Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 21st DAY OF AUGUST, 2026

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

SA No. 217/2024

1. St. Mary's Educational Trust
Rep. by its Managing Trustee
Mrs. R. Anitha
No. 1/132, East Street
Vembar, Tuticorin – 628 906

2. Mrs. R. Anitha
W/o A. Robert Jayakumar
No. 108D, Local Fund Road
Salai Street
Ramanathaputam – 623 501 **.... Applicants**

Vs

1. The Authorized Officer,
AVANSE Financial Services Ltd.,
Fulcrum Business Centre
001 & 002, A Wing
Next to Hyatt Regency Hotel
Sahar Road, Andheri (East)
Mumbai – 400 099

2. The Authorized Officer
AVANSE Financial Services Ltd.
No. 309, 2nd Floor, Bay City Centre
Poonamalle High Road
Above Maruti Kapico Showroom
Kilpauk, Chennai – 600 010 **.... Defendants**

Appearance of Advocates:
M/s Vastlaw Associates ---- Counsel for the Applicant
Defendants Financial Institution sets ex-parte

This SARFAESI Application was heard in the presence of Counsels for the Applicant and the Defendant Bank 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 impugned Possession Notice dated 30.01.2024 and 05.03.2024 issued by the Defendant Financial Institution 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. It is submitted that the 1st Applicant, **St. Mary's Educational Trust**, is a Private Educational Trust established in the year 2010. The Trust manages and runs St. Joseph Matriculation School at Vembar, from LKG to Standard XII, and also undertakes various service activities. The School is situated in a remote village and, therefore, the Trust receives only nominal fees from the students.

B. It is submitted that, in order to extend and develop the activities of the School, the 1st Applicant approached the 2nd Defendant Financial

Institution and availed an Educational Institution Loan facility of Rs.5.00 Crores on 30.04.2018. In respect of the said loan transaction, the 2nd Applicant and her husband, A. Robert Jayakumar, stood as guarantors. Further, the properties mentioned in the Schedule belonging to the Applicants were offered as collateral security for the said loan transaction. At the time of sanction of the loan, the Defendants obtained the signatures of the Trustees of the Applicant Trust and the guarantors on various pre-filled forms and blank papers, without disclosing the purpose for which the same would be used in connection with the said transactions.

C. It is submitted that the Applicants were regularly repaying the loan amount. In the meantime, there was a widespread outbreak of the COVID-19 pandemic, pursuant to which the Government of India and the Government of Tamil Nadu announced a complete lockdown for several months. During this period, the Government of Tamil Nadu ordered the closure of schools, and due to the severe restrictions imposed, the Applicant's School also remained closed for about twenty months, from March 2020 to October 2021. During this period, no fees could be collected from the students, and the Applicants were also unable to arrange any private funds. Despite the same, the Applicants serviced the interest regularly without any default. Further, during the pandemic period, the Applicants also availed a Guarantee Emergency Credit Line (GECL) Loan of Rs.90.00 Lakhs on 27.10.2020.

D. It is submitted that the Applicants were regularly repaying the loan amount. However, due to changes in Government policies and poor student intake, the repayment became slightly irregular. Without duly considering the payments made by the Applicants, the 2nd Defendant wrongly classified the Applicant's loan account as a **Non-Performing**

Asset (NPA) on 08.01.2022 and initiated recovery proceedings under the SARFAESI Act. It is submitted that the classification of the account as NPA is erroneous, since the date on which the account was classified as NPA, i.e., 08.01.2022, was a second Saturday and a public holiday for banks and financial institutions. Therefore, the Applicants question how the Defendant Financial Institution could have classified the account as NPA on a holiday. Hence, the said NPA classification is without any valid basis and is contrary to the applicable guidelines of the Reserve Bank of India. It is further submitted that, despite the above circumstances, the Applicants continued to service the interest regularly. It is pertinent to mention that, after availing the loan facility, the Applicants have, so far, paid interest and other charges amounting to approximately Rs.4,12,00,000/- **(**Four crores twelve lakhs only**)** to the Defendants. The Applicants have been apprising the 2nd Defendant Financial Institution of the developments affecting the institution, and the Financial Institution was also aware, through market sources, that several educational institutions were facing similar financial difficulties.

E. It is submitted that, while so, the 1st Defendant issued a Demand Notice dated 18.01.2022 under Section 13(2) of the Act, demanding a sum of Rs.95,45,963/- **(**Rupees ninety five lakhs forty five thousand nine hundred sixty three only**)** in respect of the GECL loan account alone. Thereafter, the 1st Defendant issued a Possession Notice dated 27.07.2023 under Section 13(4) of the Act in respect of the said GECL loan account alone. Further, in respect of the same outstanding amount under the GECL loan account, the Defendants also initiated/invoked arbitration proceedings against the Applicants at Mumbai. The Applicants contested and objected to the said arbitration

proceedings, and consequently, the Defendants dropped the said proceedings.

F. It is submitted that, while the earlier Demand Notice dated 08.01.2022 and the subsequent Possession Notice dated 27.07.2023 were still subsisting, the 1st Defendant issued a **fresh Demand Notice dated 31.10.2023 under Section 13(2) of the Act**, demanding a sum of Rs.6,39,00,378/- **(**Rupees six crores thirty nine lakhs three hundred seventy eight only**)** in respect of both the loan accounts.

G. It is submitted that, upon receipt of the said Demand Notice, the 1st Applicant submitted a detailed reply/objection dated 27.12.2023 to the Defendants, calling upon them to furnish the necessary documents relating to the classification of the loan account as NPA and raising various other legal grounds. The 1st Applicant also requested the Defendants to regularize/restructure the loan account. However, without properly considering the valid objections and requisitions raised by the Applicants under **Section 13(3A) of the Act**, the 1st Defendant issued an evasive reply dated 10.01.2024.

H. It is submitted that, thereafter, the 1st Defendant proceeded further and issued a **Possession Notice dated 30.01.2024 under Section 13(4) of the Act** in a hasty manner and took symbolic possession of the Schedule properties. It is submitted that more than 60 staff members are employed in the educational institutions, and approximately 686 students are pursuing their school education therein. The Defendants are now attempting to take physical possession of the Schedule properties without obtaining appropriate orders under Section 14 of the Act. If the Defendants are permitted to proceed further, the education and future of the 686 students, who aspire to

pursue their studies and build their careers, as well as the employment of more than 60 staff members, would be seriously affected.

I. It is further submitted that, in order to harass the Applicants, the Defendants, without withdrawing or cancelling the earlier Possession Notice dated 30.01.2024, issued yet another Possession Notice dated 05.03.2024 under Section 13(4) of the Act. Hence, being aggrieved by the said Possession Notices dated **30.01.2024 and 05.03.2024**, the Applicants have preferred the above Securitisation Application under Section 17 of the SARFAESI Act on the following, amongst other, grounds.

GROUNDS

a) The impugned Possession Notices dated 30.01.2024 and 05.03.2024 issued by the 1st Defendant, and all consequential measures initiated under the provisions of the SARFAESI Act, are arbitrary, illegal, contrary to law, unsupported by evidence and unsustainable in law and on facts. Hence, the same are liable to be set aside.

b) It is submitted that the Defendants have failed to comply with the mandatory procedures contemplated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the Security Interest (Enforcement) Rules, 2002. The measures initiated by the Defendants are therefore vitiated by non-compliance with the statutory requirements.

c) The action of the 1st Defendant in issuing the Possession Notices dated 30.01.2024 and 05.03.2024 under Section 13(4) of the SARFAESI Act, seeking to proceed against the properties of the Applicants alleged to be secured assets, is contrary to law, without jurisdiction, arbitrary and

unreasonable, violative of the principles of natural justice and amounts to a colourable exercise of power. The measures have been initiated in a capricious and improper manner and are therefore liable to be set aside.

d) The 2nd Defendant Financial Institution has wrongly classified the Applicants' loan account as a Non-Performing Asset (NPA) without properly following the applicable Reserve Bank of India (RBI) guidelines and prudential norms relating to NPA classification. It is specifically submitted that the loan account was allegedly classified as NPA on 08.01.2022, which was a second Saturday and a bank holiday. The Applicants therefore dispute the validity of the alleged date of NPA classification and submit that the Defendants are put to strict proof regarding the manner and basis on which the account was classified as NPA. Consequently, the subsequent measures initiated under the SARFAESI Act are also liable to be declared unsustainable.

e) The Defendants have not established that they satisfy the statutory requirements to invoke the provisions of the SARFAESI Act as a secured creditor. The Defendants are therefore put to strict proof regarding their status and authority to initiate proceedings under the SARFAESI Act against the Applicants and the alleged secured assets.

f) Non-Compliance with Section 13(2): The Defendants have failed to establish proper service of the Demand Notice issued under Section 13(2) of the SARFAESI Act upon all the concerned parties. The Defendants are put to strict proof of valid and effective service of the Demand Notice upon the Applicants, guarantors and other persons concerned. Further, the Applicants dispute whether the person who issued the Demand Notice was duly authorised to do so as the Authorised Officer contemplated under the SARFAESI Act and

the Rules. The Demand Notice also does not contain all the particulars required under the Act and the Rules. Hence, there was no valid and enforceable demand in accordance with law.

g) Non-Compliance with Section 13(3A): The 1st Defendant failed to properly consider and dispose of the reply/objections submitted by the Applicants to the Demand Notice in accordance with Section 13(3A) of the SARFAESI Act. The statutory obligation to consider the representation or objection and communicate the reasons for non-acceptance thereof has not been duly complied with. Such non-compliance vitiates the subsequent measures initiated under the SARFAESI Act.

h) Non-Compliance with Section 13(4) and Rule 8: The Defendants have failed to establish proper service of the Possession Notices upon all the concerned parties. The Defendants are put to strict proof of service of the Possession Notices upon the Applicants, guarantors and other persons concerned. Further, the 1st Defendant failed to comply with the mandatory requirements relating to publication of the Possession Notices in two leading newspapers having wide circulation in the locality and failed to establish that such publication was effected within the prescribed period. The 1st Defendant has also failed to establish proper affixture of the Possession Notices on the outer/conspicuous part of the secured properties in accordance with the Rules. The Applicants further dispute whether the person who issued the Possession Notices was a duly authorised officer competent to issue the same. Hence, the measures taken under Section 13(4) are liable to be set aside.

i) The 1st Defendant, without withdrawing or cancelling the earlier Possession Notice dated 30.01.2024, issued another Possession Notice

dated 05.03.2024 in respect of the same proceedings. The issuance of the subsequent Possession Notice without properly withdrawing or cancelling the earlier notice is arbitrary and has caused serious prejudice to the Applicants. The subsequent notice appears to have been issued only to overcome the defects in the earlier proceedings and to harass the Applicants.

j) The Defendants and their officials have been continuously harassing the Applicants by making repeated telephone calls throughout the day and by visiting the school premises and creating disturbance. It is alleged that the officials have shouted and used unparliamentary and inappropriate words in the presence of students. The Applicants submit that though the Defendants are entitled to recover their legitimate dues, such recovery can be made only by following the due process of law. The conduct of the Defendants and their officials amounts to an abuse of the process of law and is contrary to the applicable RBI instructions/guidelines governing recovery practices and the conduct of recovery agents.

k) The Applicants submit that the Defendants are proceeding against the properties of the Trust which are being utilised for educational purposes. Such action would have serious consequences for the functioning of the educational institution. The Applicants rely upon the legislative developments and proposed amendment relating to Section 31 of the SARFAESI Act, including Bill No. 28 of 2019 dated 21.06.2019, and submit that the educational character and public interest involved in the properties ought to be duly considered while examining the measures initiated by the Defendants.

l) Non-Furnishing of Complete Statement of Account: The Defendants have failed to furnish a complete and proper statement

of account relating to the loan account. The Applicants submit that certain payments/credits made by them have not been duly reflected in the statement of account. Hence, the Defendants may be directed to produce and furnish the complete and up-to-date statement of account, including all debits, credits, interest, penal charges and other charges levied in the loan account.

m) The Defendants may be directed to produce all the original documents in their custody which they rely upon to establish the alleged creation of mortgage and security interest. The Applicants specifically dispute the existence, validity and enforceability of the alleged security interest over the properties in question. In the absence of a valid and enforceable security interest, the Defendants cannot invoke the provisions of the SARFAESI Act against the said properties.

n) The Applicants submit that the Defendants have failed to establish that the alleged security interest/transaction has been duly registered with the Central Registry in accordance with the provisions of Section 20 of the SARFAESI Act.

o) The Applicants submit that approximately 686 students are pursuing their education in the school/institution and that any coercive action against the school properties would seriously affect their education and academic future. Further, more than 60 members of the teaching and non-teaching staff are employed in the educational institution, and any action resulting in disruption or closure of the institution would adversely affect their livelihood.

p) The Applicants submit that the interest and penal charges levied by the Defendants are contrary to the applicable RBI guidelines and regulations. The Defendants have imposed penal interest/penal

charges on the loan account without establishing their legal and contractual entitlement to do so.

q) The Defendants have failed to properly account for the payments made by the Applicants and have also failed to consider the Applicants' request for regularisation of the loan account.

r) The 1st Defendant issued the Demand Notice and Possession Notices without properly considering the impact of the COVID-19 pandemic, the prolonged lockdowns and the severe financial difficulties faced by the Applicants during the relevant period. The Applicants submit that the RBI and the Ministry of Finance had issued various circulars and directions concerning the impact of the pandemic, including measures relating to loan repayment, restructuring and classification of accounts. The Defendants failed to consider the benefit and applicability of such measures to the Applicants' loan account before initiating coercive measures under the SARFAESI Act.

SCHEDULE OF PROPERTY

Property No:1

All that piece and parcel of the land and building situated at Vembar Village, Vilathikulam union, Vilathikulam taluk, Tuticorin District measuring 3 Acres of land comprised in survey No. 191, South Eastern part of total extent of Hec. 11.56.0 with the Sub-Registration District of Villathikulam Registration District of Tuticorin

Within the boundaries hereunder

East by	:	Property of Singaraj
West by	:	Property of Gopal Nadar Trunst
North by	:	Property by Singaraj
South by	:	Property of Gopal Nadar Trust

Property No:2

All that piece and parcel of the land and building situated at Vembar Village, Vilathikulam union, Vilathikulam taluk, Tuticorin District, measuring 1 Acres of land comprised in survey No. 194/1A1A, in North West portion out of total extend of Hec. 0.73.0 with the Sub-Registration District of Villathikulam Registration District of Tuticorin

Within the boundaries hereunder

East by	:	Property of Chandrasekara Pandian
West by	:	Property of Rajaperumal and Chandrasekaran
North by	:	Property by Sedhuraja
South by	:	Pathway and Property of Chandrasekara Pandian

Property No:3

All that piece and parcel of the land and building situated at Vembar Village, Vilathikulam union, Vilathikulam taluk, Tuticorin District, measuring 1 Acres and 49 cents of land comprised in survey No. 255/1, in Southern side out of total extend of Hec. 11.56.0 with the Sub-Registration District of Villathikulam Registration District of Tuticorin

Within the boundaries hereunder

East by	:	Property of Anthonyraj and other
West by	:	Stream
North by	:	Property of Irudhayamary
South by	:	East Coast Road

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

S.No.	Date	Description of Documents
1.	31.10.2023	Demand Notice u/s 13(2)

2.	27.12.2023	Reply / objections u/s13(3A) by the applicants
3.	10.01.2024	Rejoinder by the 1st defendant
4.	30.01.2024	Impugned Possession Notice u/s 13(4)
5.	05.03.2024	Impugned Possession Notice u/s 13(4)

3. On the other hand, the Counsel for the Defendant Bank appeared before this Tribunal and undertook to file a Vakalatnama, Reply Statement and Typed Set of Papers from 21.03.2024, but failed to do so. Subsequently, he was debarred from filing the Vakalath, Reply Statement and Typed Set of Papers on 16.04.2026, 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, I find that 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, owing to changes in Government policies and poor intake of students, the financial position of the educational institution was adversely affected, resulting in irregularity in repayment of the loan instalments.

6. The Applicants have specifically challenged the classification of the loan account as a Non-Performing Asset (NPA) on 08.01.2022. According to the Applicants, date 08.01.2022 fell on the second Saturday and was a bank holiday and, therefore, the Defendant Financial Institution could not have validly classified the loan account as an NPA on the said date. On this basis, the Applicants have contended that the classification of the loan account as an NPA was erroneous and contrary to the applicable guidelines issued by the Reserve Bank of India. Thereafter, the 1st Defendant issued a Demand Notice dated 18.01.2022 under Section 13(2) of the SARFAESI Act and subsequently issued a Possession Notice dated 27.07.2023 under Section 13(4) of the SARFAESI Act. The Applicants have further contended that, while the aforesaid Demand Notice dated 18.01.2022 and the subsequent Possession Notice dated 27.07.2023 were subsisting, the 1st Defendant issued a fresh Demand Notice dated 31.10.2023 under Section 13(2) of the SARFAESI Act and thereafter issued a fresh Possession Notice dated 30.01.2024 under Section 13(4) of the SARFAESI Act.

On perusal of the records, I find that the Applicants have not filed any documentary evidence to establish that the Defendants had issued the Demand Notice dated 18.01.2022 under Section 13(2) of the SARFAESI Act and subsequently issued the Possession Notice dated 27.07.2023 under Section 13(4) of the SARFAESI Act. However, I find that the Applicants have filed the Demand Notice dated 31.10.2023 issued under Section 13(2) of the SARFAESI Act. In respect of the said Demand Notice, the Applicant raised an objection contending that the Defendant Bank had not properly considered and replied to his representation submitted under Section 13(3A) of the SARFAESI Act. However, I find that the Defendant Bank had duly considered the said objection and furnished its reply within the prescribed period. Further, the Applicant himself has annexed a copy of the reply issued by the Defendant Bank, which is found at **pages 31 to 34** of the documents filed by

the Applicant. Upon perusal of the same, I find that the Defendant Bank has duly considered and properly replied to the objections raised by the Applicant. The said Demand Notice, the objection/representation submitted by the Applicant, and the reply thereto issued by the Defendant Bank are **annexed at pages 15 to 34 of the documents filed by the Applicant**. Hence, the contention of the Applicant that the Defendant Bank failed to properly reply to his representation under Section 13(3A) of the SARFAESI Act is not sustainable.

7. The Applicant contended that the Defendants have failed to comply with the mandatory statutory requirements prescribed under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002. The Applicant has also questioned the validity of the NPA classification and the subsequent measures initiated by the Defendant under Sections 13(2) and 13(4) of the SARFAESI Act. On the other hand, though the Defendant appeared in the proceedings, it is seen that the Defendant, despite having knowledge of the proceedings and having been afforded sufficient opportunity to contest the allegations raised by the Applicant, has failed to file an effective rebuttal and has also failed to place sufficient documentary evidence on record to establish the validity and legality of the measures initiated under the SARFAESI Act.

8. In the present case, the Defendant has failed to satisfactorily establish, by producing the relevant records, the legality of the NPA classification dated 08.01.2022 and the subsequent compliance with the mandatory requirements under Sections 13(2), 13(3A) and 13(4) of the SARFAESI Act and the applicable provisions of the Security Interest (Enforcement) Rules, 2002. The Defendant has also failed to satisfactorily explain the issuance of the subsequent Demand Notice dated 31.10.2023 and Possession Notice dated 30.01.2024 while the earlier statutory measures were subsisting. In the absence of sufficient rebuttal and supporting documentary evidence from

the Defendant, the specific contentions raised by the Applicant regarding the validity of the NPA classification and compliance with the mandatory statutory procedures remain unrebutted. Accordingly, I finds that the impugned measures initiated by the Defendant cannot be sustained on the basis of the materials presently available on record. Hence, this Tribunal is of the considered view that the Applicant has made out sufficient grounds for interference under Section 17 of the SARFAESI Act. Consequently, the Securitisation Application is liable to be allowed and the impugned measures initiated by the Defendant under Section 13(4) of the SARFAESI Act are liable to be set aside. Hence, this case is liable to be allowed in absence of evidence.

In the result,

(a) SA No. 217/2024 is allowed. The impugned Possession Notice dated 30.01.2024 & 05.03.2024 issued by the 1st Defendant under Section 13(4) of the SARFAESI Act is hereby set aside.

(b) All the expenditures incurred in issuance of the Impugned Possession Notice dated 30.01.2024 & 05.03.2024 shall not be included in the loan account of the Applicant.

(c) The Defendant Bank is at liberty to initiate fresh action against the Applicant for recovery of loan amount following strictly the SARFAESI Acts & Rules.

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 21st August, 2026).

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 31.08.2026