IN THE DEBTS RECOVERY TRIBUNAL-II, BANGALORE

Dated this 19th Day of August, 2026

PRESENT: SHRI T. RAJESH
Hon'ble Presiding Officer

S.A. No. 139 of 2025

BETWEEN:

M/s. Bharatiya Rural Development Foundation
A non-profitable NGO
R/o: Hosur village, Hukkeri Tq. Belagavi Dist
Rep. By its Secretary
Mr. Shivakumar Shashikant Naik **. . . Applicant**

AND:

The Authorised Officer
Canara Bank
Branch office at
H. RD, Hidkal DAM,
P R B No.11/2 P, THE, Hidkal
Hukkeri, Taluk Hukkeri Dist: Belagavi
Karnataka – 591107 **. . . Respondent**

Ld. Counsels on record / appeared :-

Counsel for Applicant :- Sri. Shivayogi Jawoor
Counsel for Respondent :- Sri. K . Raveendran

: - O R D E R - :

1. This Securitization Application, SA is filed under section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act; herein after been referred to as SARFAESI Act or the Act, where in the possession notice is under challenged by the applicant, the contends as follows.

2. The applicant claims to be an NGO is admitting the availment of Term loan of Rs.1,00,00,000/- from the respondent bank and the applicant contends that, repayments to the account was also defaulted due to loss in business and natural disaster. However, at the same breath the applicant is contending, that they have made a substantial repayment to the loan account and that the respondent does not consider the said payments before initiating the measures. It is also pointed out that, making efforts to settle the dues and trying their best efforts to get the account regularized. In respect of the impugned possession notice, it is the case of the applicant that the same is issued without following the procedures as no demand notice is served on the applicant. Hence, according to the applicant the respondent having failed to comply Rule 3 of the Security Interest (Enforcement) Rules, had been proceeding further with the measure. Despite, the repeated request of the applicant for the OTS. It is also specifically contended that, the measures are initiated and continued without allowing the applicant to get the account regularized.

3. In the grounds to the SA, the applicant is contending that, the bank had not followed the mandates of the statutory in issuing the possession notice and there is non-compliance of Security Interest (Enforcement) Rules. Another contention is taken by the applicant is as to the want of registration under the CERSAI which according to the applicant disentitle the respondent from initiating and continuing

measures. Hence, on the above contention the applicant seeks to set aside the impugned possession notice. Along with the SA, the applicant has produced the following documents:

i. Annexure A1 : Letter of Authorization

ii. Annexure A2 : Possession Certificate

iii. Annexure A3: Letter to respondent bank

4. The respondent filed their objections inter alia contending is as follows: The contention taken by the applicant are misconceived, false and frivolous, the applicant had failed to set out any ground for grant the relief. It is also the case of the respondent that, the credit facility was sanctioned to the applicant as the applicant had undertaken to comply with the terms and condition of the repayments. Since the repayments to the loan accounts were defaulted, the accounts were classified as NPA on 31.12.2024 and the demand notice dated 12.02.2025 is issued. The contention of the applicant is to the alleged failure of the respondent in compliance of Rule 3 and Rule 8 is also denied by the respondent. In respect of the possession notice, it is contended that only as the applicant failed to pay back the amount, despite the issuance of demand notice, the possession notice was taken out and affixed in conspicuous place of the property and published as required under the statute.

5. It is also pointed out that, the applicant had approached the respondent bank to settle the account under one time settlement in three months and had failed to pay any amount to the respondents. Along with the objections, the respondent had produced the following documents:

i. Sanction letter dated 20.07.2016 – R1

ii. Simple Mortgage Deed dated 27.06.2016 – R2

iii. CERSAI registration dated 23.12.2016 – R3

iv. Notice U/s. 13(2) dated 12.02.2025 and postal receipts – R4 and R5

v. Possession notice U/s. 13(4) dated 25.04.2025 along with photographs - R6 and R7

vi. Paper publications dated 30.04.2025 – R8 and R9

vii. Statement of account – R10

On the basis of the above contentions and the documents produced by them, the respondent seeks for the dismissal of the SA.

6. Heard the counsel for both sides and perused the records.

7. The only issue that is to be gone into is as to the validity of the measures leading to the impugned possession notice.

8. The case in hand the applicant is not disputing the creation of security interest nor the defaults occurred in the account. It is the admitted case of the applicant that, they failed to make the prompt

repayments due to business loss. The subsequent contention of the applicant that they have made substantial remittances to the loan account is not supported by any documents to evidence the same and in the absence of any such evidence, this Tribunal is not inclined to accept any such contention of the applicant that, the account has been classified as NPA, despite the prompt remittance made by the applicant.

9. The next contention taken by the applicant is regarding the alleged noncompliance of Rule 3 Security Interest (Enforcement) Rues whereby it is contended that the respondent failed in complying with the mandate of issuance of demand notice. In their attempt to rebut the same, the respondent had produced the demand notice and postal receipts pertaining to the same. However, no evidence to the service of the demand notice is forth coming in the objections. In this regard it is pertinent to note that, Rule3 of the Security Interest (Enforcement) Rules mandates the secured creditor to take out the publication and affixture of the demand notice if the Authorised Officer is of the opinion that the borrower will evade the notice. The Rule 3 of the Security Interest (Enforcement) Rules, which reads as follows:

Section 3 in The Security Interest (Enforcement) Rules, 2002
3. Demand notice.

> *(1)The service of demand notice as referred to in sub-section (2) of section 13 of the Act shall be made by delivering [including hand delivery] [Inserted by*

Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).] or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgment due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service:

Provided that where authorized officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

(2)Where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate as specified under sub-rule (1).

(3)Any other notice in writing to be served on the borrower or his agent by authorized officer, shall be served in the same manner as provided in this rule.

(4)Where there are more than one borrower, the demand notice shall be served on each borrower.

(5)[The demand notice may invite attention of the borrower to provisions of sub-section (8) of section 13 of the Act, in respect of time available to the borrower, to redeem the secured assets.] [Inserted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]

10. In the absence of any proof as to the compliance of the mandate of Proviso to Rule 3, it is evident that, the case of the applicant, the respondent failed in compliance of Rule 3 is to be upheld. It is crystal

clear that, the respondent is failed to follow the mandate of statute as no proof as to the publication and the affixture of the notice is forthcoming. It is obligatory on the part of the respondent to produce the proof of the obligation and affixture especially as no proof of service of the demand notice is produced along with the objections.

11. In respect of the possession notice, the respondent had produced the proof as to the affixture and publication and a photograph evidencing personal service of the possession notice on the borrower. Though the aforesaid documents may establish substantial compliance with Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, the same cannot cure or rectify the defect arising from non-compliance with Rule 3, which goes to the root of the matter. The failure to comply with the mandatory requirement of proviso to Rule 3 vitiates the measures taken by the respondent.

12. In view of the discussions held above and the findings entered therein, this Tribunal is of the considered opinion that there is force in the contention of the applicant that, there is non-compliance of Rule of the Security Interest (Enforcement) Rules and the measures and there are procedural flows in the measures which lead to the issuance of impugned possession notice. Hence, the above issue as to the legality of the measures is answered in favour of the applicant

13. In view of the above, SA.No.139/2025 stands allowed.

(i) The measures initiated and continued to the issuance of impugned possession notice is found to not in order and is hereby set aside.

(ii) It will be open for the respondent to re-initiate the measures if the account continues to be a NPA and if they are otherwise entitled.

(iii) In the facts and circumstances of the case, there shall be a direction to the respondent not to make any debit in the account of the applicant towards the cost intimated and the expenses incurred in connection with the measures and conduct of this case. In the event any such debit has already been made, the respondent shall forthwith reverse the same.

(iv) Apart from the above, the applicant shall be entitled to costs of Rs.20,000/-, which shall be adjusted at the time of settlement or closure of the loan account.

(v) All pending IAs stand closed. The parties to bear their respective costs. Copy of this order be communicated to the parties concerned.

(Dictated to the Stenographer (PR), after her transcription and necessary corrections, signed and Order passed on this 19th day of August 2026)

Sd/-

(T. RAJESH)
PRESIDING OFFICER