Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI
DATED THIS 17th DAY OF AUGUST, 2026
PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No. 156/2020

1. M. Ambika
No. 61, Nagajothi Illam
Vaigai Vadakarai
Alwarpuram
Madurai – 625 002 **..... Applicant**

Vs

1. The Authorised Officer
IDBI Bank Ltd.
No. 1/1, Karthik Raja Complex
Vinayaga Nagar
K.K. Nagar
Madurai – 625 020 **..... Defendant**

Appearance of Advocates:
M/s V. Balamurugan ---- Counsel for the Applicant
Mr. J. Prabhakaran ---- Counsel for the Defendant Bank

This Application was heard in the presence of M/s V. Balamurugan, Counsel for the Applicant and Mr. J. Prabhakaran, Counsel for the Defendant Bank in the aforesaid case and upon hearing the arguments of both sides Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

ORDER

1. This Application has been filed under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with a prayer to set aside the possession notice dated 20.02.2020 issued by the Defendant Bank under section 13(4) of the SARFAESI Act, 2002.

2. The brief facts of the applicant case is as follows:-

A. The present Securitisation Application has been filed challenging the Possession Notice dated **20.02.2020** issued by the Defendant Bank under Section 13(4) of the SARFAESI Act, 2002 read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002.

B. The Applicant submitted that he had availed a Cash Credit facility from the Defendant Bank for the purpose of developing his business. To secure the said credit facility, he created an equitable mortgage over the immovable property more fully described in the Possession Notice dated 20.02.2020. According to the Applicant, he had been regular in servicing the loan account, but owing to severe financial difficulties arising from demonetisation and adverse market conditions, he suffered substantial business losses and was unable to continue repayment of the loan as agreed.

C. The Applicant further submitted that, despite his genuine efforts to regularise the loan account, the Defendant Bank, without considering his financial hardship, classified the loan account as a Non-Performing Asset (NPA) and initiated proceedings under the SARFAESI Act in violation of the provisions of the Act and the Rules framed thereunder.

D. The Applicant contended that the Defendant Bank issued the impugned Possession Notice dated **20.02.2020**, alleging that the Applicant had failed to discharge the liabilities pursuant to the Demand Notice dated **09.12.2019**, and claimed to have taken symbolic possession of the secured asset under Section 13(4) of the SARFAESI Act. The Possession Notice further cautioned the public against dealing with the secured asset and stated that any such transaction would be subject to the Bank's charge for a sum of **Rs.44,99,541.54 (Rupees forty four lakhs ninety nine thousand five hundred forty one and fifty four paise only)**.

E. The Applicant specifically contended that the Defendant Bank had neither issued nor served the Possession Notice in the manner contemplated under Section 13(4) of the SARFAESI Act and Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. It was further alleged that the mandatory requirements prescribed under Rules 8(1) to 8(6) had not been complied with and, therefore, the measures initiated under the SARFAESI Act are liable to be set aside.

F. The Applicant further contended that the classification of the loan account as NPA was contrary to the guidelines issued by the Reserve Bank of India and the applicable statutory provisions. It was also alleged that the Demand Notice under Section 13(2) of the SARFAESI Act had not been served upon the Applicant, thereby violating the principles of natural justice.

G. The Applicant further submitted that the impugned Possession Notice was not prepared or served in the manner prescribed under Rule 8 of the Security Interest (Enforcement) Rules, 2002. According to the Applicant, the Possession Notice was not delivered in the prescribed format as nearly as possible in Appendix IV to the borrower or the

guarantors, and consequently, the alleged symbolic possession of the secured asset was illegal and premature.

H. The Applicant also alleged that the Defendant Bank had not properly calculated the outstanding dues and interest payable under the loan account. It was further alleged that the officials and recovery agents of the Defendant Bank were attempting to take physical possession of the secured asset by coercive means without following the due process of law, rendering the impugned Possession Notice illegal and arbitrary.

I. The Applicant further contended that the Defendant Bank had failed to comply with the Reserve Bank of India guidelines and the mandatory provisions governing the enforcement of security interest. It was specifically alleged that the notice for symbolic possession was neither properly delivered to the Applicant and the guarantor nor the Possession Notice was duly affixed on the secured asset or published in newspapers having sufficient circulation in the locality as required under Rule 8(2) of the Security Interest (Enforcement) Rules, 2002.

J. The Applicant submitted that he has been making bona fide efforts to repay the loan, but due to financial hardship was unable to regularise the account. It is therefore prayed that, in view of the alleged non-compliance with the mandatory provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002, the impugned Possession Notice dated **20.02.2020** be set aside.

DESCRIPTION OF THE IMMOVABLE PROPERTY

All that part and parcel of the property consisting of Plot No. 32 & 33 in Survey No. 2721/1 Part, N.G.O. Colony TNHB Thiruvalluvar Nagar,

Ward No. 10 within the Registration Sub-District Madurai North and District Madurai.

Boundaries :

On the North by : PC Unit
On the South by : Road
On the East by : Plot No. 34
On the West by : Plot No. 31

List of Documents filed by the Applicants:

Sl. No.	Date	Description of Documents
1.	20.02.2020	Impugned Possession Notice issued by the defendant

3. On the other hand, the Defendant bank appeared and filed Vakalath, Reply Statement along with type set of papers wherein it has been submitted that the allegations contained in the Securitisation Application, except those specifically admitted herein, are false, incorrect, and therefore denied. The Defendant Bank submits as follows:

- Save and except those allegations that are expressly admitted herein, all the averments contained in the Securitisation Application are denied as false, incorrect and misleading. The Applicant is put to strict proof of each and every allegation. The Securitisation Application is not maintainable either in law or on facts and is liable to be dismissed with costs.
- The Defendant Bank submitted that it has strictly complied with the provisions of the SARFAESI Act, 2002 and the Security Interest

(Enforcement) Rules, 2002 at every stage of the recovery proceedings. The present Securitisation Application has been filed solely to delay and obstruct the lawful recovery of the public money advanced by the Defendant Bank.

- The Defendant Bank submitted that the Applicant, being the borrower and mortgagor, availed a mortgage loan of **Rs.45,00,000/- (Rupees forty five lakhs only)** on **29.05.2019**. To secure the said credit facility, the Applicant created an equitable mortgage over the secured asset by executing a registered Memorandum of Deposit of Title Deeds in favour of the Defendant Bank.

- It is submitted that the Applicant committed persistent defaults in repayment of the loan. Despite repeated follow-up by the Defendant Bank, the Applicant failed to regularise the loan account or repay the outstanding dues in accordance with the terms of the loan agreement. Consequently, the loan account was classified as a **Non-Performing Asset (NPA) on 30.11.2019** in accordance with the guidelines issued by the Reserve Bank of India.

- Thereafter, the Defendant Bank, through its Authorised Officer, issued a Demand Notice dated **19.12.2019** under Section 13(2) of the SARFAESI Act**,** calling upon the Applicant to discharge the entire outstanding liability together with interest and other charges within sixty days, failing which the Bank would exercise its statutory rights under the SARFAESI Act. The said Demand Notice was duly served on the Applicant. However, the Applicant neither repaid the outstanding dues nor submitted any objection or representation against the Demand Notice.

- Upon the Applicant's failure to comply with the Demand Notice, the Defendant Bank lawfully invoked the measures under Section 13(4) of the SARFAESI Act by issuing the Possession Notice dated **20.02.2020**. The Possession Notice was duly served upon the Applicant and was also published in The New Indian Express and Dinamani newspapers on 20.02.2020, in compliance with the statutory requirements.

- Even thereafter, the Applicant neither regularised the loan account nor approached the Defendant Bank for settlement of the dues. The Applicant failed to avail the opportunities extended by the Bank and continued to remain in default.

- Since no interim order was granted by this Hon'ble Tribunal in the present proceedings, the Defendant Bank initiated proceedings under Section 14 of the SARFAESI Act by filing Cr.M.P. No. 433 of 2022 before the Hon'ble Chief Judicial Magistrate, Madurai. The learned Chief Judicial Magistrate, by order dated 17.05.2022, authorised the Defendant Bank to take physical possession of the secured asset. Pursuant thereto, an Advocate Commissioner was appointed, and the Defendant Bank took physical possession of the secured asset on **19.10.2023**. Consequently, the challenge to the Possession Notice has become infructuous.

- The Defendant Bank further submits that a Sale Notice was subsequently issued for sale of the secured asset. However, the proposed auction could not be concluded due to the absence of bidders. The failure of the auction does not invalidate the SARFAESI proceedings or the measures already taken by the Defendant Bank in accordance with law.

- The allegations regarding non-service of notices, improper classification of the account as NPA, violation of the principles of natural justice, non-compliance with the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, and improper calculation of dues are wholly false and specifically denied. The Defendant Bank has scrupulously followed every mandatory procedure prescribed under the Act and the Rules. Copies of the relevant notices, postal acknowledgements, newspaper publications and other supporting documents have been produced along with the typed set of documents.

- The Defendant Bank submitted that the Applicant has approached this Hon'ble Tribunal without clean hands by suppressing the material facts relating to the loan transaction and the recovery proceedings. The present Securitisation Application has been instituted only with the intention of delaying the recovery proceedings and preventing the Defendant Bank from realising its legitimate dues.

- In the above circumstances, the Defendant Bank submitted that the Securitisation Application is devoid of merits, liable to be dismissed both on facts and in law, and prays that this Hon'ble Tribunal may be pleased to dismiss the Securitisation Application with costs and thus render justice.

TYPED SET OF DOCUMENTS FILED BY THE DEFENDANT BANK ON 29.01.2025

Sl. No.	Date	Particulars
1.	09.12.2019	Section 13(2) Demand Notice issued by the Defendant Bank along with Postal receipt
2.	--	Acknowledgement Card received from the Applicant

3.	13.02.2020	Section 13(4) Possession Notice issued by the Defendant Bank along with photo affixture
4.	20.02.2020	Possession Notice published in Tamil "Dinamani" and English "Indian Express Newspapers"
5.	30.01.2024	Sale Notice issued by the Defendant Bank
6.	01.02.2024	Acknowledgement Card received from Applicants
7.	06.02.2024	Sale Notice published in Tamil "Dinamani" and English "Indian Express Newspapers"
8.	--	Statement of Accounts

TYPED SET OF DOCUMENTS FILED BY THE DEFENDANT BANK ON 22.07.2026

Sl. No.	**Date**	**Particulars**
1.	09.12.2019	Office copy of Demand Notice Under Section 13(2) of the SARFAESI Act issued by the Respondent Bank
2.	09.12.2019	Xerox copy of Postal receipt
3.	--	Original postal acknowledgement of the Applicant
4.	13.02.2020	Office copy of Possession Notice under section 13(4) of the SARFAESI Act issued by the Respondent Bank along with original photo Affixture
5.	20.02.2020	E-copy of paper publication of Possession Notice in the New Indian Express and Dinamani dailies
6.	30.01.2024	Sale Notice issued by the Respondent Bank
7.	01.02.2024	Postal acknowledgement of Applicant

8.	06.02.2024	Original paper publication of Possession Notice in the New Indian Express and Dinamani dailies

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

Whether the Applicants is entitled to get the reliefs as prayed for?

5. The Applicant contended that she had availed a Cash Credit facility from the Defendant Bank for the purpose of developing her business. To secure the said credit facility, she created an equitable mortgage over the immovable property more fully described in the Possession Notice dated 20.02.2020. The applicant was regular in repayment of the loan and due to the financial crunch on account of the existing market conditions, there were some defaults in repayment of the loan accounts for which the account slip into Non performing Asset **(NPA) on 30.11.2019** and the Defendant Bank initiated proceedings under the SARFAESI Act.

6. The Defendant Bank contended that it had issued a Demand Notice dated **09.12.2019** under Section 13(2) of the SARFAESI Act, 2002, demanding payment of a sum of **Rs.44,99,541.54/-** (Rupees forty four lakhs ninety nine thousand five hundred forty one and fifty four paise only). On the other hand, the Applicant contended that the said Demand Notice was never served upon him in accordance with the provisions of **Section 13(2) of the SARFAESI Act, 2002** and the **Security Interest (Enforcement) Rules, 2002**. Upon perusal of the records produced by the Defendant Bank, I find that the copy of the Demand Notice under Section 13(2) is not free from doubt. The first page of the notice is printed on the Bank's letterhead, whereas the subsequent pages are printed on plain paper. Further, the first page does not appear to be in continuity with the second page, thereby creating uncertainty

regarding the completeness and authenticity of the document. I further find that the Defendant Bank has produced three postal receipts and two Acknowledgement Due (AD) cards, **which are annexed at Pages 01 to 6A of the Typed Set of Documents dated 29.01.2025.** Out of the two AD cards, one does not bear the seal of the postal department. Though the original AD cards are **annexed at Pages 09 and 10 of the Typed Set of Documents dated 22.07.2026**, the documentary evidence produced by the Defendant Bank does not satisfactorily establish that the Demand Notice dated 09.12.2019 was duly served upon the Applicant in the manner contemplated under Section 13(2) of the SARFAESI Act, 2002 read with the Security Interest (Enforcement) Rules, 2002.

In the absence of satisfactory and cogent proof of service of the Demand Notice, I hold that the Defendant Bank has failed to establish due compliance with the mandatory requirement of service of the Demand Notice under Section 13(2) of the SARFAESI Act, 2002.

7. Thereafter, the Defendant Bank issued the impugned Possession Notice under Section 13(4) of the SARFAESI Act. However, upon perusal of the records, I find that there is a material contradiction regarding the date of the Possession Notice in the typed set of papers, the Defendant Bank has produced a Possession Notice dated **13.02.2020**, whereas the Securitisation Application filed under Section 17 of the SARFAESI Act refers to the Possession Notice as being dated **20.02.2020**. Further, in its Reply Statement, the Defendant Bank has also admitted that the date of the Possession Notice is **20.02.2020**. Thus, the records produced by the Defendant Bank disclose an unexplained inconsistency with regard to the date of the Possession Notice issued under Section 13(4) of the SARFAESI Act. The Applicant contended that the Defendant Bank failed to serve the Possession Notice upon them, failed to publish the same in two leading

newspapers as mandated under Rule 8(2) of the Security Interest (Enforcement) Rules, 2002, and also failed to affix the Possession Notice on the conspicuous part of the secured asset in accordance with Rule 8(1) of the said Rules. On perusal of the records, I find that the Defendant Bank has produced only the office copy of the impugned Possession Notice dated **13.02.2020**, **annexed at page 7 of the typed set of papers dated 22.07.2026**. However, no postal acknowledgment due (A.D.) card or any other acceptable proof of service has been produced to establish that the Possession Notice was duly served upon the Applicants. The Defendant Bank has also produced e-copies of the newspaper publications of the Possession Notice dated **13.02.2020**, which are **annexed at pages 13 and 14 of the typed set of papers dated 22.07.2026**. Further, the Defendant Bank has produced a photograph purportedly evidencing the affixture of the Possession Notice dated **13.02.2020**, **annexed at page 12 of the typed set of papers dated 22.07.2026**. Upon careful perusal of the said photograph, I find that it does not disclose the date, time, or place of affixture. Consequently, the photograph, by itself, is insufficient to establish that the Possession Notice was affixed on the conspicuous part of the secured asset in compliance with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002.

In view of the material discrepancies and procedural irregularities found in the records produced by the Defendant Bank with respect to the Demand Notice and the Possession Notice, particularly regarding the service of both notices upon the Applicants, and affixture of the Possession Notice on the secured asset, this Tribunal is of the considered view that the Defendant Bank has failed to establish due compliance with the mandatory requirements prescribed under the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002. Consequently, the impugned Possession Notice cannot be sustained in the eye of law. Rule 8(1) and (2) of the Security Interest (Enforcement) Rules, 2002, clearly provide 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.*

In view of the above Provision, I find that the Defendant Bank has not followed the above provision in issuance of Possession Notice.

8. The Applicants are no doubt being defaulter are liable to repay the loan amount to the Defendants Bank and the Bank has been given ample power to recover the outstanding loan amount from the borrower by invoking the SARFAESI Act and without the intervention of any Court. But, it shall not allow the Bank to take possession of the property without following the due process of law strictly, because property is the constitutional right of an individual and hence, Bank cannot take possession of 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 Defendants Bank have 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 Applicant is entitled to get the reliefs as prayed for in this SARFAESI Application.

In the result,

SA No. 156/2020 is allowed. No costs. Accordingly, the Impugned Possession Notice dated 20.02.2020 issued by the Defendant Bank (submitted by the Applicant) is hereby set aside and the Defendant Bank directed not to include the expenditure incurred in issuance of

Impugned Possession Notice dated 20.02.2020 in the loan account of the Applicants.

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

Further the Defendant Bank is directed to proceed under SARFAESI for recovery of the outstanding dues from the applicant by following the due process of law strictly.

Dictated to KKN taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 17th **August**, 2026.

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 25.08.2026