BEFORE THE DEBTS RECOVERY TRIBUNAL, CUTTACK
PRESENT:- SHRI JITENDRA PRASAD SINGH
PRESIDING OFFICER.
S.A. No.112 OF 2023

DATE OF DELIVERY OF ORDER:20.08.2026

Smt. Seema Manjari Patel,
W/o. Gagan Kumar Mishra,
At-Bhojpur, Po-Karamdihi,
Dist. Sundargarh-770002,
Odisha, the erstwhile
Proprietor of M/s. Seema Granites.

… Applicant

Vrs.

1. Authorized Officer, State Bank of India,
Stressed Assets Management Branch (SAMB),
At-A/34, Pandit Jawaharlal Nehru Marg,
OSCARD Bank Building, 4th Floor,
Bhubaneswar-751001,
Dist- Khordha, Odisha

2. Asst. General Manager, State Bank of India,
Stressed Assets Management Branch (SAMB),
At-A/34, Pandit Jawaharlal Nehru Marg,
OSCARD Bank Building, 4th Floor,
Bhubaneswar-751001,
Dist- Khordha, Odisha

3. Branch Manager, State Bank of India,
Sundargarh Main Branch, At/Po/Dist.
Sundargarh, Pin-770001, Odisha

4. Baidyanath Resources Pvt. Ltd.
Represented through its Director,
Mr. Ashok Agarwal, At- X-4,
Omm kutir, Civil Town Ship,
Rourkela, Dist-Sundargarh,
Pin- 769004.

… Respondents

Counsel for the Applicant:- Shri N. K. Dash

Counsel for the Respondents No.1 to 3:- Shri Himanshu Pattnaik

Counsel for the Respondent No.4:- Shri Abhijit Agarwal

JUDGEMENT

1. This is an Application under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, filed by the applicant for setting aside the sale notice dated 14.06.2023 and for other reliefs.
2. The brief facts of the applicant case is that The applicant was the proprietor of M/s. Seema Granites (herein after referred as the Borrower), which had availed a Cash Credit facility of Rs.24,54,000/- and term loan of Rs.50,00,000/- vide a letter of arrangement dated 03.02.2009. Besides the other documents the borrower had also created equitable mortgage in respect of the property more specifically described in the schedule. The loan was also guaranteed by the personal guarantee of Sri Suresh Chandra Patel and the applicant. Due to several contributory factors the unit of the borrower did not go well to thrive in the business as a result of which, despite due diligence, the loan account was unilaterally classified as NPA. The classification of the NPA of the account was followed by a statutory notice under Section 13(2) of the SARFAESI Act dated 15.11.2011, wherein the respondents had demanded a consolidated amount of Rs.83,21,334/-.Subsequently vide a notice dated 11.06.2013, purportedly issued under 13(4) of the Act was issued, claiming to have been taken possession over the schedule property. However factually the contention in the said notice was not correct. Subsequently the respondents come up with a sale notice, calling upon the intending borrowers to participate in the online auction of the schedule property. The said notice was challenged before the Hon’ble High Court in W.P.(C) No. 22705 of 2013, which was disposed of vide order dated 25.10.2014 with certain direction. Thereafter the borrower moved the respondent-Bank vide letter dated 07.05.2014, for One Time Settlement of the account at amount of Rs.48 lakh, which, on deliberation was fixed to Rs.55 lakh towards the satisfaction and closure of the loan account under One Time Settlement Scheme. Accordingly vide OTS sanction letter dated 17.07.2014 the respondent-Bank

communicated the borrower the terms of the settlement, as per which an upfront amount of Rs.12,50,000/- was paid instantly and balance Rs.42,50,000/- was supposed to be paid by 16.08.2014.In compliance to the OTS sanction letter dated 17.07.2014 the borrower deposited Rs.26,00,000/- within the stipulated time and defaulted in making the entire payment for the compelling situation which was beyond the control of the borrower. The borrower therefore requested the respondent-Bank for extension of time which was not redressed by the respondent-Bank rather vide letter dated 13.09.2014 the respondent-bank cancelled the OTS dated 17.07.2014.The borrower, being aggrieved by the cancellation of OTS vide letter dated 13.09.2014 was constrained to approached the Hon'ble High Court of Orissa in W.P. (C) No.21417 of 2014. The Hon'ble High Court vide order dated 17.11.2014 directed the borrower to deposit the balance outstanding of the OTS amount by end of November, 2014. However, the said order was could not be complied with for paucity of funds therefore the borrower moved a Misc. Case No.20833 of 2014 and Misc. Case No. 20991 of 2014 in the writ petition, for extension of time which were allowed time to time by the Hon'ble Court. In the meanwhile the borrower was continuing to deposit the balance settlement amount and deposited the entire settlement amount along with the delayed period interest of Rs.1,49,000/-. While the matter stood thus the respondent-Bank came up with e-auction sale notice dated 21.10.2016 which was published in "The Samaj" dated 22.10.2016 inviting bid from the intending buyers of the schedule property. The said auction notice was challenged in the pending writ petition by way of an Misc. Application No.18302 of 2016 and the Hon'ble Court vide order dated 22.11.2016 passed an interim order directing not to take any coercive action against the writ petitioner/borrower till the next date and the said interim order was subsequently continued till the next date in the writ petition.

While the matter stood thus the writ petition was came before the Hon'ble Court for final disposal and vide order dated 01.12.2022 it was disposed of. In the meantime after the disposal of the writ petition vide e-auction sale notice dated 01.04.2023 fixing the E-auction on 12.05.2023, in respect of the lot No.1 of the Schedule of Properties. Probably the said auction was not successful the respondent-Bank have come up with another sale notice for Sale of Immovable Properties, in respect of the Lot No.1 of the Schedule of Properties, dated 14.06.2023, was also issued to the borrower. Fact remains that the entire action of the respondent-Bank is not only illegal, dehors to the statutory requirement but also without jurisdiction and authority. Undisputedly there was a settlement arrived between the parties and even though the balance payment was made in late but the same was paid without any objection by the Respondent-Bank and also with the interest for the delayed period. Therefore, once the respondent-Bank entered into a settlement, accepted the settlement amount along with delayed period interest, without any objection and prejudice, the attempt of auctioning the schedule property is not only illegal but also uncalled for, unfair and without jurisdiction too.

Rule 9.6 of the Security Enforcement Rules, contemplates that on confirmation of sale the Authorized Officer shall issue a sale certificate in the prescribed form under Appendix-V. Appendix-V further symbolizes that the sale certificate should be issued along with the delivery of possession. Therefore, without possession the sale of the property is not permitted under the SARFAESI Act and fact remains that the possession still remains with the applicant. Further the respondents are debarred from taking recourse under the SARFAESI Act in view of the embargo contained under Section 26-D of the Act wherein the law requires for a secure creditor to register the security interest in the central registry as per the requirement of Section 26-B. Unless such a registration U/s.26-B is made the recourse under the Act is prohibited as per 26-D of the Act. Therefore, the secured creditor being precluded from taking recourse under the Act, the impugned notice issued by the respondents is non-est in the eye of law. Therefore, the same is required to be quashed. In the case in hand though the impugned sale notice was of the year 2015 and the Chapter-IV-A in the Act was incorporated in the year 2016 still the confirmation of sale having probability in the current date has to be done in accordance with the Amended Act and to confirm the sale under the amended Act the provision under Chapter-IV-A of the Act is required to be complied with.

The very classification of NPA of the account is not in consonance to the requirement of law. As per the settled principles of law that is decided in Stan Commodities Pvt. Ltd. Vs. Punjab and Sind Bank reported in 2009 AIR, Jharkhand 14, the secured creditor is supposed to served the borrower a one-month prior notice before classification of the account as NPA. Non-communication of the intended date of NPA one month prior to the date of NPA is also violative of the circular dated 30.08.2001 issued by the Reserve Bank of India on IRAC Norms. It is appropriate to submit here that that referring to the said circular of the Reserve Bank of India the Hon'ble Apex Court in the case of Mardia Chemicals has also floated guidelines with regard to classification of the account. In deviation and in violation of all the judicial ruling as well as the Notification of the apex Bank of the country, the respondents have flawed the law and thus the entire process under SARFAESI Act is unwarranted and requires to be recalled with immediate effect.

The respondents have grossly failed to adhere with the compliance of the mandatory statutory compliance as required the SARFAESI Act and the Security Interest (Enforcement) Rules. The respondent-Bank has also failed to adhere the mandatory requirement as required under section 13(2) of the SARFAESI Act read with Rule 3 & 4 of the Security Interest Enforcement Rules.

In the present case, there is no notice U/s. 13(2) of the SARFAESI Act in connection to the auction notices, issued on 01.04.2023 & 16.06.2023. It is presumed that initially the accounts were classified as NPA in the year 2011, pursuance to which the demand notice U/s.13(2) dated 15.11.2011 was issued, followed by a settlement of drawn between the parties. It is also not disputed that pursuance to the OTS sanction, the borrower has already deposited Rs.55 lakhs with interest of Rs.1,49,000/- during the first half of the year 2015. Be that the admitted fact, the loan account classified as NPA in 2011 was regularized and was out of NPA in 2015, even if the OTS is ruled out for the sake of arguments. In that view of the matter, as fresh demand notice subject to classification of NPA, is inevitable and mandatory under the law. Having not done so, direct approach to sell the property is beyond the scope and ambit of the respondents.

The respondents have also violated the Rule 8(5) of the Security Enforcement Rules, 2002, wherein the respondents are required to obtain a proper valuation of the property from an approved valuer and may fix the reserve price of the property. In the instant case the property was valued at Rs.1,13,11,000/-, as per the sale notice dated 04.04.2023 but the self-same property is put to auction, by fixing reserve price at Rs.1,00,00,000/-, in the sale notice dated 14.06.2023, which is evidently in a gap of two and half months. Therefore, it is submitted that under no stretch of imagination it can be conceived to any prudent assumption/appreciation that the property can be devalued to Rs.13,00,000/- in two and half months. Therefore, here is a clear case of violation of Rule 8(5) of the Security Enforcement Rules, 2002.

Admittedly the property mortgaged is as per the description/property details as per the schedule. However, the auction notice is published with different description, without any clarity to such discrepancy/disconnection. Hence, the auction sale notice dated 14.06.2023 is defective, which needs to be quashed.

3. Notices were issue to the Respondent No.1 to 3 and subsequently to Respondent No.4 to show cause as to why the relief prayed for by the applicant be not granted. After receiving the notice, the Respondents No.1 to 3 and Respondent No.4 appeared and filed their counter affidavit.

4. The Respondents No.1 to 3 filed their counter affidavit contending that as the borrower failed to honour the terms and conditions of loan sanction, and did not pay the regular instalment, the account of the borrower became irregular. Despite of reminders and phone calls the borrower failed to regularize the loan account in time and as such the account was classified as NPA in terms of IRAC norms of RBI. The account was never classified as NPA unilaterally. Thereafter Bank took steps in terms of statutory provision of SARFAESI Act for recovery of its dues.

Bank has taken possession of the secured assets by issuing notice U/s.13(4) on 11.06.2013. The applicant had given a representation on 07.05.2014 for compromise of the account for Rs.48 lakhs. Bank vide its letter No. SAMB/BBSR/07/774 dated 17.07.2014 informed the applicant that the appropriate Authority of Bank has approved OTS of account for Rs.55 lakh and the applicant had received the said copy and accepted the terms and conditions mentioned therein. In the said letter it is mentioned that the amount of Rs.12.50 lakh deposited earlier has been adjusted towards OTS dues and the applicant had to pay the remaining Rs.42.50 lakh by 16th August 2014. It is also mentioned therein that on failure to comply with the terms and conditions of OTS, it will be cancelled accordingly. The applicant had failed to pay the OTS amount within stipulated time and as such the OTS was cancelled and communicated to the applicant vide letter SAMB/BBSR/07/679 dated 13.09.2014 which is Annexure-6. Since the OTS was cancelled way back on 13.09.2014 due to non-payment of the OTS amount and non-compliance of the High Court's order, there was no question of settlement of the account in terms of the earlier OTS. In reply of averments of para 5-k it is said that in the said order it is mentioned that Despite so many opportunities have been given to the applicant she did not pay the OTS amount in time and the writ petition was finally disposed of with such observation without granting any further relief to the applicant. Since the e-auction dated 12.05.2023 was not successful, it was decided to re-auction of the said property on 05.07.2023 and accordingly. Paper publication to the effect was made and 15 days sale notice was also issued to the borrower/mortgagor on 14.06.2023 as per law. It is not in dispute that the OTS was cancelled on 13.09.2014 and there is no question of settlement as per said OTS terms. It is responsibility of the borrower to pay the entire amount of loan dues and the partial amount paid by borrower is adjusted towards loan outstanding and nothing else. It is not correct that Bank has not objected to the plea of the borrower. Bank has filed its counter in the said writ petition before the Hon'ble High Court rebutting the stand taken by the petitioner in the writ petition.

It is settled principle of law that the Bank can auction the property before taking of actual physical possession. Bank has already obtained the Collector-cum-District Magistrate's permission vide Order No. 1248 dated 26.07.2014 and can take actual physical possession at any time and deliver the same to the proposed auction purchaser. The loan accounts were classified as Non-Performing Assets (NPA) as per guidelines of Reserve Bank of India (RBI) and the applicant has never disputed or denied such lawful classification. In fact she has categorically admitted such declaration of NPA at different forums on various occasions. Hence such vague plea at the present stage is not acceptable in any manner.

As per the SARFAESI Act the demand notice was issued on 15.11.2011 and subsequently the possession notice issued on 11.06.2013 and the process is going on in accordance with law. The Bank could not be able to proceed further in the matter due to pendency of the writ petition in the Hon'ble High Court and as the same was disposed of on 01.12.2022, further steps have been taken for enforcement of the secured assets for realization of the Bank's dues which is nothing but public money running into crores of rupees.

The valuation of the property is obtained from the approved valuer. It is correct that as per e-auction sale notice dated 04.04.2023 the reserved price fixed for the property was Rs.1,13,11,000/- but the said auction was failed for want of bidder due to high side of reserved price. For that on subsequent sale notice dated 14.06.2023 the reserved price has been decreased and fixed at Rs.1,00,00,000/-. Bank has not deviated in any manner and the SARFAESI Actions have been taken as per provisions of law.

The change in description of property is due to change in the ROR and it shows in the ROR downloaded from Bhulekh site that an area of Ac 0.04 Dec of land has been acquired by Government Authority vide Land Acquisition Case No. 269/2011. As per ROR the correct description has been given to avoid future dispute at the time of registration and mutation to be made by the auction purchaser. No deviations have been made and everything is in order as per law.

5. Respondent No.4 filed counter and contended that the Respondent No.4 i.e. the answering respondent herein is the successful auction purchaser of the properties of the applicant from the bank vide e-auction dated 05.07.2023 and notice for sale dated on 14.06.2023.Since the Auction Purchaser has paid an amount of Rs.25,12,500/- in favour of the Respondent Bank which is 25% of the bid amount and thus the sale has been confirmed in favour of the Auction Purchaser.The Auction Purchaser in its letter dated 18.07.2023, requested the Respondent Bank to allow the Auction Purchaser further 90 days' time to deposit remaining 75% of the auction amount. As per the request of the Auction Purchaser the Respondent Bank vide letter dated 19.07.2023 allowed the Auction Purchaser additional 90 days' time to deposit the remaining 75% of the auction amount which is on or before 03.10.2023.The Auction Purchaser deposited the remaining 75% of the bid amount in favour of the Respondent Bank on 03.10.2023 and the same was also communicated to the bank vide letter dated 03.10.2023.

The Applicant has been sleeping over the said outstanding loan amount till date and it is when the auction was conducted by the respondent bank and the Auction Purchaser was declared successful bidder of the said auctioned property, the Applicant has now turned up to quash the Impugned Sale notice dated 14.06.2023. This act of the Applicant makes it clear that the Applicant is making mockery of the entire SARFAESI Proceedings.

6. On the perusal of the pleadings of the rival parties, the following issues arise for consideration.

(i) Whether the Respondent Bank has violated Rule 9(6) of Security Interest Enforcement Rues, 2002?

(ii) Whether the Respondent Bank has violated Section 26-D of the Act?

(iii) Whether the Respondent Bank has taken proper valuation of the property before putting the property into auction sale and fixing the reserve price as per Rule 8(5) o the At,2002??

(iv) Whether the applicant is entitled to the reliefs as claimed?

7. Issue No.(i):- Whether the Respondent Bank has violated Rule 9(6) of Security Interest Enforcement Rues, 2002?

The contention of the applicant is that Rule 9.6 of the Security Enforcement Rules, contemplates that on confirmation of sale the Authorized Officer shall issue a sale certificate in the prescribed form under Appendix-V. Appendix-V further symbolizes that the sale certificate should be issued along with the delivery of possession. Therefore, without possession the sale of the property is not permitted under the SARFAESI Act and fact remains that the possession still remains with the applicant.

The contention of the Respondent Bank is that It is settled principle of law that the Bank can auction the property before taking of actual physical possession. Bank has already obtained the Collector-cum-District Magistrate's permission vide Order No. 1248 dated 26.07.2014 and can take actual physical possession at any time and deliver the same to the proposed auction purchaser.

From the perusal of the record it is seen that Respondent Bank has not filed any proof with regard to taking physical possession of the property before issuance of sale certificate and it has been admitted by the Respondent Bank in their counter. As such it is evident that the Respondent Bank has failed to prove that the possession was taken before issuance of sale certificate. Accordingly issue No.(i) is answered in favour of the applicant.

8. Issue No.(ii):- Whether the Respondent Bank has violated Section 26-D of the Act?

The contention of the applicant is that the respondents are debarred from taking recourse under the SARFAESI Act in view of the embargo contained under Section 26-D of the Act wherein the law requires for a secure creditor to register the security interest in the central registry as per the requirement of Section 26-B. Unless such a registration U/s.26-B is made the recourse under the Act is prohibited as per 26-D of the Act. Therefore, the secured creditor being precluded from taking recourse under the Act, the impugned notice issued by the respondents is non-est in the eye of law.

The contention of the Respondent Bank is that the applicant has no scope under tale to take shelter under such provision of law. However, it is registered in terms of CERSAI Act and the document to that effect can be produced at appropriate time if called upon to do so.

From the perusal of the record it is seen that the applicant has specifically pleaded that the unless registration is made U/s 26-B the recourse under the Ac is prohibited as per 26-D of the Act. The Respondent Bank in order to disprove the contention of the applicant they could have filed the documents in order to prove that the registration has been made as per 26-B and the Bank can take recourse as per 26-D of the Act. But the Respondent Bank failed to file any document in order to disprove the contention of the applicant. Accordingly issue No.(ii) is answered in favour of the applicant.

09. Issue No.(iii):- Whether the Respondent Bank has taken proper valuation of the property before putting the property into auction sale and fixing the reserve price as per Rule 8(5) of the Act, 2002?

The contention of the applicant is that the respondents have also violated the Rule 8(5) of the Security Enforcement Rules, 2002, wherein the respondents are required to obtain a proper valuation of the property from an approved valuer and may fix the reserve price of the property. In the instant case the property was valued at Rs.1,13,11,000/-, as per the sale notice dated 04.04.2023 but the self-same property is put to auction, by fixing reserve price at Rs.1,00,00,000/-, in the sale notice dated 14.06.2023, which is evidently in a gap of two and half months. Therefore, it is submitted that under no stretch of imagination it can be conceived to any prudent assumption/appreciation that the property can be devalued to Rs.13,00,000/- in two and half months. Therefore, here is a clear case of violation of Rule 8(5) of the Security Enforcement Rules, 2002.

The contention of the Respondent Bank is that the valuation of the property is obtained from the approved valuer. It is correct that as per e-auction sale notice dated 04.04.2023 the reserved price fixed for the property was Rs.1,13,11,000/- but the said auction was failed for want of bidder due to high side of reserved price. For that on subsequent sale notice dated 14.06.2023 the reserve price has been decreased and fixed at Rs.1,00,00,000/- Bank has not deviated in any manner and the SARFAESI actions have been taken as per provisions of law.

From the perusal of the record it is seen that the applicant has challenged the valuation of the property. The Respondent Bank has not filed their valuation report on the basis of which reserve price is fixed to disprove the contention of the applicant. Respondent Bank has also not stated that they have consulted with the borrower and the secured creditor while reserve price has been decreased. Hence the contention of the applicant appears true that the property has not been valued properly and fixation of the reserve price not as per Rule. As such the Respondent Bank has violated Rule 8(5) of the Security Interest (Enforcement) Rules, 2002. Accordingly issue No.(iii) is answered in favour of the applicant.

10. Issue No.(iv):-Whether the applicant is entitled to the reliefs as claimed?

From the perusal of the record it is seen that after availing the credit facilities from the bank, the applicant did not adhere to the terms and conditions of the sanction and did not clear the amount despite several correspondences and request from the bank for which the said loan accounts of the applicant became NPA. Thereafter the Respondent Bank had initiated the actions against the applicant under the provisions of the SARFAESI Act. But the Respondent Bank failed to prove that the Bank have not violated Rule 9(6) of the Security Enforcement Rules, 2002 and the Bank also failed to prove that the bank has taken recourse as per 26-D of the Act. Further the Respondent Bank also failed to prove that the Respondent Bank has obtained a proper valuation of the property from an approved valuer and has fixed the reserve price of the property without violation of Rule 8(5).

In view of the aforesaid discussion made above, and the issues already answered in the preceding paragraphs and considering the facts and circumstances of the case and the material available on record, this Tribunal is of the view that the Respondent Bank failed to prove its defence and the applicant established its case against the Respondent Bank. Therefore, the instant SA bearing SA No.112/2023 is allowed and the sale notice dated 14.06.2023 being violative of the provisions enshrined in the SARFAESI Act is hereby quashed. Accordingly, Issue No.(iv) is answered.

O R D E R

In the result, S.A. No.112 of 2023 is allowed and the sale notice dated 14.06.2023 is hereby set aside. Respondent Bank is at liberty to take fresh steps as per law. Respondent Bank is further directed to refund the amount deposited by the auction purchaser along with interest @7% p.a. simple from the date of deposit till the date of payment within 30 days from today. Registrar is directed to return the DDs of Rs.25.00 lakhs deposited by the applicant within 30 days to the applicant from the date of this order.

Since the main SA is disposed of, hence all the IAs, pending, if any, stands disposed of and interim order, if any, stands vacated.

Let a copy of this order be supplied to the parties forthwith as per rules.

Let the file of SA No.112 of 2023 be consigned to the record room.

This order is dictated and corrected by me and pronounced in the open Court under my signature, this the 20th day of August, 2026.

(Jitendra Prasad Singh)
Presiding Officer.