Fair Order

IN THE DEBTS RECOVERY TRIBUNAL - 1 AT ERNAKULAM

DATED THIS 11th DAY OF AUGUST, 2026

PRESENT: Su. WILLYAHM, B.Sc., M.L.
[DISTRICT JUDGE - Retd]
PRESIDING OFFICER

S.A No. 214 of 2022

Between

M/s. Kanaka Enterprises
Registered partnership firm
Having its office at CC XL/9702,
Veekshanam Road, Kochi,
Ernakulam -682 035
Represented by its Partner
Jithesh R. Shenoy, S/o. A.D. Ratnakara Shenoy,
Residing at No.40/7107,
Damodar Nivas, T.D. Road,
Ernakulam – 682 035.

--- Applicant

And

1. Authorized Officer,
Union Bank of India,
Ernakulam Main Branch,
Union Bank Bhavan,
M.G. Road, Ernakulam-682035.

2. M/s. Shenoys Infra Mart Private Ltd.
(Erstwhile M/s. Trustrite Industries
Pvt. Ltd.), 709, Goyal Trade Centre,
Opp: HDFC Bank, Shantivan City,
BORIVALI (East), Mumbai, Maharashtra -400 066,
Having its Unit Office at
Door No.10/656, Near S N Public School Junction,
Mulluvila, Kollam – 691 021,
rep. by its Managing Director.

3. Kotak Mahindra Bank Limited,
40/9702, Kanaka Damodar Building,
Veekshanam Road,
Ernakulam -682 035,
Rep. by its Branch Manager.

4. State Bank of India,
Commercial Branch, 1st Floor,
State Bank Building,
Near Railway Station,
Kollam – 691 001,
Rep. by its Manager.

5. Sudarshana Shenoy,
W/o. Late A.D. Sadananda Shenoy,
Nandha Sudhan House,
Padmasree Lane, T.D. North End,
Ernakulam – 682 035.

6. A.S. Suresh Shenoy,
S/o. A.D. Sadananda Shenoy,
Nandha Sudhan House,
Padmasree Lane, T.D. North End,
Ernakulam – 682 035.

7. A.S. Rupesh Shenoy,
S/o. A.D. Sadananda Shenoy,
Nandha Sudhan House,
Padmasree Lane, T.D. North End,
Ernakulam – 682 035.

8. Abdul Sattar A.,
S/o. Assanaru Kunju,
Residing at Arafa House,
Vallikunnam South Post,
Vallikkunnam Alappuzha-690 501,
Represented by his Power of
Attorney Holder Abdul Rahseed A.,
S/o. Abdul Rahimankunju,
“Daru Rahma”, Munduparambil House,
Punnapra South P.O., Alappuzha – 688 004.

--- Defendants

This Securitization Application coming on 23.06.2026 for hearing before me in the presence of Mr. Raju Joseph Senior Counsel appearing for the applicant and Mr. A.V. Thomas Senior Counsel appearing for the 1st defendant and Mr. Vijayakumari R. for the 2nd defendant and Mr.Muhammed Faris representing the counsel for 3rd defendant and Ms.Sajitha representing the counsel for the 4th defendant and Mr. Babu Karukapadath Counsel appearing for the 8th defendant and defendants 5 to 7 having been set exparte and argument of counsel for the applicant and counsel for D1 and counsel for D2 and counsel for D8 having heard and argument having not been advanced by the counsel for D3 and D4 and upon perusing the material records, this Tribunal delivered the following:

O R D E R

1. This Securitisation Application was filed on 11.04.2022 seeking to declare the rights of the applicant over the S.A schedule property and to declare that the 1st defendant has no security interest over the S.A schedule property and to declare the measures initiated by the 1st defendant under the SARFAESI Act 2002 and Security Interest (Enforcement) Rules 2002 are illegal and to set aside Annexure-A10 Possession Notice, A11 and A12 sale notices and to set aside Annexure-A15 order and allow the cost of this proceedings.

2. (i) According to the applicant, it is a registered partnership Firm which constructed the three storied building in the land situated in Sy. No.412/1 in Ernakulam Village, Kanayannoor Taluk, Ernakulam District. The said property is described in the schedule to the S.A. The aforesaid land belonged to defendants 5 to 7. The applicant leased out the building to the 3rd defendant for a period of 12 years starting from 02.02.2015 by way of registered lease deed. It is not in dispute that the 1st defendant granted cash credit facility to the 2nd defendant after inspection of the premises and verification of documents. The applicant came to know of affixture of possession notice dated 25.02.2022 on its premises and the measures taken by the 1st defendant under the SARFAESI Act 2002. Subsequent to the institution of this S.A, the 1st defendant issued sale notices Annexure-A11 and A12. The SA scheduled property was sold to the 8th defendant. The SA subject matter of the property is not a secured asset. Hence the alleged sale without considering the ownership right of the applicant over the property is illegal and liable to be set aside.

(ii) Thereafter the 1st defendant bank approached the Additional Chief Judicial Magistrate Court (MPs/MLAs), Ernakulam and filed application Annexure-A13 and Annexure-A14 affidavit in MC No.1051/2022, suppressing the registered sale deed entered into between the applicant and the 3rd defendant. Annexure-A15 order came to be passed appointing

Advocate Commissioner to take physical possession of the secured asset. The Advocate Commissioner issued Annexure-A16 notice intimating that she would take possession of the property after 15.03.2023. Subsequently physical possession of the secured asset was taken and handed over to the 1st defendant.

3. The counsel appearing for the applicant submitted that one A.D.Sadananda Shenoy and A.D. Ratnakara Shenoy entered into Annexure-A1 partnership deed dated 17.08.1985 under the name and style of M/s.Kanaka Enterprises, as Karta of Hindu undivided family. For the purpose of constructing building for the partnership firm, Sri.A.D.Sadananda Shenoy and his brothers leased about 32 cents of land free of ground rent. The partnership firm constructed three storied building in the land after obtaining Annexure-A2 building permit from the Corporation of Cochin. Since Annexure-A1 partnership firm was constituted without considering the Kerala Joint Hindu family system (Abolition) Act 1976, the firm was re-constituted with execution of Annexure-A3 partnership deed. It has been recited in Annexure-A3 that the building constructed in the land shall be the ownership of the Firm.

4. The counsel for the applicant submitted further that in terms of Annexure-A3, Sri. A.D.Sadananda Shenoy, Sri. A.S. Suresh Shenoy and Sri.A.S.Rupesh Shenoy as land owners executed a lease deed dated 17.08.1998, Annexure-A18 in favour of the applicant Firm for an annual rent of Rs.50,000/-. Subsequently, the partnership firm was reconstituted by including Mrs. Sudarsana Shenoy, wife of late Sadananda Shenoy as partner. In 2015, as per Annexure-A5 registered lease deed, the applicant together with the land owners leased the building to the 3rd defendant bank for a period of 12 years. The applicant firm had mortgaged the S.A scheduled property to M/s State Bank of India for availing term loan.

5. The counsel appearing for the applicant submitted further that the mortgage created in favour of the 1st defendant by the 2nd defendant is without any authority, since the 2nd defendant has no assignable interest in the building constructed, without joining the Firm also as a party and that the 1st defendant was aware of the applicant firm’s ownership over the building and that no building number is given for the asset details which was uploaded in the CERSAI portal and that hence it is evident that land alone was mortgaged and not the building as claimed by the 1st defendant. The sale of the property to the 8th defendant is illegal. Hence, the 8th defendant cannot claim any right over the property. Therefore, SA may be allowed as prayed for.

6. The counsel appearing for the 1st defendant submitted that the 1st defendant extended four credit facilities to the 2nd defendant company

which has been secured with the mortgage of the land together with three storied building belonging to the defendants 5 to 7, in addition to hypothecation agreement, letters of guarantee etc. Since the 2nd defendant defaulted in repayment of the loan due, loan accounts were classified as Non-Performing Asset and measures were initiated under the SARFAESI Act 2002 and the Rules made there under, Advocate Commissioner took physical possession of the secured asset on 14.07.2023 except the building portion occupied by the 3rd defendant lessee which is entitled to continue till 01.02.2027. After issuance of series of sale notices, the secured asset was sold to the highest bidder, who is the 8th defendant, in the auction held on 13.11.2022, pursuant to issuance of Annexure-A12 sale notice. Sale certificate was issued on 13.12.2022 to the 8th defendant and sale certificate was registered in Ernakulam SRO.

7. The counsel for the 1st defendant submitted further that defendants 5 to 7 are alone the owners of the SA schedule property and that they have signed a declaration Annexure-D1 (h) stating that they are the owners of the property including the building and that Annexure-D1 (a) partition deed recites that the title deed of the land and building stands in the name of the defendants 5 to 7 and that in the revenue records, Annexure-D1 (b) land tax receipt, defendants 5 to 7 are shown as Pattadars holding the land under Thandaper No.21216. Annexure-D1 (c) possession certificate certifies that defendants 5 to 7 are in possession and enjoyment of the property. Annexure-D1 (d) – D1(g) building tax receipts shows that D5 to D7 have remitted tax as owners of the building. D5 to D7 have also signed Annexure-D1 (h) declaration stating that they are the sole owners of the mortgaged land and building covered by Annexure-D1 (a) partition deed.

8. The counsel for the 1st defendant submitted further that Annexure-A1, A3 and A4 partnership deeds recites that there was lease of land and that but no instrument has been produced to show the lease of transfer. Annexure-A1 partnership deed is a void deed since it was entered into between two undivided Hindu families when two Hindu family system in the State of Kerala had been abolished as per Kerala Joint Hindu Family System (Abolition) Act 1976. Therefore, the recitals found in Annexure-A1 for bringing the land to the firm is void. In Annexure-A1 partition deed vacant land alone is mentioned. No survey No. or village is mentioned in Annexure-A1. No property has been brought into the Firm as per Sec.14 of the Partnership Act. There is no written instrument for bringing the properties of the defendants 5 to 7 for the common stock of the applicant Firm.

9. The counsel for the 1st defendant submitted further that though Annexure-A2 building permit was issued to the partner, as per Rule 2 (72) of the Kerala Building Rules 1984, the term “owner” is defined as an agent or trustee or a receiver or a mortgagee and the lessee in possession, hence

granting of building permit to the partner of the Firm cannot be construed that the Firm is the owner of the building. The recitals in Annexure-D1 (a) partition deed mentions that Sadananda Shenoy became vested with the mortgaged land as per Document No.1926/1964 and that he constructed a three storied building therein and on death of Sadananda Shenoy, the mortgaged land and building devolved upon D5 to D7. No registered instrument has been produced to show that the applicant Firm is the owner of the building. Annexure-A5 lease deed executed in favour of the 3rd defendant bank does not mention about the right or interest of the applicant Firm in the property.

10. The counsel for the 1st defendant submitted further that challenge against Annexure-A15 order is unsustainable. The 1st defendant has furnished all the details required u/s 14 (1) [Clause (i) to (ix) to the provisions of Section 14 (1) of the SARFAESI Act 2002] in Annexure-A14 affidavit. Defendants 5 to 7 have colluded with the applicant without filing any counter or written statement in order to wriggle out of the liability of D2 company. Annexure-A18 lease deed dated 17.08.1998 had expired since the tenure was only for 10 years. The lease was expired much before the creation of the mortgage by defendants 5 to 7. In view of the above submissions, S.A may be dismissed with cost to the 1st defendant.

11. The counsel appearing for the 8th defendant submitted that there was a three storied building in the land when it was mortgaged to the 1st defendant bank and that in Annexure-D1 (h) declaration, the defendants 5 to 7 have declared that they are the owners of the land and the three storied building and that no other person has any right, title or interest over the property. If the building had not been included as a part of the mortgaged property, the defendants 5 to 7 would not have deposited the document with respect to the building for creating mortgage. The name of the applicant Firm is not mentioned in Annexure-D1 (d) to D1 (g). In Annexure-D1 (a) partition deed it is narrated that the land having an extent of 12.34 Ares originally belonged to Mr A.D. Sadananda Shenoy, and that he had constructed the three storied building and that on his demise, the land and building was inherited by the executants of Annexure-D1 (a). Therefore, defendants 5 to 7 are the owners of the land and building.

12. The counsel for the 8th defendant submitted further that the defendants 5 to 7 who are the partners of the applicant Firm after having made the 1st defendant bank to act upon such representation of the partners, are estopped from taking a different contention by the principles of estoppel. The applicant Firm never paid building tax for the building since it had no title or ownership over the building. The defendants 5 to 7 deposited the title deed of the property and other documents such as tax receipts for the land and the building, possession certificate in respect of the land and

building. The above conduct of the defendants 5 to 7 clearly demonstrates that they have created mortgage not only over the land but also over the building. Annexure-D1 (a) partition deed narrates the derivation of title with respect to the property including the building. The recitals in Annexure-D1 (a) partition deed mentions that Sadananda Shenoy became vested with the mortgaged land as per Document No.1926/1964 and that he constructed a three storied building therein and on death of Sadananda Shenoy the mortgaged land and building devolved upon D5 to D7.

13. The counsel for the 8th defendant submitted further that as per the Sec.8 of the Transfer of Property Act when the land is transferred by way of mortgage, the building constructed thereon is also incidentally taken there with. Hence, the owners of the property have specifically admitted that the property over which they have created the security interest is the land and the building thereon was incidentally taken with it and that secured asset is the whole property including the three storied building. The applicant has not produced any document/agreement in order to show the construction of the building in the land. The defendants 5 to 7 are paying property tax for the building as owners of the same and no tax is paid by the applicant firm for the building. No document has been produced to show that the applicant firm spent money for construction of the building. Annexure-A18 lease deed was expired on 17.08.2008. Though, there are certain clauses in Annexure-A18 which might give an indication that the applicant firm has ownership over the building, Clause No.3 (e) to Clause No.4 (c) would indicate that the lesser/land owners have responsibility of maintenance of the building, as the owners of the land and permitting the lessee to use the premises. Since there is no evidence to show that the building was constructed by applicant firm, Annexure-A18 cannot be considered as a genuine document. Even assuming for argument's sake that, Annexure-A18 is a genuine document, the period of lease of ten years expired on 17.08.2018 and subsequent execution of Annexure-D1(a) partition deed, Annexure-D1 (d) to D1 (g) would indicate that owners of the land obtained ownership over the building. No document has been produced by the applicant firm in order to show that the firm has been registered. Hence, the S.A filed by the applicant firm is not maintainable.

14. The counsel for the 8th defendant submitted further that the 8th defendant became the successful bidder in the auction held on 13.11.2022 and that on payment of total sale consideration of Rs.11.25 Crores, sale certificate Annexure-D8 (a) was issued to him and that sale certificate was registered as Document No.592/2023 of SRO, Ernakulam as per Annexure-D8 (b). All necessary details were furnished in Annexure-A13 application and A14 affidavit. Annexure-A15 order passed by the Additional Chief Judicial Magistrate Court (MPs/MLAs), Ernakulam is valid and legal. In

view of the above submissions, S.A may be dismissed with compensatory cost to the 8th defendant.

15. Written argument notes has been filed by the counsel for the applicant, the counsel for the 1st defendant and the counsel for the 8th defendant. The counsel appearing for D3 and D4 did not address argument. Their submission "no argument" has been recorded in the proceeding sheet dated 23.06.2026.

16. Annexure-A1 is the partnership deed dated 17.08.1985 which was entered into between the applicant Firm represented by A.D. Sadananda Shenoy and A.D. Ratnakara Shenoy. It has been recited in Clause 6 of the Annexure-A1 Partnership Deed that the party of the first part shall make available the vacant land free of ground rent to the firm for the purpose of constructing halls and other apartments suitable for the purpose of business of the firm and that the buildings so constructed shall be in the ownership of the firm and shall be caused to be demolished as soon as the partnership constituted by this partnership is terminated. Annexure-A1 partnership deed is a void deed since it was entered with between two undivided Hindu families when two Hindu family system in the State of Kerala had been abolished as per Kerala Joint Hindu Family System (Abolition) Act 1976. Therefore, the recitals found in Annexure-A1 for bringing the land to the firm is void, as rightly submitted by the counsel for the 1st defendant and the counsel for the 8th defendant. That is why, partnership Firm was reconstituted by executing Annexure-A3 partnership deed. According to the applicant Firm, the clause relating to the building and the rights thereto remained substantially the same as in Annexure-A1. Admittedly, in Annexure-A3 there is a clause that a lease deed would be executed in respect of the land and that the building constructed shall be in the ownership of the Firm.

17. In Clause 13 of Annexure-A4 which is the modified partnership deed, it is recited that the partners have agreed to lease the 30.50 cents of the land in Sy. No.412/1 Part of Ernakulam Village as per partition deed No.1926/1964 with the Sub Registrar's Office, Ernakulam belonging to the partners 1 to 3 and that the Firm has constructed a building thereon. No instrument has been produced by the applicant Firm in order to prove its contention that lease deed was executed pursuant to incorporating the relevant recitals found in Annexure-A1, A3 and A4 for creation of lease over the land and the building. If the property of a partner or partners of a partnership Firm is to be brought to the common stock of the partnership firm, a written instrument should be executed as per the provisions of Sec. 14 of the Partnership Act. In the present case, no such written instrument has been produced in order to show that the three storied building and the land were brought to the common stock of the applicant Firm. No document

has been produced to show that annual rent of Rs.50,000/- was being paid by the applicant firm for the land.

18. The applicant Firm relies upon Annexure-A2 building permit issued by the Corporation of Cochin to the applicant Firm for construction of three storied building in the leased land. It is seen from the perusal of Annexure-A2 that building permit was granted to the partner of the petitioner firm. Now the issue which arises for the consideration is as to whether the petitioner firm can be considered as the owner of the vacant land, belonging to the respondents 5 to 7. Rule 72 of the Kerala Building Rules defines the 'owner' as the person who receives the rent for the use of the land or building or would be entitled to do so if they were let and includes an agent or Trustee, a receiver, a mortgagee in possession and a lessee in possession. Thus, it is evident that a person in the capacity of as mentioned *supra* can apply for permit to put up construction in the land. Hence on the basis of Annexure-A2 building permit, the contention of the petitioner firm that it is the absolute owner of the land is unsustainable, since building permit can be granted to any category of person as referred to above. In any event, no document has been produced by the applicant Firm in order to show that pursuant to granting of Annexure-A2 permit, three storied building was constructed in the land. The relevant income tax return or balance sheet has not been produced by the applicant Firm in order to show the expenditure for construction of the building. If the building is constructed, completion certificate has to be submitted to the concerned Municipal Corporation for the purpose of tax assessment. In the present case, no such certificate has been produced by the applicant Firm. Therefore, Annexure-A2 building permit cannot be relied upon as a valid and convincing document to accept the contention of the applicant Firm that three storied building was constructed in the land.

19. It cannot be disputed that on 19.02.2020 the defendants 5 to 7 deposited the title deeds, partition deed No.4103/2015 of SRO, Ernakulam dated 23.09.2015, Annexure-D1 (a) along with Annexure-D1 (b) basic tax receipt, Annexure-D1 (c) possession certificate, Annexure-D1 (d) to D1 (g) building tax receipts, with the 1st defendant bank in respect of the secured asset. In Annexure-D1 (a) partition deed it is recited as follows:

> *"During the lifetime of A.D. Sadananda Shenoy, he had constructed a three storied building consisting of ground, two floors therein …… and thus the said A.D. Sadananda Shenoy became the absolute and undisputed owner in possession of the aforesaid 12.34 Ares of land comprised in Sy. No.412/1 of Ernakulam village, along with all improvements, easements and all other similar rights appurtenants thereto covered by the partition deed No.1926/1964 of SRO, Ernakulam."*

It is further recited in Annexure-D1 (a) partition deed as follows:

> *"On the demise of A.D. Sadananda Shenoy an extent of 12.34 Ares of land comprised in Sy. No.412/1 of Ernakulam village, along with all improvements, easements and all other similar rights appurtenants thereto covered by the partition deed No.1926/1964 of SRO, Ernakulam were jointly devolved on to the parties (defendants 5 to 7 herein) ……… by way of intestate succession and thus parties herein became the co-owners and in joint possession and enjoyment of the aforesaid property."*

20. The aforesaid recitals of Annexure-D1 (a) partition deed is sufficient to disprove the contention of the applicant Firm that it constructed three storied building in the land. In Annexure-D1 (b) basic tax receipt and Annexure-D1 (c) possession certificate, the names of the defendants 5 to 7 are alone mentioned as the owners of the property. Annexure-D1 (d) to D1(h) are the receipts for payment of building tax in respect of the S.A schedule property. In all the aforesaid receipts, the names of the defendants 5 to 7 are alone mentioned. If the applicant Firm had paid the building tax, its name alone ought to have been mentioned in the aforesaid documents. Hence, it is clearly established that the applicant Firm could not have been the owner of the three storied building constructed in the land.

21. In Annexure – D3(a) reply (produced by the applicant firm) received from the office of Assistant Engineer, KSEBL dated 04.02.2026, it is stated that electricity service connection has been issued in the name of Jithesh R. Shenoy who is the partner of the applicant firm. It is a known fact that electricity service connection can be given even in the name of a tenant also. Hence, the mere providing electricity service connection in the name of the occupant of the premises cannot be construed that the premises was constructed by the occupant. Hence, this Tribunal does not find any substance in the contention of the applicant firm that since the electricity service connection stands in the name of the partner of the firm, building was constructed by it.

22. In Annexure – D3(b) which is asset based search report produced by the applicant firm, house flat number is mentioned as 66/4632, 66/4632A and floor number is mentioned as 3, building name is mentioned as Kanaka Damodar. Therefore, the contention of the applicant firm that land alone was mortgaged and that building was not mortgaged since building was not mentioned in Annexure – D3(b) is absolutely incorrect.

23. Above all, the admission of a party in respect of an issue is the best evidence for which no proof is required. This fact is revealed from the perusal of Annexure-D1 (h) declaration which was signed by the defendants 5 to 7 and handed over to the 1st defendant bank on 02.01.2020. They had declared in the above declaration that they are the owners of the property including the portion of three storied building with all rights and improvements. It is pertinent to mention that defendants 6 and 7 are also

the partners of the applicant Firm and nevertheless the applicant Firm has filed this S.A against its own partners. Therefore, the defendants 6 and 7 cannot blow hot and cold by contending that three storied building was constructed by the Firm on the one hand and that they are the owners of the three storied building on the other hand.

24. The 1st defendant bank relying upon the documents D1 (a) to D1 (h) produced by the defendants 5 to 7 was induced to sanction the credit facility to the defendants 5 to 7. Therefore, it is established that the conduct of the applicant Firm in filing this S.A reveals the fact that the S.A has been filed at the instigation and instance of the defendants 5 to 7 in order to stall the measures initiated by the 1st defendant.

25. Annexure-A18 lease deed which expired on 17.8.2008 itself appears to be a self-serving document on which no reliance can be placed. Hence, the recital found in Annexure-A18 that the applicant Firm has ownership over the building cannot be a true recital for the reason that there is no documentary evidence to show that three storied building was constructed by the applicant Firm in the land.

26. It is not in dispute that the 3rd defendant, which is the Bank, is the tenant of the portion of the secured asset. It is the contention of the 3rd defendant in the written statement that its right to continue its peaceful possession and enjoyment of the leased premise as the lessee should not be disturbed by the applicant and other defendants. In the SA no specific relief is sought for by the applicant firm against the 3rd defendant. Hence, no finding can be given in favour of the 3rd defendant.

27. The applicant Firm is said to have availed credit facility from the 4th defendant bank. It is averred by the 4th defendant bank in its written statement that the applicant Firm has no cause of action for filing this S.A against this defendant. The reason stated by the applicant Firm in the S.A for adding the 4th defendant bank in the party array is in order to show that rent of the building which has been rented out to the 3rd defendant was paid to the 4th defendant bank towards the outstanding loan due. However, the 4th defendant bank has averred in the written statement that it is not aware of repayment of the loan from the rent of the building. The 1st defendant bank has specifically averred in paragraph 14 of its counter affidavit filed for the petition IA No.931/2023 that this respondent (1st defendant herein) never interfered with the possession of the lessee (4th defendant herein) and that notice of Advocate Commissioner was issued only for taking physical possession of the property excluding the portion of the property occupied by the lessee. In any event, it is evident that adding the 4th defendant bank as the party array to the S.A amounts to mis-joinder of party.

28. There is no specific challenge by the applicant Firm in respect of Annexure-A10 possession notice issued by the 1st defendant for symbolically taking possession of the secured asset. The 1st defendant has averred in the additional written statement with regard to issuance of the six sale notices for sale of the secured asset. First Sale notice dated 10.06.2022, second sale notice dated 30.07.2022, third sale notice dated 30.08.2022, fourth sale notice dated 30.09.2022 were issued for sale of the secured asset. Indisputably, sale was not fructified for want of bidders in the auctions held on 20.07.2022, 24.08.2022, 22.09.2022 and 28.10.2022. Finally fifth sale notice dated 05.11.2022 was issued. The 1st defendant has produced copies of paper publications as Annexure-D1 (i) to D1 (n) in order to prove its contention that the above sale notice was issued in two leading news papers. Annexure-D1 (g) produced by the 1st defendant evidences the affixture of the sale notice dated 05.11.2022 on the conspicuous part of the secured asset. Annexure-D1 (o) and D1 (p) valuation reports dated 08.03.2022 and 15.03.2022 respectively produced by the 1st defendant shows that reserve price for the secured asset was fixed based upon the valuation of the property mentioned in the aforesaid reports.

29. The applicant Firm has contended in the S.A that the property mentioned in the sale notices is not the secured asset and that no notice was issued to the applicant Firm and all the original owners were not made parties and that the reserve price fixed in the sale notice is meager. Once it is established that the applicant firm is not the owner of the building constructed in the land, there is no necessity to serve sale notice to it. Sale notices were issued to the defendants 5 to 7, who are the owners of both the land and the building. The applicant firm has not produced any material before this Tribunal in order to prove its contention that the reserve price fixed for the property is meager and that the 1st defendant colluded with the auction purchaser and that there was no proper or genuine participation by the auction purchaser in the auction. Hence, the aforesaid contention of the applicant firm is liable to be rejected in *toto*. Therefore, this Tribunal does not find any procedural irregularity in respect of sale of the secured asset to the highest bidder, who is the 8th defendant.

30. Issuance of prior notice to the borrowers or guarantors or the person in occupation of the secured asset prior to passing order under Section 14 (1) of the SARFAESI Act, 2002 by the Chief Judicial Magistrate or the District Magistrate for taking physical possession of the secured asset is not mandatory. Therefore, the contention of the petitioner firm that no notice was served to the petitioner firm prior to passing order Annexure-A15, does not hold good.

31. It is seen from the perusal of affidavit, Annexure-A14 and Order dated 24.1.2023 Annexure-A15 that the 1st respondent bank has furnished all the details as required under Section 14(1) (i) to (ix) of the SARFAESI Act, 2002 and that the learned Additional Chief Judicial Magistrate Ernakulam passed Order for taking physical possession of the secured asset after having perused the contents of the affidavit and satisfied over the same. Therefore, the contention of the petitioner firm that, the Order Annexure-A15, passed in M.C. No.1051/2022 is not in accordance with law, is liable to be rejected.

32. Above all, the applicant Firm which has no right, title or interest over the three storied building constructed in the land belonging to the defendants 5 to 7, is not entitled to challenge the measures initiated by the 1st defendant in respect of sale of the secured asset and taking possession of the secured asset.

33. In view of the foregoing reasons and discussions, this Tribunal holds that the claim of the applicant Firm over the S.A scheduled property, which is the secured asset is unsustainable and untenable. Therefore, the applicant Firm is not entitled to get any reliefs sought for in the S.A which deserves to be dismissed with compensatory cost to the 1st defendant and the 8th defendant.

In the result, this SA No.214 of 2022 stands dismissed with costs and also compensatory costs of Rs.25,000/- each payable to the 1st defendant bank and the 8th defendant.

Dictated to Steno, taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court, this the 11th day of August, 2026.

[Su. WILLYAHM]
PRESIDING OFFICER

SA SCHEDULE PROPERTY

Description

Three storied building known as "Kanaka Damodar" consisting of ground floor bearing Cochin Corporation Old Door No.40/9702 and First & Second floor bearing Cochin Corporation Old No.40/9702-UA (present new Door Nos.66/4632, 664632-A, 66/4632-A1 & 66/4632/A2 (42) situated in 12.34 Ares (30.50 cents) in Sy. No.412/1 in Ernakulam village in Kanayannur Taluk, Ernakulam District, belonging to the applicant.

Boundaries

North	: Property owned by A.P. Narasimha Shenoy
East	: Property owned by Reddiar and sons
West	: Palliparambu/Church
South	: Veeksnam Road (Erstwhile Kaloor Cross Road)

(Su. WILLYAHM)
PRESIDING OFFICER

List of documents filed by the Applicant along with the S.A.

Sl. No.	Date	Particulars	
1.	17.08.1985	Photocopy of the duplicate copy of partnership deed	Annexure-A1
2.	28.04.1986	Photocopy of the building permit issued by the Corporation of Cochin to the applicant	Annexure-A2
3.	01.04.1998	True copy of the amended partnership deed.	Annexure-A3
4.	16.03.2001	True copy of the amended partnership deed.	Annexure-A4
5.	16.03.2015	True copy of the registered lease deed No.1484/2015	Annexure-A5
6.	29.03.2019	True copy of the loan arrangement with 4th defendant	Annexure-A6
7.	24.03.2022	True copy of the insurance policy	Annexure-A7
8.	04.03.2022	True copy of the letter issued by the 3rd defendant to the 1st defendant	Annexure-A8
9.	04.03.2022	True copy of the letter issued by the 3rd defendant to the applicant	Annexure-A9
10.	25.02.2022	True copy of the Possession Notice issued by the 1st defendant	Annexure-A10
11.	16.06.2022	Auction sale notice dated 10.06.2022 published in the Hindu daily.	Annexure-A11
12.	13.11.2022	Auction sale notice dated 12.11.2022 published in the Hindu daily.	Annexure-A12
13.	---	True copy of application in MC No.1051/2022 on the file ACJM Court, Ernakulam.	Annexure-A13
14.	---	True copy of affidavit in MC No.1051/2022 on the file ACJM Court, Ernakulam.	Annexure-A14
15.	24.01.2023	True copy of Order in MC No.1051/2022 on the file ACJM Court, Ernakulam.	Annexure-A15
16.	25.02.2023	True copy of the notice issued by the Advocate Commissioner.	Annexure-A16
17.	23.04.1986	True copy of the proposed building plan approved by the Corporation of Cochin	Annexure-A17

18.	17.08.1998	True copy of the registered lease deed	Annexure-A18
19.	---	True copy of the memorandum of plaint filed by Spencer's Retail Ltd before the Sub Court, Ernakulam, as O.S. No.929/2010.	Annexure-A19

List of documents filed by the 1st defendant along with the written statement

Sl. No.	Date	Particulars	
1.	23.09.2015	True photocopy of partition deed No.4103/2015 of SRO Ernakulam.	Annexure-D1(a)
2.	19.10.2019	True photocopy of basic tax receipt issued by Village Office, Ernakulam along with English translation.	Annexure-D1(b)
3.	26.10.2019	True photocopy of the possession certificate issued by Village Office, Ernakulam.	Annexure-D1(c)
4.	18.10.2019	True photocopy of the building tax receipt No.01/119150506312 issued by Corporation of Kochi with respect to Door No.66/4632.	Annexure-D1(d)
5.	18.10.2019	True photocopy of the building tax receipt No.01/119150506313 issued by Corporation of Kochi with respect to Door No.66/4632-A.	Annexure-D1(e)
6.	18.10.2019	True photocopy of the building tax receipt No.01/119150506314 issued by Corporation of Kochi with respect to Door No.66/4632-A1.	Annexure-D1(f)
7.	18.10.2019	True photocopy of the building tax receipt No.01/119150506315 issued by Corporation of Kochi with respect to Door No.66/4632-A2.	Annexure-D1(g)
8.	02.01.2020	True photocopy of the declaration signed by defendants 5 to 7.	Annexure-D1(h)
9.	13.11.2022	True photocopy of newspaper publication in Hindu daily (Kochi edition)	Annexure-D1(i)

10.	13.11.2022	True photocopy of newspaper publication in Hindu daily (Kollam edition)	Annexure-D1(j)
11.	13.11.2022	True photocopy of newspaper publication in Mathrubhumi daily (Kochi edition)	Annexure-D1(k)
12.	13.11.2022	True photocopy of newspaper publication in Mathrubhumi daily (Kollam edition)	Annexure-D1(l)
13.	13.11.2022	True photocopy of newspaper publication in News Hub daily (Mumbai)	Annexure-D1(m)
14.	13.11.2022	True photocopy of newspaper publication in Pratahkal daily (Mumbai)	Annexure-D1(n)
15.	08.03.2022	True photocopy of the valuation report	Annexure-D1(o)
16.	15.03.2022	True photocopy of the valuation report	Annexure-D1(p)
17.	05.11.2022	True photocopy of the affixture of sale notice.	Annexure-D1(q)

List of documents filed by the 8th defendant along with the written statement

Sl. No.	Date	Particulars	
1.	13.12.2022	True copy of the sale certificate issued by the 1st defendant to the 8th defendant.	Annexure-D8(a)
2.	20.02.2023	True copy of the sale deed No.592/2023 of SRO, Ernakulam.	Annexure-D8(b)

(Su. WILLYAHM)
PRESIDING OFFICER