Presented on : 02.03.2016
Registered on : 09.03.2016
Decided on : 07.08.2026
Duration : Y M D
10.05.06

IN THE DEBTS RECOVERY TRIBUNAL
AT AURANGABAD
(BEFORE DR. J.R. CHAUHAN, PRESIDING OFFICER)

SECURITISATION APPLICATION NO.31 OF 2016

1. Md. Salim Sattar Shaikh,
   Age : 46 years, Occu. Business,

2. Md. Ibrahim Sattar Shaikh,
   Age : 65 years, Occu. Business,

   Both R/o Nobel Colony, Udgir,
   Tq. Udgir, Dist. Latur ..**Applicants**

Versus

1. Branch Manager,
   State Bank of India,
   Udgir, Tq. Udgir, Dist. Latur

2. Regional Manager,
   Regional Business Office,
   State Bank of India,
   Adarsh Colony, Ausa Road,
   Latur

3. Authorized Officer,
   Regional Business Office,
   State Bankk of India,
   Adarsh Colony, Ausa Road,
   Latur ….**Respondents**

<u>APPEARANCE</u> :

Applicants : Mr. Ravibhushan P. Adgaonkar, Advocate

Respondents : Mr. Rahul R. Deshmukh, Advocate

CORAM: DR. J.R. CHAUHAN, PRESIDING OFFICER

<u>JUDGMENT</u>

(Pronounced on : 07.08.026)

1. By this Securitisation Application (S.A.) filed under Section 17 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"), the applicants seek to challenge the notice dated 06.11.2015 issued by the respondent bank under Section 13(2) and the action dated 06.02.2016 under Section 13(4) of the SARFAESI Act, initiated pursuant to the said notice dated

06.11.2015, thereby taking over the symbolic possession of the property of the applicants bearing Municipal Council No. 5-1-114/5-1-130 (New), Noble Colony, Udgir, be declared as null and void and it be quashed and set aside. The applicants have further prayed that the respondent bank be directed to restore the possession of the aforesaid property of the applicants and hand it over to the applicants.

2. The facts of this Securitisation Application as per amended S.A., in brief, are as under:

3. The respondent No.1 invited applications by publication in daily newspaper `Sakal' dated 30.01.2010, mentioning therein that the bank is requiring open or constructed 5000 sq.feet plot for the purpose of branch building. In pursuance of the said advertisement, the applicants approached the bank and submitted their application. The bank officials visited the spot. The respondent bank, considering the location and feasibility, issued a letter dated 15.05.2010, informing the applicants to proceed further as regards rate of offer and willingness to construct the premises as per

RBI/bank's norms and design. Thereafter, the respondent bank, vide letter dated 22.09.2010, communicated applicants regarding visit of bank's engineer. After negotiations and upon considering the willingness of constructing the building as per requirements and norms of the bank, negotiations regarding rent also took place and ultimately, rent of Rs;18/- per sq.feet was agreed upon and certain terms and conditions were settled and accordingly, the same was communicated by the respondent bank, vide letter dated 26.03.2011. Upon finalization of terms, respondent No.1 issued a letter to the Assistant General Manager, Zonal Office at Aurangabad for finalization of building construction maps and other details as per bank's specifications, so also the applicants were informed regarding finalization of the building map and reconsideration of leasing rates, vide letter dated 28.06.2011. Since the lease rate of Rs.18/- per sq.feet was inadequate, a proposal of increasing the rate was under consideration before the Competent Authority. After considering the prevailing rates, the Competent

Authority increased the rate to Rs.23/- per sq.feet from Rs.18/- per sq.feet, vide letter dated 16.09.2011 and the applicants were requested to proceed further for the finalization of building maps with Premises Department at Zonal Office, Aurangabad for commencing the construction work as per bank's specifications. On 09.12.2011, the applicants informed respondent bank that in view of letter dated 26.03.2011, applicants had visited Zonal Office at Aurangabad and after meeting the Deputy Manager (Civil), have prepared a plan and the same was submitted to the Branch Office for its approval.

4. It is further stated that the applicants have intimated the respondent bank regarding their financial status and considering this, the respondent bank assured the applicants regarding advancing loan facility for the purpose of construction of the said premises. Pursuant to the assurance, the applicants applied for term loan and a proposal in that regard was forwarded to the higher authorities for its sanction. Pursuant to the assurance given by the

bank, the applicants started construction work with their available funds in anticipation of approval of the loan. Accordingly, the respondent Branch Manager forwarded the proposal under the head `loan to landlords under "Rent plus Scheme" to the regional office vide letter dated 06.08.2012, thereby requesting the Regional Business Office to approve the loan of Rs.80,00,000/- against the mortgaged land and construction thereon, under the bank's "Rent plus Scheme". In the meanwhile, since the construction was started and the applicants have exhausted their available funds, urgent finance was required to continue the same. Considering the situation and pendency of loan proposal, the respondent Branch Manager requested applicants to apply for "bridge finance" and upon application having been made by the applicants, term loans of Rs.8,00,000/- and Rs.19,70,000/- were sanctioned by the respondent bank. The recommendations were also appraised and recommended by Deputy Manager (SME). In the recommendation dated 22.10.2012, it is specifically mentioned that this loan will be fully liquidated by the borrower as and when the loan (Rent Plus) will be sanctioned for the bank's construction proposed premises. Thereafter, all the funds in the form of bridge finance, referred to above, were utilized by the applicants for the construction of the building. Thereafter, the applicants requested the respondent bank to sanction the loan as assured by them since the construction work was stopped and the construction cost was increasing day by day. Accordingly, the Branch Manager, vide its letter No. O/PREMISES/NEW/286, recommended the AGM to sanction the loan of Rs.67,50,000/- and also requested for early sanction of the same since the applicants were facing financial crunch. Since the RBO returned the proposal as the CRA rating of the unit at SB/8 was not acceptable for commercial construction, the Branch Manager again wrote a letter dated 27.06.2013 for reconsideration of the case as per new financial projections and requested to approve the term loan of Rs.67,50,000/- to the applicants. But the respondent authorities neither approved the loan as per the recommendation of the Branch Manager, nor have communicated the rejection to the applicants. Therefore, again on 27.03.2014, the applicants approached the branch and requested for early sanction of the loan as per the recommendations. Again on 10.04.2014, the Branch Manager communicated respondent No.3 regarding inadequacy of funds. In these facts and circumstances, despite there being no fault on the part of the applicants, the respondent bank authorities have started recovery proceedings under SARFAESI Act, 2002 and issued notices under Section 13(2) and possession notice under Section 13(4) of the SARFAESI Act. It is further stated that upon initiation of recovery proceedings under SARFAESI Act, though there was inaction on the part of respondent authorities without considering the same on 16.02.2016, the respondent authorities with an intention to take possession of the mortgaged property under bridge finance, approached the applicants and under threat of possession, compelled applicants to execute undertaking regarding repayment of the loan of the bridge finance upto 28.03.2016, as the reputation of the applicants was at stake. The applicants were compelled to deposit an amount of Rs.5,00,000/-, which the applicants arranged from their near friends and relatives.

5. It is further averred that the applicants have challenged action of the respondents i.e. the proceedings under SARFAESI Act initiated by the respondent bank on the ground that the action of the respondent for attachment of the property bearing Municipal Council No.5-1-114/5-1-130 (New), Noble Colony, Udgir is wrong, erroneous, against the principles of natural justice and equity. It is averred that the demand notice under Section 13(2) of the SARFAESI Act dated 06.11.2015 issued by the respondent bank is null and void. As per the recommendations by the Branch Manager, the liquidation of debts was supposed to be started after the bank starts paying rent of the new premises proposed. The respondent bank has failed to provide loan for construction of the new building premises as per the agreement. The building is half

constructed as per sanction plan and the construction raised is not helpful for any other purposes and the applicants have already suffered huge loss on account of inaction on the part of the bank. The recovery proceeding has been initiated to harass the applicants, whereas nothing was due on the date of issuance of impugned notices and hence, the action initiated by the respondent bank is highly illegal and the same is liable to be set aside. On the basis of above averments, the applicants have prayed to allow the present Securitisation Application.

6. The respondents have filed their reply-affidavit dated 09.07.2021 and contested the Securitisation Application on the grounds that the respondent No.1, vide paper publication in daily newspaper "Sakal" dated 30.01.2020 (probably it should be "30.01.2010" and not "30.01.2020"), invited applications mentioning therein that the bank requires open or constructed 5000 sq.feet plot for the purpose of shifting branch and in pursuance of the said advertisement, the applicants approached the bank and

submitted their application. Thereafter, the bank officials visited the spot and considering the location and feasibility, the respondent bank issued a letter dated 15.05.2010 informing the applicants to proceed further as regards the rate of offer and willingness to construct the premises as per RBI/Bank's norms and design. It is also admitted that after negotiations and upon considering the willingness of applicants to construct the building as per requirements or norms of the bank, negotiations regarding rent took place and ultimately, the rent at the rate of Rs.18/- per sq.feet and certain terms were settled and accordingly, a communication to that effect was forwarded by the respondent bank vide letter dated 26.03.2011. It was decided between the parties that actual rent will be subject to measurement of carpet area with effect from the date of possession and the respondent, prior to proceeding under Section 13(1) of the SARFAESI Act, did not obtain possession of the said plot. It is stated that the present applicants did not execute any document in respect of lease of said plot. It was also admitted that the Branch Manager sent proposal in respect of the terms of the Assistant General Manager, Zonal Office, Aurangabad of finalization of building construction maps and other details as per the bank's specifications. The applicants were informed regarding finalization of the building map and reconsideration of leasing rates vide letter dated 28.06.2011. It was also informed that letter dated 28.06.2011 is just an intimation letter, which is subject to terms and conditions sanctioned by the appropriate authorities of the respondents, which is prior to finalization of the lease agreement. The Competent Authority, after considering the prevailing rates, increased the rate to Rs.23/- per sq.feet from Rs.18/- per sq.feet and requested the applicants to proceed further for finalization of building maps with Premises Department at Zonal Office, Aurangabad for commencing the construction work as per bank's specifications. It is further admitted that as per letter dated 26.03.2011, the applicants met Deputy Manager (Civil) and prepared a plan and vide letter dated 09.12.2011, submitted the same to the Branch Office for approval.

7. It is further stated by the answering respondents that while entering into the agreement in pursuance of the advertisement, the applicants had not intimated the respondent bank regarding their financial status and that the respondent bank had not assured them regarding loan facility for constructing the premises. Probably, the then Branch Manager might have promised to consider the proposal of the applicants for grant of loan on terms and conditions of the bank and the same was treated by the applicants as an assurance on his part. It is admitted that the applicants applied for term loan and the proposal was sent to higher authorities for its sanction. It is further admitted that the applicants started the construction but the allegation that they did so in pursuance of assurance of respondents anticipating the sanction of loan. It is admitted that the Branch Manager forwarded its proposal under the head Loan to Landlords under "Rent Plus Scheme" to the regional office vide letter dated

06.08.2012 and recommended to approve loan of Rs.80,00,000/- against the mortgage of land and construction over it under the bank's "Rent Plus Scheme". It is further stated that it is true that term loans of Rs.8,00,000/- and Rs.19,00,000/- were sanctioned to the applicants as Bridge Loans. It is admitted that the appraisal was recommended by the Deputy Manager (S.M.E.) on 22.10.2012 and possibility of liquidation of loan when loan under Rent Plus Scheme will be sanctioned, was envisaged by that officer. The answering respondents are not aware as to whether the funds in the form of Bridge Finance were utilized by the applicants for construction of building. It is true that the applicants requested the Branch Manager to sanction the loan but the claim of assurance therefor is false. It is true that the Branch Manager recommended to A.G.M. to sanction loan of Rs.67,50,000/- and further requested for early sanction of the same as the applicants had shown their financial crunch.

8. It is further alleged by the answering respondent that R.B.O. returned the proposal as the C.R.A. retting (it should be "rating") of the unit at SB/8 was not acceptable for commercial construction and that the Branch Manager, vide letter dated 27.06.2013, recommended the proposal for reconsideration as per new financial projections and requested to sanction term loan of Rs.67,50,000/-. It is admitted that the applicants were persuading the bank officers for sanction of loan. It is also true that the proposal was neither approved nor rejected by the higher officers of the bank. However, it is submitted that the applicants were orally told that the security proposed by them for sanction of loan of Rs.67,50,000/- was not sufficient and they will consider the proposal if more securities are made available to the bank. The applicants told them that they will try to bring more securities and as nothing was heard from them, the decision is not taken by the authorities on the recommendations made by the Branch Manager. It is denied that the bank authorities had started recovery proceedings under SARFAESI Act, 2002 and

had issued notices under Sections 13(2) and 13(4) though there was no fault on the part of applicants. It is stated that it was for the applicants to make arrangement for construction of the building and the bank tried to help them within the prescribed limits. The expectation of the applicants that the bank should advance the loan to the tune of entire construction is wrong. The loans sanctioned by the bank were turned N.P.A. and the bank has rightly taken action available to them under law. It is further stated that in fact, still there is no agreement of lease as such, as alleged by the applicants. It is further stated that the agreement between the bank and the applicants would be entered when there will be completion of construction as per R.B.I. norms and the possession of the same would be given to respondent bank. The bank in no way is responsible for non-completion of construction by the applicants. The respondents never compelled the applicants on 16.02.2016 to execute an undertaking for repayment of Bridge Finance upto 28.03.2016 and the applicants were never compelled to deposit an amount of Rs.5,00,000/-. But the applicants, on their own wish, have deposited the said amount and have executed an undertaking to repay the Bridge Loan on or before 28.03.2016. The applicants have filed the present application only to avoid rigors of law. The respondents have denied other allegations of the Securitisation Application and prayed for rejecting the same with costs.

9. The applicants have produced following documents on record as per the Details of Documents dated 01.03.2016 (Exhibit-4):

Sr. No.	**Particulars**	**Exhibit**
1	Copy of paper publication dated 30.01.2010 and letter issued by respondent bank dated 15.05.2010s	A
2	Copy of letter dated 22.09.2010	**B**
3	Copies of letters dated 26.03.2011 and 16.03.2011	C
4	Copies of both letter dated 28.06.2011 and construction maps	D
5	Copy of letter dated 16.09.2011	E
6	Copy of letter dated 09.12.2011	F
7	Copy of letter dated 06.08.2012	G

8	Copies of loan sanction letters along with recommendations dated 22.10.2012	H
9	Copy of recommendation letter bearing No. HO/PREMISES/NEW/286	I
10	Copy of letter dated 27.06.2013	J
11	Copy of letter dated 27.03.2014	K
12	Copy of letter dated 10.04.2014 and copies photograph of status of construction	L
13	Copies of letters dated 06.11.2015 and 06.02.2016	M
14	Copies of undertaking letter dated 16.02.2016 and payment deposit receipts	N

10. On the other side, the respondents have produced on record photocopies of two documents as per List of Documents along with Diary No.5448/2023, namely (i) registered Mortgage Deed dated 02.11.2012 and (ii) registered Mortgage Deed dated 06.01.2012.

11. I have heard the learned counsel for the parties and gone through the written submissions of applicants filed on record and the entire material available on record thoroughly and carefully. My findings along with reasons therefor are as under.

12. In this case, the facts as such are not much disputed that both the applicants approached the bank and submitted their application in response to the paper publication (Exh-A) in Daily "Sakal" dated 30.01.2010, inviting applications, mentioning therein that the bank was requiring open or constructed 5000 sq.feet plot for the purpose of branch building. The bank officials visited the spot and after considering the location and feasibility, the bank issued a letter informing the applicants to proceed further and ultimately, by way of negotiations, rent at the rate of Rs.23/- per sq.feet was agreed instead of Rs.18/- per sq.feet already/earlier agreed and a letter dated 26.03.2011 (Exh-C) in that regard was forwarded by the respondent bank to the applicants. On finalization of terms, the respondent issued a letter to the Assistant General Manager, Zonal Office at Aurangabad for finalization of the building construction map and other details as per bank specifications, vide letter dated 28.06.2011 (Exh-D). On 09.12.2011, the applicants informed the respondent bank that in view of letter dated 26.03.2011, the

applicants had visited the Zonal Office at Aurangabad and after meeting with Deputy Manager (Civil), have prepared the plan and the same was submitted to the branch office for its approval.

13. The applicants, while entering into agreement, in pursuance of the advertisement, intimated the respondent bank regarding their financial status and the respondent bank assured the applicants regarding providing loan facility for the purpose of construction of said premises and accordingly, the applicants applied for grant of Term Loan and proposal thereof was forwarded to the higher authorities of the respondent bank for its sanction vide document (Exh-H) and pursuant to the assurance, the applicants started construction work with the funds available with them in anticipation of the approval of the loan. The Branch Manager of respondent bank forwarded the loan proposal for its sanction under "Rent Plus Scheme" to the Regional Office (R.O.), vide letter dated 06.08.2012 (Exh-G), thereby requesting to approve the loan of Rs.80,00,000/- against the mortgage of the land and construction

thereon. In the meantime, the applicants have exhausted the funds available with them and therefore, urgent finance was required to continue with the construction. Considering this situation and pendency of loan proposal, respondent No.1 Branch Manager requested the applicants to apply for `Bridge Finance' and accordingly, Term Loan of Rs.8,00,000/- and Rs.19,70,000/- was sanctioned by the bank. The recommendations were also appraised and recommended by the Deputy Manager (SME) and in the recommendation dated 22.10.2012 (Exh-H), it was specifically mentioned in unequivocal terms that this loan will be fully liquidated by the bank as and when the loan (Rent Plus Scheme) will be sanctioned for construction of the proposed premises.

14. The R.B.O. of the bank returned the loan proposal of the applicants as the CRA rating of the unit at SB/8 was not acceptable for commercial construction. The Branch Manager of the bank again, vide letter dated 27.06.2013 (Exh-J), requested the R.B.O. for reconsideration of the case as per new financial projections and

requested to approve the term loan of Rs.67,50,000/- and thereafter, no communication was made by the R.B.O. office. Thereafter, the respondent bank initiated the recovery proceeding pertaining to Bridge Finance being Term Loan of Rs.8,00,000/- and Rs.19,70,000/- and a demand notice under Section 13(2) of the SARFAESI Act dated 06.11.2015 was issued for an amount of Rs.25,14,716/-. The symbolic possession was also taken by the bank on 06.02.2016. Second demand notice under Section 13(2) dated 06.01.2025 pertaining to second loan was issued on 06.11.2015 for an amount of Rs.9,78,828/-. The loan account of Rs.19,70,000/- was declared NPA on 30.11.2013, whereas the second loan account of Rs.8,00,000/- was declared NPA on 31.01.2014.

15. After taking symbolic possession, both the applicants submitted written letter dated 16.02.2016 (Exh-N – page Nos.72 to 76 of the paper-book), whereby they agreed to deposit an amount of Rs.5,00,000/- (Rs.3,00,000/- in Account No.32641114762 and

Rs.2,00,000/- in Account no.32129119094) on 16.02.2016. They further undertook to deposit an amount of Rs.5,00,000/- upto 07.03.2016 and remaining amount of approximately Rs.19,00,000/- upto 28.03.2016 and in case they fail to repay the agreed amount, the bank has its right to proceed against them under Section 13(4) of the SARFAESI Act. As per this letter (Exh-N), produced at page Nos.72 to 76 of the paper-book, including payment receipts, the applicants have admitted their liability of Bridge Finance. They have even admitted as to how they have deposited the amount in both the loan accounts and further they agreed to deposit the entire amount in the loan account by 28.03.2016.

16. No doubt, the applicants have suffered losses as they have raised construction of the bank building as per the site plan of respondent bank by their own resources as well as by obtaining Bridge Loan/Advance in the form of Term Loan of Rs.8,00,000/- and Rs.19,70,000/-. Thereafter, due to paucity of finances/funds, further/remaining construction of the building could not be

undertaken by the applicants as the bank failed to honour the loan proposal moved to the higher authorities of the bank duly recommended by the Branch Manager of the respondent bank. It may be noted here that both the Term Loans, by way of Bridge Finance, were sanctioned by the same bank by its higher authorities and thereafter, the loan proposal recommended by the Branch Manager for its sanction for an amount of Rs.67,50,000/- vide letter dated 27.06.2013, could not be rejected on the ground that CRA rating of unit at SB/8 was not acceptable for commercial construction. This was the position at earlier point of time when earlier two Bridge Loans were sanctioned to the applicants by the higher authorities. It may be noted here that the present applicants, after demolishing the shops existing over the premises in question, from where they were getting rent and as per proposal of the bank, they had started construction and invested some amount along with Bridge Loan, but the respondent bank did not sanction the loan amount and therefore, the applicants have suffered damages and since the applicants are challenging the proceedings under the SARFAESI Act initiated by the bank pertaining to recovery of Bridge Loan/Finance, this Tribunal has limited jurisdiction as to whether the respondent bank has proceeded further against the applicants/borrowers for recovery of the admitted loan as per provisions of the SARFAESI Act and/or the Rules made thereunder. The applicants are at liberty to file appropriate proceeding/s against the respondent bank before appropriate forum/court for damages.

17. The applicants, in this case, only claimed that the amount of Bridge Loan cannot be recovered by the respondent bank as the loan was sanctioned for initial construction of the new proposed branch building, which shall be liquidated as and when the loan under "Rent Plus Scheme" for construction would be sanctioned, as per letter (Exh-H – page Nos.44 to 53 of the paper-book). Admittedly, the loan proposal for its sanction submitted by the Branch Manager of the respondent bank was not sanctioned by the

higher authority (R.B.O.) and the applicants/borrowers thereafter did not repay the Bridge Loan, ultimately, the respondent bank initiated the proceedings for recovery of Bridge Loan, as referred to above, by issuing demand notice and symbolic possession was also taken. Thereafter, both the applicants, on their own, moved an application/letter (Exh-N), admitting all the liability of Bridge Loan and even, paid an amount of Rs.5,00,000/- in both accounts and further agreed to liquidate the entire loan account by 28.03.2016 and a document to this effect is submitted by the applicants on record from page Nos.72 to 76 of the paper-book, including the payment receipts of Rs.3,00,000/- and Rs.2,00,000/- deposited in both the accounts. When both the applicants themselves have admitted to repay the amounts in both Bridge Loan Accounts, now they cannot take shelter of the recommendation made by the bank at the time of sanction of the Loan that the Bridge Loan shall be adjusted as and when the loan under "Rent Plus Scheme" for construction would be sanctioned. Therefore, the respondent bank is proceeding against the applicants/borrowers for recovery of Bridge Loan by issuing demand notice under Section 13(2) of the SARFAESI Act on 06.11.2015 as both the accounts were declared NPA and symbolic possession was taken on 06.02.2016 and the proceedings conducted by the respondent bank for recovery of the amount cannot be said to be illegal when the applicants have executed an undertaking regarding repayment of loan of Bridge Finance on 16.02.2016 (Exh-N1 colly), as referred above. Further, the applicants have claimed that the undertaking (Exh-N) was executed under threat and compulsion. However, there is no evidence to this effect on record produced from the side of the applicants.

18. In view of the above analysis and evaluation of the evidence on record, made by me and the findings arrived at by me as above, the present Securitisation Application is liable to be dismissed.

19. In the result, I pass the following order:

ORDER

(A) The Securitisation Application No.31 of 2016 is hereby dismissed with no order as to costs.

(B) The Interlocutory Application (I.A.), pending if any, stands disposed of in terms of this judgment.

(C) Copy of this judgment be uploaded on the website of this Tribunal.

(D) File be consigned to the Record Room.

(Dr. J.R. Chauhan),
PRESIDING OFFICER,
DEBTS RECOVERY TRIBUNAL,
AURANGABAD

Aurangabad

Date : 07.08.2026