorrectly calculated. The 1st Defendant has failed to furnish complete particulars of the loan account and the statement of accounts in support of the amount claimed in the proceedings under Section 14 of the SARFAESI Act.

i) The Advocate Commissioner and the officials of the 1st Defendant attempted to take possession without granting reasonable time to the Applicant to resolve the dispute or settle the loan account, thereby acting in a coercive and arbitrary manner.

j) The impugned proceedings are arbitrary, illegal, contrary to the provisions of the SARFAESI Act, violative of the constitutional rights of the Applicant, including his right to livelihood and shelter, and are therefore liable to be set aside.

k) 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 of the present application.

WRITTEN ARGUMENTS FILED ON BEHALF OF THE APPLICANT

I. That the applicant has filed the present Securitisation Application challenging the impugned order dated 19.02.2024 passed by the 2nd

Defendant in Cr.M.P. No.23452/2023**,** whereby an Advocate Commissioner was appointed to assist the 1st Defendant in taking physical possession of the secured asset from the applicant. Pursuant to the said order, the officials of the 1st Defendant proposed to take physical possession of the applicant's property by using coercive measures on 16.03.2024. On coming to know of the same, the applicant immediately approached this Hon'ble Tribunal seeking protection of his property and appropriate relief.

II. That this Hon'ble Tribunal, by order dated 15.03.2024, was pleased to grant an interim stay of the order passed by the 2nd Defendant in Cr.M.P. No.23452/2023, subject to the condition that the applicant deposit 30% of the outstanding amount. The applicant duly complied with the said condition, and upon reporting such compliance, this Hon'ble Tribunal was pleased to make the interim stay absolute.

III. That the 1st Defendant has failed to disclose the basis on which it sought assistance from the 2nd Defendant under Section 14 of the SARFAESI Act. Further, no document has been produced to establish that the application before the 2nd Defendant was filed by an Authorised Officer as contemplated under Section 13(12) of the SARFAESI Act. In the absence of such proof, the proceedings initiated under Section 14 are not maintainable in law.

IV. That neither the applicant nor the guarantor was afforded adequate notice or an opportunity of hearing before the order under Section 14 of the SARFAESI Act was passed. The impugned order has thus been passed in violation of the principles of natural justice and is liable to be set aside.

V. That the 1st Defendant has not disclosed the basis on which the outstanding amount was calculated. Despite repeated requests, the

1st Defendant has failed to furnish the statement of account or the details of the computation of the amount claimed. Such failure deprives the applicant of an opportunity to verify the correctness of the demand and enables the 1st Defendant to claim arbitrary and excessive amounts. The 1st Defendant is bound to act strictly in accordance with the provisions of the SARFAESI Act, the Rules framed thereunder, and the applicable guidelines.

VI. That the Demand Notice issued under Section 13(2) of the SARFAESI Act dated 11.07.2022 claimed an outstanding amount of Rs.7,81,872/- (Rupees seven lakhs eighty one thousand eight hundred seventy two only). The applicant was shocked to find that the demand included several exorbitant and inadmissible charges, including pre-closure charges of Rs.30,911/-(Rupees thirty thousand nine hundred eleven only) though such charges were not applicable to the applicant's loan account. The inclusion of such impermissible charges renders the demand illegal and consequently vitiates the proceedings initiated pursuant thereto, including the impugned order passed by the 2nd Defendant.

VII. That the applicant requested the 1st Defendant to regularise the loan account after making conditional payments. Had the loan account been regularised, the applicant would have been in a position to continue repayment in accordance with the original repayment schedule up to 10.12.2028. However, the 1st Defendant failed to consider the applicant's genuine request and proceeded with coercive measures instead of adopting a fair and reasonable approach.

VIII. That the 1st Defendant has failed to furnish the details regarding the computation of the outstanding amount of Rs.8,43,160/- (Rupees eight lakhs forty three thousand one hundred sixty only) mentioned in the Possession Notice issued under Section 13(4) of the SARFAESI Act. The manner in which the said amount was arrived at has not been disclosed, and it appears that the 1st Defendant has capitalised interest by charging interest upon interest, which is impermissible in law. Further, the Possession Notice dated 21.12.2022 was not served upon the applicant in accordance with the mandatory procedure prescribed under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002. While the newspaper publication was effected on 21.12.2022, the Possession Notice appears to have been served upon the applicant only on 01.02.2023, which is contrary to the statutory procedure. Subsequently, the 1st Defendant has claimed an outstanding amount of Rs.10,11,898/-(Rupees ten lakhs eleven thousand eight hundred ninety eight only) without furnishing any statement of account or the basis for such enhancement. Since the measures initiated by the 1st Defendant under Sections 13(2) and 13(4) suffer from serious procedural and legal infirmities, all consequential proceedings, including the impugned order passed under Section 14 of the SARFAESI Act, are liable to be set aside.

DESCRIPTION OF THE IMMOVABLE PROPERTY

All that piece and parcel of the property situated at Dindigul District Gujiliyamparai Sub-Registrar Office, Vedasandur Taluk, D.Gudalor Village in S.No. 790/2A2A Ac.0.51 cents in this Middle part of Ac. 0.17 Cents in which anextent of Ac. 0.12 cents of land with & all other appurtenances attached to the said property.

<u>Boundaries :</u>

North by	:	Property belongs to Seenivasan
South by	:	Property of 12 Ft East to West common Pathway & sold property

East by : Property belongs to Ramasamy Reddiyar
West by : Property belongs to Ramasamy Reddiyar

List of Documents filed by the Applicant:

Sl. No.	Date	Particulars
1.	11.07.2022	Demand Notice
2.	21.12.2022	Possession Notice
3.	19.02.2024	Impugned Order passed by th 2nd Defendant in Cr.MP. No. 23452/2023
4.	07.03.2024	Notice given by the Advocate Commissioner

3. On the other hand, the 1st Defendant Finance Company appeared and filed Reply Statement along with typed set and Written argument of papers wherein it has been submitted that the applicant availed a Housing Loan for a sum of Rs. 6,78,079/- (Rupees six lakhs seventy eight thousand seventy nine only) and by executing necessary agreements, title deed and other relevant documents were deposited and created mortgage in favour of 1st Defendant Finance Company.

- The 1st Defendant submitted that the applicant and the co-borrower, namely Sujatha, availed a housing loan of Rs.6,78,079/- (Rupees Six Lakhs Seventy-Eight Thousand and Seventy-Nine only) from the 1st Defendant Financial Company by executing all necessary loan and security documents and creating an equitable mortgage over the schedule-mentioned property.
- The 1st Defendant submitted that the applicants agreed to repay the loan amount in 113 Equated Monthly Instalments (EMIs) of Rs.15,468/- (Rupees fifteen thousand four hundred sixty eight

only) each but the applicants committed persistent defaults in repayment of the loan instalments. Consequently, the loan account was classified as a Non-Performing Asset (NPA) on 19.06.2022 in accordance with the applicable guidelines.

- The 1st Defendant further submitted that the Demand Notice dated 11.07.2022 under Section 13(2) of the SARFAESI Act issued to both the applicants and the guarantor, namely Kamalakannan**.** Despite receipt of the said notice, neither the applicants nor the guarantor submitted any representation or objection under Section 13(3A) of the SARFAESI Act, nor did they repay the outstanding dues.
- The 1st Defendant submitted that since the applicants failed to discharge their liability, the 1st Defendant issued a Possession Notice dated 21.12.2022 under Section 13(4) of the SARFAESI Act**,** which was duly served upon the applicants and also published in two leading newspapers, namely Dinamani (Tamil) and The New Indian Express (English) on 22.12.2022, in compliance with the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002.
- The 1st Defendant submitted that the Possession Notice was further affixed on the secured asset as required under the Rules. Even thereafter, the applicants failed to regularise the loan account or discharge the outstanding liability. Consequently, the 1st Defendant filed Cr.M.P. No.23452 of 2023 before the learned Chief Judicial Magistrate, Dindigul, under Section 14 of the SARFAESI Act seeking assistance for taking physical possession of the secured asset. Upon being satisfied with the affidavit and documents produced, the learned Chief Judicial Magistrate, Dindigul, by order dated 19.02.2024, allowed the application and

appointed Mr. T. Senthil Kumar, Advocate Commissioner, to take physical possession of the secured asset. Pursuant thereto, the learned Chief Judicial Magistrate issued the necessary warrant authorising the Advocate Commissioner to take possession of the secured asset. Only with a view to protract the recovery proceedings and delay the enforcement measures initiated under the SARFAESI Act, the applicants have filed the present Securitisation Application, which is devoid of merits and liable to be dismissed.

- The 1st Defendant submitted that the applicants failed to pay the EMIs regularly. Consequently, the loan account was rightly classified as an NPA on 19.06.2022, following which the 1st Defendant issued the Demand Notice dated 11.07.2022 under Section 13(2) of the SARFAESI Act and thereafter the Possession Notice dated 21.12.2022 under Section 13(4) of the Act to the applicants, co-borrower and guarantor, strictly in accordance with law.
- The 1st Defendant submitted that the applicants never came forward with a genuine proposal to settle the loan account. On the contrary, the 1st Defendant afforded sufficient opportunities to the applicants to regularise the loan account, but they failed to avail themselves of the same. Only after complying with all the mandatory provisions of the SARFAESI Act and the Rules framed thereunder did the 1st Defendant initiate proceedings under Section 14 of the Act.
- The 1st Defendant submitted that since the applicants failed to repay the loan amount despite repeated opportunities, the 1st Defendant was constrained to file Cr.M.P. No.23452 of 2023 under Section 14 of the SARFAESI Act and obtained the order dated

19.02.2024. It is submitted that Section 14 of the SARFAESI Act does not contemplate issuance of notice or grant of personal hearing to the borrowers before passing an order. Having admittedly been served with the Demand Notice and Possession Notice, the applicants cannot now contend that they had no knowledge of the SARFAESI proceedings.

- The 1st Defendant submitted that the proceedings initiated under Section 14 of the SARFAESI Act are administrative in nature, and the statute does not require issuance of notice or personal hearing before the Magistrate. The 1st Defendant strictly complied with the mandatory provisions of the SARFAESI Act by issuing the Demand Notice, Possession Notice and effecting publication and affixture in accordance with law.
- The 1st Defendant submitted that the application under Section 14 of the SARFAESI Act was filed only by the duly Authorised Officer of the 1st Defendant Financial Company. The learned Chief Judicial Magistrate, after verifying the affidavit and documents produced, rightly passed the order. Hence, the allegation that the application was not filed by an Authorised Officer is wholly false and untenable.
- The 1st Defendant submitted that the applicants voluntarily availed the housing loan by creating a valid security interest over the secured asset. Having committed default in repayment, they cannot now allege violation of their constitutional rights. The 1st Defendant has acted strictly in accordance with the provisions of the SARFAESI Act, and no fundamental or legal right of the applicants has been infringed.
- The 1st Defendant submitted that the interest has been levied strictly in accordance with the loan agreement executed by the

applicants and the applicable guidelines issued by the Reserve Bank of India. The 1st Defendant furnished all necessary particulars and documents before the learned Chief Judicial Magistrate while seeking assistance under Section 14 of the SARFAESI Act. The allegation that the outstanding amount has been arbitrarily calculated is baseless and unsupported by any material.

- The 1st Defendant submitted that the 1st Defendant has followed every mandatory procedure prescribed under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002 before initiating measures against the secured asset. The applicants have approached this Hon'ble Tribunal solely to delay the lawful recovery proceedings. The Securitisation Application is devoid of merits and is liable to be dismissed with costs.

Documents filed by the Defendants:

Sl. No.	Date	Particulars
1.	11.07.2022	Demand Notice along with postal receipts and tracking extract acknowledgement cards
2.	21.12.2022	Possession Notice along with postal receipts and tracking extract acknowledgement cards
3.	22.12.2022	Newspaper – Dinamani (Tamil Edition) Extract showing Publication of Possession Notice
4.	22.12.2022	Newspaper – The New Indian Express (English Edition) Extract showing publication of Possession Notice
5.	---	Photographs

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 has availed Housing Loan for a sum of Rs. 6,78,079/- (Rupees six lakhs seventy eight thousand seventy nine only). The applicants and one Kamalakannan as guarantor for the due repayment of the loan and the applicants mortgaged the schedule mentioned property to the Defendant Finance Company. It is stated by the Applicant that he was regular in repayment loan dues but due to heavy financial crisis he could not repay the loan amount properly.

Hence the 1st Defendant Finance Company classified the Applicant's loan accounts as Non-Performing Assets (NPA) on 19.06.2022. Thereafter, the Bank issued Demand Notices dated 11.07.2022 under Section 13(2) of the SARFAESI Act in respect of loan account, demanding a sum of Rs.6,78,079/- (Rupees six lakhs seventy eight thousand seventy nine only) towards the Housing Loan. Subsequently, the 1st Defendant Bank issued Possession Notices dated 21.12.2022 under Section 13(4) of the SARFAESI Act in respect of loan account, demanding a sum of Rs.8,43,160/- (Rupees eight lakhs forty three thousand one hundred sixty only) towards the Housing Loan Thereafter, the 1st Defendant Bank obtained an order dated 19.02.2024 in Cr.M.P. No.23452 of 2023 from the 2nd Defendant for taking physical possession of the secured asset. Aggrieved by the aforesaid measures initiated by the 1st Defendant Financial Company under the SARFAESI Act, the Applicant has filed the present S.A. No.197 of 2024.

6. On the other hand, the Defendant Bank has denied the Applicant's contention that he was regular in the repayment of the loan. It is the specific case of the 1st Defendant Finance Company that, upon the Applicant's default in repayment of the Equated Monthly Instalments (EMIs), Demand Notices dated 11.07.2022 under Section 13(2) of the SARFAESI Act were issued in respect of loan account. The Demand Notice pertaining to the Housing Loan demanded a sum of Rs.6,78,079/- (Rupees six lakhs seventy eight thousand seventy nine only). The said notice was sent to the Borrower and the Guarantor by Registered Post with Acknowledgment Due (RPAD). I perused the documents produced by the 1st Defendant Bank, I find that the Defendant Finance Company has filed a copy of the Demand Notice relating to the Housing Loan (**annexed at pages 01 to 03 of the 1st Defendant's typed set of papers)** along with the Track consignment **(annexed at pages 04 to 07 of the 1st Defendant's typed set of papers)**. Further, I find that the Applicant neither sent any reply to the Demand Notices under Section 13(3A) of the SARFAESI Act nor made any representation to the 1st Defendant Finance Company in respect of the loan account.

7. Thereafter, the 1st Defendant issued a Possession Notice dated 21.12.2022 under Section 13(4) of the SARFAESI Act in respect of loan account. The Possession Notice pertaining to the Housing Loan demanded a sum of Rs.8,43,160/- (Rupees eight lakhs forty three thousand one hundred sixty only). The said notice was sent to the Borrower and the Guarantor by Registered Post with Acknowledgment Due (RPAD). I also perused the documents produced by the 1st Defendant Bank and I find that the Bank has filed a copy of the Possession Notice relating to the Housing Loan (**annexed at page 08 of the 1st Defendant's typed set of papers)** along with the copy of Registered Post with Acknowledgment due (RPAD) **(annexed at pages 09 to 12 of the 1st Defendant's typed set of papers)**. Further the 1st Defendant has published the Possession Notices in two leading newspapers, namely, "The New Indian Express" (English) and "Dinamani" (Tamil) **(annexed at pages 13 & 14 of the 1st Defendant's typed set of papers)**. However, on a perusal of the records, I find that the 1st Defendant has produced only web copies of the newspaper publications and has not produced the original newspapers or authenticated copies thereof. The web copies do not satisfactorily establish the name of the newspaper, the edition, or the place of publication. 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. In the absence of such proof, the 1st Defendant has failed to establish due compliance with the mandatory requirements of **Rule 8(2) of the Security Interest (Enforcement) Rules, 2002** clearly says that

> … "*The Possession Notice as referred to in sub-rule(1) shall also be published, as soon as possible but any case not later than seven day from the date of taking Possession, **in two leading news papers,** one in vernacular language having sufficient circulation in that locality, by the authorized officer"*

Consequently, the mandatory procedure prescribed under the Rules has not been duly complied with, rendering the possession proceedings legally unsustainable.

8. I further find that the Possession Notice was affixed on the conspicuous part of the secured asset. In support of such affixture, the 1st Defendant has produced a Xerox copy of a photograph evidencing the affixture of the Possession Notice on the conspicuous part of the secured property **(annexed at page 15 of the 1st Defendant's typed set of papers)**. However, on perusal of the records, I find that the 1st Defendant Finance Company has failed to produce the original photograph. Further, the Xerox copy of the photograph does not disclose either the date or the place of affixture. In the absence of the original photograph and any identifiable particulars indicating the date and location of affixture, the alleged photographic evidence cannot be accepted as satisfactory proof of compliance with the mandatory requirement of affixture under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 states that

> … "*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 foregoing discussion, I hold that the Defendant Finance Company has failed to establish due compliance with the mandatory provisions of Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002. The Defendant has failed to produce satisfactory evidence to establish that the Possession Notice was duly affixed on the outer door or at any other conspicuous place of the secured asset as mandated under Rule 8(1). Further, the Defendant has also failed to establish that the Possession Notice was published in two leading newspapers, one in the vernacular language having sufficient circulation in the locality where the secured asset is situated, as required under Rule 8(2) of the Rules. Such non-compliance with the mandatory statutory requirements vitiates the measures taken under Section 13(4) of the SARFAESI Act and the consequential proceedings initiated pursuant thereto. I also find that the Defendant Finance Company failed to mention the complete description of the secured property in the Possession Notice.

9. Thereafter, the Defendant Finance Company obtained the impugned order dated 19.02.2024 from the learned Chief Judicial Magistrate, Madurai, in Cr.M.P. No.23452of 2023 under Section 14 of the SARFAESI Act for taking physical possession of the secured asset. Aggrieved thereby, the Applicant has filed the present Securitisation Application under Section 17 of the SARFAESI Act.

As already discussed, this Tribunal has held that the Defendant Finance Company failed to establish compliance with the mandatory requirements of Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002 while taking symbolic possession of the secured asset under Section 13(4) of the SARFAESI Act. Since the measures under Section 13(4) have been found to be vitiated on account of non-compliance with the mandatory statutory provisions, the consequential order dated 19.02.2024 passed by the learned Chief Judicial Magistrate, Madurai, in Cr.M.P. No.23452 of 2023, granting assistance for taking physical possession of the secured asset under Section 14 of the SARFAESI Act, cannot be sustained in the eye of law and is accordingly liable to be set aside.

The Applicant has no doubt being a defaulter is liable to pay the loan amount to the Defendant Finance Company and the Finance Company 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 Finance Company to take the Physical Possession of the property of the Applicant without following the due process of law. I also find that the Applicant was complied the conditional stay order dated 15.03.2024 passed by this Tribunal. Thus he has shown his bona-fide before the Court.

Under the above facts and circumstances of the case, this Tribunal is of the considered view to allow the ARFAESI Application.

In the result,

1. S.A. No. 197/2024 is allowed. No costs.

2. The Impugned order passed by the Ld. Chief Judicial Magistrate, Madurai dated 19.02.2024 in Cr. M.P. 23452/2023 is hereby set aside.

3. All the expenditures incurred in issuance of Impugned Possession Notice dated 21.12.2022 and further in obtaining the Order passed by the Ld. Chief Judicial Magistrate, Madurai dated 19.02.2024 in Cr.M.P. No. 23452/2023 shall not be included in the loan account of the Applicant.

4. The Defendant Finance Company 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 KKN taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 03rd August, 2026).

Sd/-

(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 07.08.2026