Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 24th DAY OF AUGUST, 2026

PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No. 560/2023

1. S. Gowsi
S/o Shajahan
No. 34A, Kaja Street
M.K. Puram, Madurai – 625 011 **.... Applicant**

Vs

1. M/s Shriram City Union Finance Limited
Has merged with Shiram Transport Finance Limited
Which is renamed as Shriram Finance Limited
Rep by its Authorized Officer D. Shanmugavadivelu
Zonal office at Shriram House, No. 5, 2nd Floor,
11th cross, Ramachandrapuram
Tenur, Trichy – 620 01 **.... Defendant**

Appearance of Advocates:
M/s S. Suresh ---- Counsel for the Applicant
Mr. A. Ganesan ... Defendant Financial Institution sets ex-parte

This SARFAESI Application was heard in the presence of Counsels for the Applicant and the Defendant Financial Institution and fixed for passing final order before me and upon hearing the arguments of the Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

O R D E R

1. This Application has been filed u/s 17 of the SARFAESI Act, 2002 by the Applicant, praying that this Hon'ble Tribunal may be pleased to set aside the order passed by the Learned Chief Judicial Magistrate, Madurai under Section 14 of the SARFAESI Act, 2002 dated 07.07.2023 in Cr.M.P. No. 453 of 2023, appointing an Advocate Commissioner for taking Physical Possession of the schedule mentioned properties and the consequential Notice of the Advocate Commissioner dated 20.09.2023 and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, and thus render justice.

2. The brief averments of the Application filed by the Applicant are as follows:-

A. The Applicants submitted that the present Application has been filed challenging the order passed by the Learned Chief Judicial Magistrate, Madurai, under Section 14 of the SARFAESI Act, 2002, dated 07.07.2023 in Cr.M.P. No.453 of 2023, whereby an Advocate Commissioner was appointed for taking physical possession of the property described in the Schedule herein, towards the alleged dues recoverable from the Applicant.

B. The Applicant availed a credit facility of Rs.50,00,000/- (Rupees Fifty Lakhs only) from the Defendant and offered his immovable property as collateral security for the due repayment of the said loan. The Applicant submits that he has, till date, repaid a sum of Rs.18,00,000/- towards the said loan facility.

C. The Applicants submitted that, initially, he was prompt and regular in repaying the loan and operated the loan account within the sanctioned limits. However, due to a severe slump in the market, the Applicant suffered substantial losses in his business and, consequently, was unable to adhere to the repayment schedule stipulated by the Defendant. Accordingly, the Defendant classified the loan account of the Applicant as a Non-Performing Asset (NPA) on 08.10.2018. Even thereafter, the Applicant continued to make substantial repayments towards the loan account until the outbreak of the Covid-19 pandemic.

D. The Applicants submitted that, thereafter, due to the outbreak of the Covid-19 pandemic and the lockdown announced by the Government, normal life and business activities came to a standstill. The Applicant was also severely affected financially and was struggling even to meet his day-to-day livelihood expenses. Consequently, the Applicant could not regularise and settle the loan account with the Defendant.

E. The Applicants submitted that, thereafter, only after a lapse of more than four years from the date on which the loan account was classified as NPA, the Defendant initiated recovery proceedings and is alleged to have issued a Demand Notice dated 18.11.2022 under Section 13(2) of the SARFAESI Act, 2002. However, the Applicant submits that he did not receive the said Demand Notice. Thereafter, the Defendant allegedly took symbolic possession of the secured asset on 10.02.2023 by issuing a Possession Notice under Section 13(4) of the SARFAESI Act, 2002. However, the said Possession Notice was neither affixed on the conspicuous part of the secured

property nor published in two leading newspapers as contemplated under the Security Interest (Enforcement) Rules, 2002.

F. The Applicants submitted that, in the meantime, the Defendant approached the Learned Chief Judicial Magistrate, Madurai, by filing a petition under Section 14 of the SARFAESI Act, 2002 in Cr.M.P. No.453 of 2023, seeking assistance for taking physical possession of the secured property. The Learned Chief Judicial Magistrate, Madurai, passed an order dated 07.07.2023 in the said proceedings, without notice to the Applicant, and appointed an Advocate Commissioner for taking physical possession of the Schedule mentioned property.

G. The Applicants submitted that the proceedings initiated by the Defendant under Section 14 of the SARFAESI Act, 2002 and the consequential order dated 07.07.2023 are liable to be examined in the light of the procedural violations committed by the Defendant in the course of the SARFAESI proceedings. In particular, the Applicant disputes the alleged service of the Demand Notice and the manner in which the Possession Notice was issued and served, affixed and published.

GROUNDS

a) The order passed by the Learned Chief Judicial Magistrate, Madurai, under Section 14 of the SARFAESI Act, 2002, dated 07.07.2023 in Cr.M.P. No.453 of 2023, appointing an Advocate Commissioner for taking physical possession of the Schedule mentioned property, is arbitrary, unreasonable, contrary to law and the principles of natural justice, and is therefore liable to be set aside.

b) The impugned action initiated by the Defendant suffers from serious errors apparent on the face of the record and is contrary to the provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002. Hence, the entire proceedings are liable to be set aside by this Hon'ble Tribunal.

c) The Defendant ought to have seen that the Applicant's loan account was classified as NPA on 08.10.2018, whereas the Defendant initiated SARFAESI proceedings only thereafter by allegedly issuing a Demand Notice under Section 13(2) of the SARFAESI Act, 2002, dated 18.11.2022. The Applicant submits that the Defendant's claim and the measures initiated pursuant thereto are barred by limitation and are therefore not legally sustainable.

d) The Defendant ought to have seen that a secured creditor cannot invoke the provisions of the SARFAESI Act, 2002 for enforcement of a claim which is barred by limitation. Therefore, when the underlying claim is barred by limitation, the Defendant cannot legally proceed against the secured asset by invoking the provisions of the SARFAESI Act, 2002.

e) The Defendant ought to have seen that the mandatory Demand Notice under Section 13(2) of the SARFAESI Act, 2002 was not duly served upon the Applicant. In the absence of proper service of the Demand Notice, the subsequent measures initiated by the Defendant under Section 13(4) of the SARFAESI Act, 2002 are vitiated and are liable to be set aside.

f) The Defendant further failed to comply with the mandatory procedure prescribed under Rule 8 of the Security Interest (Enforcement) Rules, 2002. The Possession Notice was not affixed on

the conspicuous part of the secured property in the manner prescribed under the Rules, nor was the same properly published in two leading newspapers as required by law. Hence, the alleged taking of symbolic possession is contrary to the mandatory statutory procedure and is liable to be set aside.

g) The Defendant ought to have seen that the mandatory procedures contemplated under Section 13(4) of the SARFAESI Act, 2002 read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 were not duly complied with. Though the Defendant allegedly took symbolic possession of the property on 10.02.2023, the Possession Notice was allegedly sent to the Applicant only on 14.02.2023. The Defendant has therefore failed to establish due and proper service of the Possession Notice in accordance with law. On this ground also, the subsequent SARFAESI measures are liable to be set aside.

h) The Learned Chief Judicial Magistrate ought to have examined whether the statutory requirements prescribed under Section 14 of the SARFAESI Act, 2002 had been duly complied with by the Defendant before passing the order dated 07.07.2023. The Defendant had failed to place the complete and relevant particulars before the Learned Chief Judicial Magistrate and had suppressed material facts relating to the SARFAESI proceedings. The Applicant further submits that the requisite affidavit containing the particulars contemplated under Section 14 of the SARFAESI Act, 2002 was not duly filed along with the petition. Hence, the order passed under Section 14 is liable to be set aside.

i) The Learned Chief Judicial Magistrate ought to have seen that the particulars furnished by the Defendant regarding the dates of

issuance and service of the Demand Notice under Section 13(2) and the Possession Notice under Section 13(4) were contrary to the actual facts and did not pertain to the Applicant's case. The Defendant having failed to place the correct and complete facts before the Learned Chief Judicial Magistrate, the petition under Section 14 of the SARFAESI Act, 2002 ought not to have been allowed.

j) The Learned Chief Judicial Magistrate ought to have satisfied himself that the Defendant had complied with all the mandatory statutory requirements before granting assistance under Section 14 of the SARFAESI Act, 2002 for taking physical possession of the secured asset. In the absence of such compliance, the order appointing an Advocate Commissioner for taking physical possession of the Schedule mentioned property is unsustainable in law.

k) The action of the Defendant in initiating and continuing the SARFAESI proceedings, without complying with the mandatory provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002, is unlawful, arbitrary, unreasonable and contrary to the principles of natural justice. Hence, the entire proceedings initiated by the Defendant are liable to be set aside.

l) The Defendant, being a secured creditor, is bound to strictly comply with the statutory requirements prescribed under the SARFAESI Act, 2002 and the Rules framed thereunder. Any material deviation from the mandatory procedure vitiates the measures taken against the Applicant and the secured asset.

m) The Applicant submits that the order passed by the Learned Chief Judicial Magistrate under Section 14 of the SARFAESI Act, 2002 cannot survive independently when the foundational measures taken under Sections 13(2) and 13(4) of the Act are themselves challenged on the ground of non-compliance with the mandatory statutory requirements.

SCHEDULE OF PROPERTIES

Item No.1

Madurai District, Madurai South Registration District and Sub-Registration District, Madurai South Taluk, No.42 Kalkulam Village, Old Patta No.92, New Patta No. 140, Ayan Nanja R.S.No.5-4, No.0.1850 Ares R.S. No.5-5, 0.15.50 Ares, R.S.No.5-6, 0.15.50 Ares totally measuring to an extent of 0.49.50 Ares, 1 Acre 22 cents, present Patta No.179, 1 Acre 22 Cents of Nanja Land divided into house plots and sub divided as R.S.No.5-4 named as Akshaya Avenue within this vacant house site bearing Plot No.21 and the superstructure house built in this and bounded on the

North	:	Site in Plot No.22,
South	:	Site in Plot No.20,
East	:	30 feet wide Common Road,
West	:	Balance House site,

Within this measuring East-West 39 feet on both sides and North-South 30 feet on both sides totally admeasuring 1170 sq. ft. of land along with superstructure House in the Ground Floor along with all easementary rights leaving the 30 feet common road within which the share belonging to this Plot.

Item No.2

Madurai District, Madurai South Registration District and Sub-Registration District, Madurai South Taluk, No.42 Kalkulam Village, Old Patta No.95, Ayan Nanja R.S.No.5-1, Out of 56 Cents, Eastern side 28 Cents, as per Sub-division after Patta No.137, Patta No.157, present Patta No.195,

bearing Ayan Nanja R.S.No.5-1 B, 0.11.5 Ares, 28 Cents of Nanja Land within the following boundaries

North	:	Ariyanachi Urani and Poromboke land,
South	:	East-West Canal,
East	:	Nanja Land belonging to Palaniyandi Sevai,
West	:	Nanja Land belonging to Devarajan,

Within this 28 cents of Nanja Land.

The Applicant has submitted the following List of documents in support of his claim in the SA :-

S.No.	Date	Description of Documents
1.	10.02.2023 14.02.2023	13(4) Possession Notice
2.	07.07.2023	Order passed by the Learned CJM in Cr.M.P. No. 453 of 2023 (Impugned Order)
3.	29.08.2023	Warrant issued to the Advocate Commissioner
4.	20.09.2023	Notice issued by the Advocate Commissioner to the Applicant

3. On the other hand, the Counsel for the Defendant Bank appeared before this Tribunal filed a Vakalatnama, and undertook to file Reply Statement and Typed Set of Papers from 21.12.2023, but failed to do so. Subsequently, he was debarred from filing the Reply Statement and Typed Set of Papers on 10.07.2025, and therefore this case was heard ex parte.

4. ***ON THE BASIS OF ABOVE PLEADINGS THE POINT WHICH ARISES FOR CONSIDERATION IS:-***

I. Whether the Applicant has been able to prove his case in his favour?

II. Whether the Applicant is entitled to get the reliefs as prayed for?

5. Having heard the Applicant and upon perusal of the pleadings, documents and the entire records available on record, It is not in dispute that the Applicant had availed a credit facility from the Defendant Financial Institution for business purposes by mortgaging the property more fully described in the Schedule to the Securitisation Application. It is the case of the Applicant that, initially, the loan account was regular and the repayments were made in accordance with the terms agreed with the Defendant Financial Institution. However, the Applicant has also admitted in the pleadings that, due to the slump in the market the Applicant suffered huge loss in the business and he is not able to adhere to the repayment schedule of the Defendant.

6. The Defendant Bank classified the loan account of the Applicant as a Non-Performing Asset (NPA) on 08.10.2018 and thereafter initiated proceedings under the SARFAESI Act, 2002. The Defendant issued a Demand Notice dated 18.11.2022 under Section 13(2) of the SARFAESI Act. Thereafter, the Defendant issued the impugned Possession Notice dated 10.02.2023 under Section 13(4) of the SARFAESI Act, 2002. The Defendant subsequently approached the Learned Chief Judicial Magistrate, Madurai, by filing a petition under Section 14 of the SARFAESI Act, 2002 in Cr.M.P. No.453 of 2023, seeking assistance for taking physical possession of the secured asset. The Learned Chief Judicial Magistrate, Madurai, passed an order dated 07.07.2023 in the said proceedings and appointed an Advocate Commissioner for taking physical possession of the Schedule-mentioned property.

7. The Applicant has contended that, since the loan account was classified as an NPA on 08.10.2018 and the Demand Notice under Section 13(2) was issued only on 18.11.2022, the claim of the Defendant Bank and the measures initiated pursuant thereto are barred by limitation and, therefore, are not legally sustainable. I find that the mere fact that the Section 13(2) notice was issued more than 3 years after the NPA date does not, by itself, establish that the SARFAESI proceedings are barred by limitation.

8. The Applicant has further contended that, although the Defendant Bank took symbolic possession of the secured asset on 10.02.2023 by issuing the Possession Notice under Section 13(4) of the SARFAESI Act, 2002, the said Possession Notice was neither affixed on the conspicuous part of the secured asset nor published in two leading newspapers, as required under the Security Interest (Enforcement) Rules, 2002.

9. In support of the aforesaid contentions, I find that the Applicant has produced the Possession Notice dated 10.02.2023, which was sent to the Applicant on 14.02.2023, the order passed by the Learned Chief Judicial Magistrate, Madurai, in Cr.M.P. No.453 of 2023 dated 07.07.2023, the warrant issued to the Advocate Commissioner dated 29.08.2023, and the notice issued by the Advocate Commissioner to the Applicant dated 20.09.2023. The aforesaid documents are **annexed at pages 10 to 20** of the documents produced by the Applicant.

10. On the other hand though sufficient opportunity was granted, the Defendant neither filed a reply statement nor produced any documents to substantiate the legality of the measures initiated under the SARFAESI Act. The Defendant has also failed to contest the specific averments relating to the insurance coverage, the classification of the account as NPA and the statutory compliance regarding the issuance of the Possession Notice. Further, I find

that the Defendant has not produced any material to demonstrate compliance with the mandatory requirements relating to affixture of the Possession Notice on the secured asset and publication of the Possession Notice in two leading newspapers as contemplated under Rule 8 of the Security Interest (Enforcement) Rules, 2002. Despite having full knowledge of the case and despite being afforded sufficient opportunity to rebut the allegations made by the Applicant, the Defendant failed to do so.

11. In the absence of any rebuttal evidence from the Defendant and having regard to the unrebutted documentary evidence placed by the Applicant, I am of the considered view that the Defendant has failed to prove or establish that the measures initiated under the SARFAESI Act were in accordance with law. Consequently, the impugned order passed by the Learned CJM, Madurai in Cr.M.P.No. 453 of 2023 dated 07.07.2023 cannot be sustained.

In the result,

S.A. No. 560 of 2023 is allowed.

1. The impugned order passed by the Learned CJM, Madurai in Cr.M.P.No. 453 of 2023 dated 07.07.2023 is hereby set aside.

2. The Defendant Finance Company is directed not to recover from the Applicant the expenses incurred towards the order passed by the Learned CJM, Madurai in Cr.M.P.No. 453 of 2023 dated 07.07.2023

3. It is made clear that the 1st Defendant Finance Company is at liberty to initiate fresh proceedings against the Applicant for recovery of the outstanding loan amount, strictly in accordance with the provisions of the SARFAESI Act, 2002, and the Security Interest (Enforcement) Rules, 2002.

Consequently, all pending IAs (if any) are also disposed of. No costs.

(Dictated to KKN taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 24th August, 2026).

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 31.08.2026