IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated this the 06th day of August, 2026.

SECURITIZATION APPLICATION No.346/2023

Between

1. Girija Nair,
Kadathoor Veedu,
Cheruniyoor P.O.,
Varkala,
Thiruvananthapuram,
Pin – 695 142.

2. Sreemathy Amma L,
Kadathoor Veedu,
Cheruniyoor P.O.,
Varkala,
Thiruvananthapuram,
Pin – 695 142.

3. Krishnakumar G,
Kadathoor Veedu,
Cheruniyoor P.O.,
Varkala,
Thiruvananthapuram,
Pin – 695 142. …Applicants

And

The Authorized Officer,
South Indian Bank,
3rd Floor,
YWCA Building,
M.G.Road,
Statue Junction,
Trivandrum 695 001. …Defendant

This Securitization Application having been heard on 08.07.2026 in the presence of Advocate Mr. Jithendran for the applicants and Advocate Mr. Anandu V Lal representing counsel for Advocate Mr. Mohan Jacob George for the defendant and stood over to this day for consideration, the Tribunal delivered the following:

F I N A L O R D E R

Challenging the securitization proceedings initiated by the defendant under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), the applicants/borrowers filed this SA under S.17(1) of the SARFAESI Act seeking relief to set aside the entire securitization proceeding.

Brief facts of the case:

2.1 Applicants availed ₹5,00,000/- as agricultural loan from the defendant on 10.12.2008 by mortgaging the property of an extent of 8.55 Ares of land described in the SA. Due to default in repayment, the defendant filed O.S.No.144/2013 before the Sub Court, Attingal for recovery of outstanding debt of ₹7,17,489/-. The Sub-Court granted a decree for an amount of ₹4,39,798/- with interest by judgment dated 30.11.2019 marked Annexure-A1. The decree was challenged by the applicants before the Hon'ble High Court of Kerala.

2.2 The defendant proceeded with securitization proceeding by issuing a demand notice u/s.13(2) of the SARFAESI Act, calling the applicants to pay the outstanding amount of ₹20,37,768.64 as due to 24.10.2019 within a period of 60 days. Due to default in repayment, the defendant proceeded in taking measure u/s.13(4) of the SARFAESI Act and symbolical possession of the secured asset is taken on 16.06.2023 vide Annexure-A3 stating the amount due to the bank of an amount of ₹8,04,656.38 (Rupees Eight Lakh Four Thousand Six Hundred and Fifty Six and Paise Thirty eight only) as per the judgment in O.S.No.144/2013 before the Sub Court, Attingal.

2.3 The applicants claim that the judgment passed by the Civil Court is challenged before the Hon'ble High Court of Kerala and the decree passed by the trial court is stayed until further orders. Hence, the demand notice and possession notice are rendered illegal and it is therefore, prayed to set aside the entire securitization proceeding.

3. The defendant filed written statement denying the claim stating that the loan was classified as NPA on 30.11.2009. A

demand notice u/s.13(2) of the SARFAESI Act was issued on 25.10.2019 calling upon the applicant and co-obligant to pay the outstanding amount. Due to non-payment of the claimed amount, symbolical possession of the secured asset was taken on 16.06.2023 after compliance of the statutory requirement. There is no illegality or irregularity in the securitization proceeding and hence, the SA may be dismissed.

4. From the respective case of the applicants and defendant, the following points emerged for adjudication in this case:

(i) Whether the securitization proceedings initiated by the defendant suffer from any illegality to intervene with the same?

(ii) Whether the applicants are entitled to get any relief in this case?

FINDINGS:

Point Nos.(i) & (ii):

5. During hearing, the learned counsel for the applicants raised limited points stating that the demand notice based upon the suit claim amount in O.S.No.144/2013 of an amount of ₹7,17,489/- with interest, penal interest, legal charges etc. in total ₹20,37,768/-

as on 24.10.2019. In the final judgment and decree passed on 30.11.2019 by the learned Sub-court, it was held that the defendant is entitled for a sum of ₹4,39,798/- together with simple interest @ 6% per annum. That judgment is under challenge before the Hon'ble High Court of Kerala in RFA No.170/2021 and interim order is passed in staying the civil court decree. In the possession notice, the claim amount was recalculated based upon the judgment of the O.S.No.144/2013. As the decree of the Civil Court is stayed by the Hon'ble High Court, the defendant cannot proceed with the securitization proceeding based upon such demand notice and possession notice.

6. The learned counsel for the defendant would contend that there is no bar to proceed in the securitization proceeding during pendency of the OA. The security interest can be enforced pending final adjudication in the civil suit. Even decree passed by the civil court is stayed, there is no bar to continue with the securitization proceeding and hence the SA may be dismissed.

7. On careful consideration of the submissions of both sides, it appears from the demand notice issued u/s.13(2) of the SARFAESI Act, marked Annexure-B1 that the defendant has claimed for recovery of ₹7,17,489/- as on 07.04.2013 based upon

claim in the Civil Court in O.S.No.144/2013, and after clubbing interest, penal interest, legal charges etc. the total claim amount is ₹20,37,767.64 as on 24.10.2019. There is no dispute about service of the demand notice on the applicants. Due to non-repayment of the amount, the defendant issued a possession notice u/s.13(4) of the SARFAESI Act, marked Annexure-B3, stating that the total outstanding in the loan account is ₹8,04,656.38 as on 15th June, 2023 based upon the judgment of the Civil Court in O.S.No.144/2013. The applicants have not raised any material illegality in issuing such possession notice.

8. The only dispute, the learned counsel for the applicant raised that the decree passed by the Civil Court in O.S.144/2013 having been stayed by the Hon'ble High Court of Kerala in RFA No.170/2021 dated 31.05.2023, the entire securitization measure starting from the stage of issuance of the demand notice and the possession notice is vitiated and the defendant cannot proceed further with the said notices. In support of his contention, the learned counsel has referred a judgment of the Hon'ble High Court of Kerala reported in 2024(3)KHC 266 in the case of **Jasmin K.** v. **State Bank of India** where in it was held as follows:

> *"Securitisation and Reconstruction of financial Assets and Enforcement of Security Interest Act, 2002 – S.13(2) – Whether secured creditor is entitled to continue with the measures under the Act, once a civil suit filed*

by it for recovery is dismissed by the Court – Held, once a civil remedy is invoked and Civil Court has found that there is no debt to be recovered by the creditor against the borrower, creditor cannot proceed under the Act independently de hors the dismissal of suit – Secured creditor is disentitled from proceeding further with measures under the Act, since there is no legally recoverable debt – Constitution of India, Art.226".

9. The learned counsel for the defendant would contend that the O.A. and the securitization proceeding can run concurrently. In the OA the total debt due is adjudicated and the recovery certificate is issued. But in the SARFAESI proceedings, the enforcement of the security interest in respect of the secured asset is adjudicated. Both are complementary to each other. In such premises even the decree passed by the Civil Court is stayed by the Hon'ble High Court, there is no bar to proceed with the securitization proceeding. In support of his contention, the learned counsel for the defendant relied upon the judgment of the Hon'ble High Court of Kerala dated 03.01.2022 passed in WP(C)No.21892/2021 in the case of **Annam Steels (P) Ltd. and Ors.** v**. Canara Bank Ltd. and Ors.** wherein in paragraph 32 it is held as follows:

"*The subsequent quantification and crystallization of the debt due, including a reduction in the interest, that too, for the period beyond the date of notice, cannot have a bearing on the notice issued for enforcing the security interest*."

10. On consideration of the submissions of both sides, there is no dispute that the O.A. and SA can run concurrently. The claims

in both the cases are totally different. But in this case, the applicant has issued a demand notice based upon the OA claim of an amount of ₹7,17,489/- together with interest, penal interest, legal charges etc. Subsequently, after adjudication, the Civil Court arrived at a conclusion that the defendant bank was entitled to get only ₹4,39,798/-, which is stayed in the RFA filed by the present applicant before the Hon'ble High Court of Kerala. Subsequently, the applicant issued a possession notice under sec. 13(4) of the SARFAESI Act claiming the outstanding amount based upon the decree of the Civil Court. When the decree passed by the Civil Court is stayed by the Hon'ble High Court of Kerala, issuance of possession notice based upon such decree is not sustainable. It is true that the defendant bank may proceed with the securitization proceeding during pendency of the OA but the demand must be proper and correct. In such premises, the defendant may proceed afresh from the stage of issuance of the demand notice after quantifying the claim in accordance with the law. Both the points are answered accordingly.

Hence it is ordered:-

ORDER

11. In view of the foregoing reasons and with the above observation, the SA, is allowed but in the circumstances without costs.

(Dictated to my steno, corrected and pronounced by me in the open Tribunal on this the 6th day of August, 2026)

[SOVAN KUMAR DASH]
PRESIDING OFFICER

Documents on the part of the applicants

Annexures	Date	Particulars of documents
A1	30.11.2019	True copy of the Judgment in O.S.No.144/2013 of the Sub Court, Attingal.
A2	31.05.2023	True copy of the Order in I.A.No.1/2021 in RFA 170/2021 of the Hon'ble High Court of Kerala.
A3	16.06.2023	True copy of the possession notice.

Documents on the part of the defendant

Annexure	Date	Particulars of documents
B1	25.10.2019	Copy of Section 13(2) notice.
B2	-	Copy of the postal receipt evidencing issuance of Section 13(2) notice.
B2(a)	-	Copy of the AD cards evidencing receipt of Section 13(2) notice.
B3	16.06.2023	Copy of the possession notice issued to the applicant and co-obligant.
B4	-	Copy of the photographs evidencing the affixture of the possession notice on the conspicuous part situated in the security property.
B5	17.06.2023	Copy of the paper publication made in the "New Indian Express" daily.
B6	17.06.2023	Copy of the publication made in the "Kerala Kaumudi" daily.
B7	-	Copy of the possession notice issued to the applicant and the other co-obligant and copy of the postal receipt evidencing the issuance of the possession notice.

B8	01.10.2008	Copy of the Possession Certificate No.450/2008 issued by Village Officer, Vettoor, Cherunniyoor Village, Chirayinkeezhu Taluk with its English translation.

PRESIDING OFFICER

IN THE DEBTS RECOVERY TRIBUNAL-2,
KERALA AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated the 6th August, 2026

SA No.346/2023

Between

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F I N A L   O R D E R