Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 18th DAY OF AUGUST, 2026

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

SA No.569/2025

1.Mr. Senthil Murugan,
S/o. Ganesan,
3/464, Pandiyan Nagar, Omettupatti,
Othaiyal Mettupatti, Sattur,
Virudhunagar - 626 203.

2.Mr. Ganesan S.,
S/o. Shanmugavel,
3/464, Pandiyan Nagar, Omettupatti,
Othaiyal Mettupatti, Sattur,
Virudhunagar - 626 203.

3.Mr. Lakshmanakumar G.,
S/o. Ganesan,
3/464, Pandiyan Nagar, Omettupatti,
Othaiyal Mettupatti, Sattur,
Virudhunagar - 626 203.

4.Mrs. Murugalakshmi G.,
D/o. Subbaiya,
3/464, Pandiyan Nagar, Omettupatti,
Othaiyal Mettupatti, Sattur,
Virudhunagar - 626 203. ---- Applicant(s)

-Vs-

M/s. Nido Home Finance Limited,
(Formerly known as Edelweiss Housing Finance Limited),
Through its Authorized Officer,
Mr. Santhanu S.,
Having its Registered Office at:
EHFL/ECLFL: Edelweiss House,

Off CST Road, Kalina,
Mumbai - 400 098.

Having Registered Office at:
Tower 3, 5th Floor, Wing 'B',
Kohinoor City Mall, Kohinoor City,
Kirol Road, Kurla (West),
Mumbai - 400 070.

Having Regional Office at:
Edelweiss Housing Finance Limited,
Wing A, 7th Floor, Citi Tower,
No. 117, Sir Theagaraya Road,
Drivers Colony, T. Nagar,
Chennai - 600 017. --- Defendant FI

Appearance of Advocates:
Mr.S.Suresh ---- ***Counsel for the Applicant***
Mr.V.Kasirajan ---- ***Counsel for the Defendant FI***

This SARFAESI Application was heard in the presence of Counsels for the Applicant, Defendant FI 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 under Sec.17(1) of the SARFAESI Act 2002 by the Applicants praying that this Hon'ble Tribunal may be pleased to call for the records pertaining to the initiation of proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, culminating in the issuance of the impugned Auction Sale Notice dated 17.06.2025, fixing the date of sale on 25.07.2025, issued under Section 13(4) of the SARFAESI Act in respect of the schedule-mentioned property, to quash the same, and to pass such further or other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case, and thus render justice.

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

a) The Applicants submitted that, the above application has been filed challenging the impugned Auction Sale Notice dated 17.06.2025, whereby the date of sale was fixed as 25.07.2025, in respect of the property offered as security for the alleged dues arising out of the home loan facility availed by the Applicants.

b) It is further submitted that, the 1st Applicant availed a housing loan from the Defendant to the tune of Rs.25,00,000/-, and Applicants 2 to 4 stood as co-borrowers. It is further submitted that the loan was sanctioned on 17.12.2020. The Applicants offered the schedule-mentioned property as security for the due repayment of the loan. The tenure of the loan was 20 years.

c) It is also submitted that, they were regular in the repayment of the loan for the initial two years. However, due to the ill health of the 2nd Applicant, they had to incur substantial medical expenses. Consequently, they were unable to pay the EMIs regularly, resulting in defaults, and were not in a position to adhere to the repayment schedule prescribed by the Defendant. However, whenever they had sufficient funds, they made payments towards the loan account.

d) It is further submitted that, to the shock and surprise of the Applicants, the Defendant classified the loan account as a Non-Performing Asset (NPA) on 04.06.2023. Thereafter, the Defendant issued a Demand Notice under Section 13(2) of the SARFAESI Act on 21.06.2023, calling upon the Applicants to pay a sum of Rs.26,60,732.45/- as on 12.06.2023. Immediately upon receipt of the Demand Notice under Section 13(2) of the SARFAESI Act, the

Applicants approached the Defendant, offered to pay the overdue amount, and requested the Defendant to regularise the loan account. It is pertinent to point out that the Reserve Bank of India (RBI) had issued guidelines providing for the restructuring of eligible home loan accounts upon payment of the overdue amount. However, the Defendant did not consider the Applicants' request favourably.

e) It is further submitted that, thereafter, the Defendant took symbolic possession of the schedule-mentioned property by issuing the Possession Notice dated 04.09.2023 under Section 13(4) of the SARFAESI Act, 2002. However, the Possession Notice was neither affixed on a conspicuous part of the secured asset nor published in two leading newspapers, as contemplated under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002. Thereafter, the Defendant brought the secured asset for public auction by issuing the Auction Sale Notice dated 19.03.2024, fixing the date of sale as 20.04.2024. However, the auction sale did not materialise due to the absence of bidders.

f) It is further submitted that, In the meantime, the Defendant filed a petition before the Learned Chief Judicial Magistrate, Srivilliputhur, under Section 14 of the SARFAESI Act, 2002, in Crl.M.P. No.1900 of 2024, seeking assistance to take physical possession of the schedule-mentioned property. The said petition was allowed on 06.02.2025 without issuing notice to the Applicants, and an Advocate Commissioner was appointed to take physical possession of the property. Thereafter, the Advocate Commissioner issued a notice dated 13.03.2025 granting the Applicants seven days' time to vacate the schedule-mentioned property. Aggrieved by the same, the Applicants filed S.A. No.223

of 2025 before this Hon'ble Tribunal. By order dated 03.04.2025, this Hon'ble Tribunal granted a conditional interim order directing the Applicants to deposit 35% of the claim amount in three equal monthly instalments of Rs.3,11,000/- each. The Applicants paid the first instalment of Rs.3,11,000/- as directed by this Hon'ble Tribunal. However, due to financial constraints, the Applicants were unable to pay the second instalment within the stipulated time, and consequently, the interim order stood vacated automatically.

g) It is further submitted that, taking advantage of the same, the Defendant took physical possession of the schedule-mentioned property and thereafter issued the impugned Auction Sale Notice dated 17.06.2025, fixing the date of sale as 25.07.2025, allegedly without obtaining a proper valuation of the property after taking physical possession. Aggrieved by the aforesaid action of the Defendant, the Applicants have filed the present application with the following grounds.

- The impugned Auction Sale Notice dated 17.06.2025, fixing the date of sale as 25.07.2025, issued under Section 13(4) of the SARFAESI Act, 2002, is arbitrary, unreasonable, contrary to law, and legally unsustainable. Hence, the same is liable to be set aside.

- The impugned action of the Defendant suffers from errors apparent on the face of the record and is, therefore, liable to be set aside/quashed by this Hon'ble Tribunal.

- The Defendant ought to have noted that the classification of the Applicants' loan account as a Non-Performing Asset (NPA) is

illegal, particularly when the Applicants had been regularly paying the EMIs till June 2023 and had sought restructuring of the loan in accordance with the RBI guidelines. Therefore, the Defendant Finance Company had no legal justification to classify the loan account as an NPA. Consequently, the classification of the Applicants' loan account as an NPA is bad in law, legally unsustainable, and liable to be set aside.

- The Defendant has not furnished the statement of account to the Applicants and has failed to account for certain credits made by them. It is further contended that the claim amount has been arbitrarily inflated by charging an exorbitant rate of interest. Hence, the claim amount is fabricated, excessive, and legally unsustainable.

- The Defendant ought to have obtained a fresh valuation of the schedule-mentioned property after taking physical possession of the same. However, without obtaining such valuation, the Defendant proceeded to issue the impugned Auction Sale Notice dated 17.06.2025. Hence, the impugned Auction Sale Notice is liable to be set aside.

Therefore, it is prayed that this Hon'ble Tribunal may be pleased to allow this Application.

DESCRIPTION OF PROPERTY

Virudhunagar Registration, Sattur Sub-Registration, Virudhunagar District, Sattur Taluk, O. Mettupatti Village Housing in the above village under Natham Survey No.137, No.6 Acres 43 Cents towards its South 3 Acres 48 Cents in which as per present Sub-Division Survey No.137/1 in its centre measuring about East-West 100, South-North 45, totally 4500 Square Feet of vacant land for which four boundaries are as follows:-

North: Ayyachamy vacant land

East: East-West - 12 Ft Width North-South Street

South: Mariammal property

West: East-West - 10 Ft Width North-South Street

Vacant Land within the above boundaries is present, for the above mentioned schedule property as per the present Sub-Division the Survey Number is Survey No.137/28. The schedule property is out of undivided share 2 out of 3 shares. Schedule is right. Schedule property comes under Sattur Panchayat Union.

The Applicants have filed the following List of documents in support of their claim in the SA, which are as follows:

SI. NO.	DATE	DETAILS OF DOCUMENTS
1.	19.03.2024	Auction Sale Notice issued under Section 13(4) of the SARFAESI Act
2.	06.02.2025	Order passed in Crl.M.P. No.1900 of 2025
3.	17.06.2025	Impugned Auction Sale Notice issued by the Defendant fixing the date of sale as 25.07.2025

3. On the other hand, the Counsel for the Defendant FI appeared before this Tribunal and filed Reply Statement and Typed set of papers in which they have submitted that, the 1st Applicant is the borrower and Applicants 2 to 4 are the co-borrowers. Applicants 1, 3, and 4 are the children of the 2nd Applicant. The Applicants approached the Defendant for a housing loan of Rs.25,00,000/-, and the 2nd Applicant agreed to mortgage the schedule-mentioned property as security. Upon the Applicants agreeing to the various terms and conditions, the Defendant sanctioned a housing loan of Rs.25,00,000/- to the Applicants on 17.12.2020.

a) It is further submitted that the housing loan was availed after the execution of the loan agreements and other related documents, and the schedule-mentioned property was offered as security for the loan. The mortgage created over the said property was duly registered with CERSAI in accordance with the prescribed procedure.

b) It is further submitted that the Applicants committed default in the repayment of the loan availed by them, and despite repeated follow-up by the Defendant, the Applicants failed and neglected to repay the principal amount along with the interest and other charges as per the terms of the loan agreement. Consequently, the loan account of the Applicants was classified as a Non-Performing Asset (NPA) on 04.06.2023 as per the guidelines issued by the Reserve Bank of India.

c) It is further submitted that the Defendant, pursuant to the provisions of the SARFAESI Act, through its Authorised Officer, issued a Demand Notice dated 21.06.2023 under Section 13(2) of the SARFAESI Act to the Applicants and the mortgagor, calling upon them to pay a sum of Rs.26,60,732.45, being the amount due as on 12.06.2023, together with further interest from the said date till the date of payment, within a period of 60 days from the date of receipt of the notice, failing which the Defendant would be entitled to exercise all or any of the rights available under the SARFAESI Act in respect of the secured asset.

d) It is further submitted that the Demand Notice was sent to the Applicants by Registered Post on 23.06.2023, and the Acknowledgement Card was received from the 3rd Applicant. However, the postal cover addressed to the 1st Applicant was returned. Thereafter, by way of substituted service, the contents of

the Demand Notice were published in two leading newspapers, namely, the vernacular daily "Dinakaran" and the English daily "Business Standard", on 30.06.2023, as mandated under the SARFAESI Act and the Rules framed thereunder. The Applicants did not issue any reply objecting to the contents of the said Demand Notice.

e) It is further submitted that, as the Applicants failed to comply with the Demand Notice, the Defendant took symbolic possession of the schedule-mentioned property on 04.09.2023. The Possession Notice was sent to the Applicants on 07.09.2023 and was also affixed on the schedule-mentioned property. The fact of taking possession was brought to the notice of the public by publishing the Possession Notice in the English daily "Business Standard" and the Tamil daily "Dinakaran", both dated 06.09.2023. The Acknowledgement Cards evidencing service of the Possession Notice were duly received from the Applicants. Even thereafter, the Applicants did not come forward to redeem the secured asset. The reserve price was fixed after obtaining a valuation report from an approved valuer in consultation with the secured creditor. Accordingly, the Defendant issued the first Sale Notice dated 19.03.2024, fixing the auction on 20.04.2024. However, the auction scheduled on 20.04.2024 could not be conducted due to the absence of bidders.

f) It is further submitted that the Applicants failed to clear the outstanding liabilities despite repeated reminders issued by the Defendant. Consequently, the Defendant was constrained to file a petition under Section 14 of the SARFAESI Act before the Hon'ble Chief Judicial Magistrate, Srivilliputhur, in Crl.M.P. No.1900 of 2024, which was allowed on 06.02.2025. Thus, the Defendant has scrupulously followed the provisions of the SARFAESI Act and the Rules framed thereunder. It is submitted that the Applicants

admitted their liability and undertook to clear the outstanding dues within 40 days. However, instead of discharging the liability, they filed S.A. No.223 of 2025 before this Hon'ble Tribunal challenging the order dated 06.02.2025 passed by the Hon'ble Chief Judicial Magistrate and the consequential notice dated 13.03.2025 issued by the Advocate Commissioner. By order dated 03.04.2025, this Hon'ble Tribunal granted a conditional interim order directing the Applicants to deposit 35% of the claim amount in three equal monthly instalments of Rs.3,11,000/- each. However, the Applicants failed to comply with the said conditional order passed by this Hon'ble Tribunal.

g) Consequently, the Defendant was left with no other option but to issue the second Sale Notice dated 17.06.2025, fixing the auction on 25.07.2025. The said Sale Notice was published in the English daily "Business Standard" and the Tamil daily "Dinakaran", both dated 17.06.2025. Further, the Sale Notice was affixed at a conspicuous part of the secured asset in accordance with law and was also duly served on the Applicants. The Applicants were fully aware of the entire proceedings and did not raise any objections. Thus, the Defendant has scrupulously complied with the provisions of the SARFAESI Act and the Rules framed thereunder.

h) It is further submitted that the Applicants did not make any payment towards the defaulted loan amount even after the issuance of the statutory notices. They did not approach the Defendant Company for any settlement nor did they raise any objections to the notices issued by the Defendant. In short, the Defendant alone took all necessary legal steps for the recovery of the outstanding loan amount, whereas the Applicants turned a deaf ear to the statutory proceedings and continued to enjoy the benefits of the loan without discharging their repayment obligations.

i) It is further submitted that, under the aforesaid circumstances, the present application came to be filed, and this Hon'ble Tribunal, by order dated 24.07.2025 in I.A. No.2858 of 2025, passed the following conditional order directing the Applicants to deposit the amounts indicated below:

Sl. No.	Instalment No.	On or Before	Amount
1.	I	25.08.2025	Rs.3,21,000/-
2.	II	25.09.2025	Rs.3,21,000/-
3.	III	27.10.2025	Rs.3,21,000/-
4.	IV	27.11.2025	Rs.3,21,000/-

However, the Applicants failed to comply with the conditional order passed by this Hon'ble Tribunal. Consequently, the Defendant Company proceeded to take physical possession of the secured asset on 22.03.2025.

j) It is further submitted that, despite obtaining a favourable conditional order from this Hon'ble Tribunal on 24.07.2025, the Applicants failed to comply with the directions contained therein. The Hon'ble High Court of Madras, in AIR 2010 Mad (DB) 91, has held as follows:

*"At this juncture, we feel it apt to quote the judgment of the Honourable Apex Court in **Prestige Lights Ltd. v. State Bank of India**, MANU/SC/3355/2007 : (2007) 8 SCC 449.*

In the said case also, the applicant company therein had availed a loan from the respondent Bank by mortgaging certain immovable properties and thereafter failed to repay the same, amounting to a sum of Rs.87,64,549.42. The borrower unsuccessfully challenged the sale proceedings initiated by the Bank before the Tribunal and the High Court and thereafter approached the Honourable Supreme Court, wherein a conditional stay order was passed by the Honourable Apex Court on 06.05.2005, including a default clause that, on non-payment, the stay would stand vacated. Admittedly, the said conditional order had not been complied with by the petitioner therein. In such circumstances, the Honourable Apex Court held in the following terms:

An order passed by a competent court—interim or final—has to be obeyed without any reservation. If such order is disobeyed or not complied with, the court may refuse to hear the party violating such order on merits. Refusal to hear a party to the proceeding on merits is a "drastic step" and such a serious penalty should not be imposed on him except in grave and extraordinary situations, but sometimes such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding by the terms and conditions on which a relief is granted by the court in his favour. This, however, does not mean that in each and every case in which a party has violated an interim order, it has no right to be heard at all. Nor will the court refuse to hear him in all circumstances. The normal rule is that an application by a party will not be entertained until he has purged himself of the contempt. There are, however, certain exceptions to this rule. One of such exceptions is that the party may appeal with a view to setting aside the order on which his alleged contempt is founded. A person against whom contempt is alleged must be heard in support of the submission that, having regard to the meaning and intendment of the order which he is said to have disobeyed, his actions did not constitute a breach of it.

A prerogative remedy is not available as a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of the court by deceiving it. The very basis of the writ jurisdiction rests in the disclosure of true, complete, and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

k) It is further submitted that, in Page No.5, Paragraph No.3, 3rd line, the applicant has admitted that he had availed the credit facilities and could not repay the same. The relevant portion is extracted below for ready reference:

"Hence the applicants could not able to pay the EMI regularly and there was default and the applicants are not in a position to adhere to the repayment schedule of the defendant."

Hence, the contrary allegations made in the appeal are stoutly denied by the Defendant Bank.

l) It is further submitted that, the applicant has stated in Page No.8, Paragraph No.4, 6th line, as extracted hereunder: "*The Applicants immediately on receipt of the 13(2) Demand Notice approached the Defendant and offered to pay the overdue amount and requested*

them to regularize the loan account." and thus, the Applicants have admitted the receipt of the Demand Notice. It is submitted that, despite the said averment, the account was not regularized. Further, no such representation was made by the Applicants, and no scrap of evidence to that effect has been produced in the typed set of papers for the perusal of this Hon'ble Tribunal. Hence, the said allegation is denied as false.

m) It is further submitted that the statutory notices issued by the Defendant Company are valid in law and were issued strictly in accordance with the provisions of the SARFAESI Act, the Rules framed thereunder, and the applicable RBI guidelines. The Defendant Company has scrupulously followed the prescribed statutory procedure in classifying the loan account as a Non-Performing Asset (NPA) and in initiating the recovery proceedings. The default committed by the Applicants resulted in the classification of the loan account as an NPA. The allegations and grounds raised by the Applicants, including Ground Nos. (a) and (b), are untenable in law and devoid of merits. The impugned notices have been issued after due compliance with the statutory requirements and are valid, legal, and sustainable in the eye of law. Accordingly, the actions of the Defendant Company are proper, legal, and justified, and the impugned notices cannot be set aside on the basis of the bald and unsubstantiated allegations made by the Applicants.

n) It is further submitted that Grounds Nos. (c) to (g) are wholly untenable in law and devoid of merits. The Defendant Company has strictly adhered to the RBI guidelines and the terms and conditions of the loan agreement, and the interest has been charged in accordance with the contractual terms. The present

recovery proceedings have been initiated solely on account of the Applicants' failure to repay the loan as agreed. The loan account was rightly classified as a Non-Performing Asset (NPA) on 04.06.2023, and therefore, the allegation of wrongful classification of the account as an NPA is unsustainable. The Applicants are not entitled to restructuring of the loan account under the applicable RBI guidelines, and the contrary plea is misleading. The allegation regarding non-compliance with the procedure for taking possession is also false, as the Defendant Company duly served the Possession Notice upon the Applicants, published the same in newspapers on 06.09.2023, and affixed the Possession Notice on the mortgaged property in accordance with the provisions of the SARFAESI Act and the Rules framed thereunder. The relevant records have also been produced in the typed set of papers. The contention that the statement of account was not furnished is equally baseless, as the Defendant Company had already furnished the statement of account to the Applicants on two occasions and, in order to avoid unnecessary litigation, has once again enclosed the statement of account in the typed set of papers and served a copy upon the Applicants. Hence, the allegations made in Grounds Nos. (c) to (g) are liable to be rejected.

o) It is further submitted that Grounds Nos. (h) to (l) are devoid of merits and liable to be rejected. The Defendant Company obtained a valuation report from an approved valuer before fixing the reserve price, and the Applicants did not raise any objection regarding the valuation upon receipt of the Sale Notice. The allegation of improper valuation is, therefore, a mere afterthought, and there is no gross undervaluation of the secured asset. The burden lies upon the Applicants to substantiate such allegation with acceptable evidence. It is further submitted that the Defendant Company has scrupulously complied with the provisions of the SARFAESI Act

and the Rules framed thereunder at every stage of the proceedings. The Applicants admittedly availed the loan facility but failed to discharge their repayment obligations, thereby inviting the SARFAESI proceedings. The Applicants have also accepted the receipt of the Demand Notice dated 21.06.2023 and did not raise any objection or submit any valid representation within the statutory period. The allegations raised in the present application are, therefore, belated, baseless, and have been made only to protract the recovery proceedings. The present application lacks bona fides and has been filed with the sole intention of obstructing the Defendant Company from realising its lawful dues by enforcing the security interest over the mortgaged property.

In view of the above facts, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above application with cost and thus render Justice.

Typed set of Papers filed by the Defendant FI on 04.12.2025

SI. NO.	DATE	DESCRIPTION OF DOCUMENTS
1.	21.06.2023	Demand Notice issued by the Defendant along with postal receipts
2.	27.06.2023	Acknowledgement Card received from the 3rd Applicant and returned postal cover addressed to the 1st Applicant
3.	30.06.2023	Demand Notice published in "Dinakaran" (Tamil Newspaper)
4.	30.06.2023	Demand Notice published in "Business Standard" (English Newspaper)
5.	04.09.2023	Possession Notice issued by the Defendant along with postal receipts
6.	07.09.2023	Acknowledgement Cards received from the Applicants
7.	06.09.2023	Possession Notice published in "Dinakaran" (Tamil Newspaper)
8.	06.09.2023	Possession Notice published in "Business Standard" (English Newspaper)
9.	—	Photographs showing affixture of the Possession Notice
10.	14.06.2025	Valuation Report

SI. NO.	DATE	DESCRIPTION OF DOCUMENTS
11.	17.06.2025	Second Sale Notice issued by the Defendant
12.	18.06.2025	Postal Receipts
13.	17.06.2025	Sale Notice published in "Dinakaran" (Tamil Newspaper)
14.	17.06.2025	Sale Notice published in "Business Standard" (English Newspaper)
15.	—	Statement of Account

4. *ON THE BASIS OF ABOVE PLEADINGSTHE 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 submissions of both parties and upon perusal of the entire records available on file, I find that the 1st Applicant is the borrower and Applicants 2 to 4 are the co-borrowers in the loan account. The Applicants availed a housing loan of **Rs.25,00,000/- (Rupees Twenty-Five Lakhs only)** from the Defendant Financial Institution by creating an equitable mortgage over the schedule-mentioned property. The loan was sanctioned on 17.12.2020. It is the case of the Applicants that they initially repaid the loan instalments regularly in accordance with the terms of the loan agreement. However, the Applicants have admitted in their pleadings that, owing to the ill health of the 2nd Applicant, they were unable to continue servicing the loan, although they had regularly repaid the loan for the first two years. Consequently, the Defendant Financial Institution classified the loan account as a **Non-Performing Asset (NPA) on 04.06.2023** and initiated measures under the provisions of the SARFAESI Act.

6.0 Thereafter, the Defendant Financial Institution issued a Demand Notice dated 21.06.2023 under Section 13(2) of the SARFAESI Act, calling upon the Applicants to pay a sum of **Rs.26,60,732.45p (Rupees Twenty-Six Lakhs Sixty Thousand Seven Hundred Thirty-Two and Forty-Five Paise only)**, being the outstanding amount as on 12.06.2023. The said Demand Notice was dispatched to the Applicants by Registered Post. I perused the documents produced by the Defendant Financial Institution. The Defendant has filed Xerox copies of the Demand Notice, the postal cover, and the Acknowledgement (AD) cards, which are annexed at pages 1 to 7 of the Defendant's typed set of papers. However, only an incomplete Xerox copy of the AD card and the postal cover have been produced.

6.1 The Defendant Financial Institution also effected substituted service of the Demand Notice by publishing the same in the newspapers "Business Standard" and "Dinakaran" on 30.06.2023. Copies of the said publications are annexed at pages 8 and 9 of the Defendant's typed set of papers.

6.2 The Applicants have admitted that, upon receipt of the Demand Notice dated 21.06.2023, they approached the Defendant Financial Institution, expressed their willingness to pay the overdue amount, and requested regularisation of the loan account. However, they have not produced any documentary evidence in support of the said contention. Further, despite having knowledge of the Demand Notice, the Applicants failed to submit any reply or representation under Section 13(3A) of the SARFAESI Act within the prescribed period. Therefore, the contention of the Applicants in this regard is untenable.

7.0 Thereafter, the Defendant Financial Institution issued a Possession Notice dated 04.09.2023 under Section 13(4) of the SARFAESI Act in respect of the outstanding dues of **Rs.26,60,732.45p (Rupees Twenty-**

Six Lakhs Sixty Thousand Seven Hundred Thirty-Two and Forty-Five Paise only) as on 12.06.2023. The Defendant Financial Institution has filed Xerox copies of the Possession Notice, the Acknowledgement Due (AD) cards, photographs of the alleged affixture of the Possession Notice, and newspaper publications, which are annexed at pages 10 to 16 of the Defendant's typed set of papers.

7.1 On perusal of the records, I find that the Defendant Financial Institution has produced Xerox copies of the newspaper publications of the Possession Notice in one English daily and one Tamil daily, along with photographs purportedly showing the affixture of the Possession Notice on a conspicuous part of the secured asset. However, the photographs do not disclose the date on which the Possession Notice was affixed. Further, the person shown in the photographs is holding a newspaper bearing the title "Dinamalar", whereas the Defendant Financial Institution claims to have published the Possession Notice in “Dinakaran” newspapers. This discrepancy casts serious doubt on the authenticity of the alleged affixture. Moreover, the photographs produced are not clear and do not conclusively establish that the Possession Notice was affixed on the secured asset in the manner prescribed under the Security Interest (Enforcement) Rules, 2002.

7.2 It is also pertinent to note that, despite specific directions of this Tribunal, the Defendant Financial Institution failed to produce the original records relating to the affixture and publication of the Possession Notice. Further, the Defendant has produced the English newspaper publication, namely, “Business Standard”, which is a financial and business daily newspaper, but has not produced any material to establish that the concerned edition had sufficient or wide physical circulation in Virudhunagar District, where the secured property is situated. Therefore, mere production of the said publication cannot be treated as sufficient proof of compliance with the mandatory requirement

under Rule 8(2) of the Security Interest (Enforcement) Rules, 2002. Consequently, the Defendant Financial Institution has failed to establish strict compliance with the mandatory requirements prescribed under Section 13(4) of the SARFAESI Act read with Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002. Hence, the Possession Notice dated 04.09.2023 cannot sustained in the eye of law. The Rule 8(1) & 8(2) of Security Interest Enforcement Rules, 2002, clearly says that

"8. Sale of immovable secured assets.

(1) Where the secured asset is an immovable property, the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and ***by affixing the possession notice on the outer door*** *or at such conspicuous place of the property."*

(2) The possession notice as referred to in sub-rule (1) shall also be published in two ***leading newspaper, one in vernacular language having sufficient circulation in that locality****, by the authorized officer.*

8.0 Thereafter, the Defendant Financial Institution issued the first Sale Notice dated 19.03.2024, fixing the e-auction on 20.04.2024. The Applicants have admitted in their pleadings that the said Sale Notice was issued by the Defendant Financial Institution and that the proposed e-auction could not be concluded due to the absence of bidders.

8.1 Subsequently, the Defendant Financial Institution obtained an order dated 06.02.2025 from the Chief Judicial Magistrate in Cr.M.P. No. 1900 of 2024 under Section 14 of the SARFAESI Act for taking physical possession of the secured asset. The Applicants contended that the said order was passed without issuing notice to them. However, the Applicants have admitted that they received the Advocate Commissioner's notice dated 13.03.2025 informing them that physical possession of the secured asset would be taken within seven days.

8.2 It is well settled that an order passed by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act is administrative in nature and is intended to facilitate the secured creditor in taking physical possession of the secured asset. The SARFAESI Act does not mandate the issuance of prior notice to the borrower before passing such an order. Therefore, the contention of the Applicants that the order under Section 14 is vitiated for want of prior notice is untenable.

8.3 Aggrieved by the measures taken pursuant to the order under Section 14 of the SARFAESI Act, the Applicants filed S.A. No. 223 of 2025 before this Tribunal. This Tribunal granted an interim conditional order; however, the Applicants failed to comply with the conditions imposed therein.

9.0 Thereafter, I find that the Defendant Financial Institution issued the impugned Sale Notice dated 17.06.2025, fixing the e-auction of the secured asset on 25.07.2025 for the recovery of a sum of **Rs.32,08,381/- (Rupees Thirty-Two Lakhs Eight Thousand Three Hundred and Eighty-One only)**, being the outstanding dues as on 11.06.2025.

9.1 Upon perusal of the records, I find that the Defendant Financial Institution has failed to produce any documentary evidence to establish the service of the Sale Notice upon all the Applicants. Though the Defendant has filed Xerox copies of the newspaper publications of the Sale Notice dated 17.06.2025, which are annexed at pages 25 and 26 of the Defendant's typed set of papers, it has not produced any photographic evidence to establish that the Sale Notice was affixed on a conspicuous part of the schedule-mentioned property, as mandated under Rule 8(7) of the Security Interest (Enforcement) Rules, 2002. The Defendant Financial Institution has also failed to produce the original records relating to the service and affixture of the Sale Notice, despite specific directions of this Tribunal. Further, the Defendant has produced the English newspaper publication, namely, “Business Standard”, which

is a financial and business daily newspaper, but has not produced any material to establish that the concerned edition had sufficient or wide physical circulation in Virudhunagar District, where the secured property is situated. These deficiencies clearly establish that the Defendant Financial Institution has failed to prove strict compliance with the mandatory procedure prescribed under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002 while issuing the impugned Sale Notice. Thus, the Defendant FI has not followed the Rule 8(6) & (7) of the Security Interest (Enforcement) Rules 2002, which clearly says that,

"Rule 8(6) & (7) in the Security Interest (Enforcement) Rules, 2002:-

*"(**6**) The authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):*

*[Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor **shall** cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.]"*

*(**7**) [Every notice of sale **shall be** affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web- site of the secured creditor, which shall include;*

(a)the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b)the secured debt for recovery of which the property is to be sold;

(c)reserve price of the immovable secured assets below which the property may not be sold;

(d)time and place of public auction or the time after which sale by any other mode shall be completed;

(e)deposit of earnest money as may be stipulated by the secured creditor;

(f)any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.]"

10.0 In view of the above discussion, I find that the Defendant FI has proceeded under the SARFAESI Act and rules for recovery of money from the Applicants but they have not followed the procedure as mentioned in the SARFAESI Act & Rules strictly. Moreover, the Applicants are no

doubt being defaulter are liable to pay the loan amount to the Defendant FI and the FI has been given ample power to recover the outstanding loan amount from the borrowers by invoking the SARFAESI Act and without the intervention of any Court. But, it shall not allow the Bank to sell the property of the Applicants without following the due process of law strictly, because property is the constitutional right of an individual and hence, Defendant FI cannot sell the property without following the mandatory provisions of Act & Rules. In view of the above facts and circumstances of the case, I find that the Defendant FI has not followed the due procedures for recovery of the loan amount under SARFAESI Act. As such, I find merit in the above SARFAESI Application. Therefore, this Tribunal holds that the Applicants are entitled to get the reliefs as prayed for.

In the result,

a) **SA No.569/2025** is allowed. The Impugned Sale Notice dated 17.06.2025 is hereby set aside.

b) All the expenditures incurred in issuance of Sale Notice dated 17.06.2025 shall not be included in the loan account of the Applicants.

c) The Defendant FI is at liberty to initiate fresh action against the Applicants 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 LDC (KK), taken down, transcribed, typed by him, corrected and pronounced by me, in the Open Court in this the 18th August 2026.

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 28.08.2026