IN THE DEBTS RECOVERY TRIBUNAL-II, BANGALORE

Dated this 27th Day of August, 2026

PRESENT: SHRI T. RAJESH
Hon'ble Presiding Officer

S.A. No. 14 of 2025

BETWEEN:
Sri. Kasturiranga K
Aged about 70 years
S/o. Sri. Krishnamachar
R/at. No.124/23, 21st main road,
Padmanabha Nagar,
Bangalore – 560070 **. . . Applicant**

AND:
1. The Authorized Officer
Central Bank of India
Kathriguppa Branch
No.3/11/7/1, PWD Road,
Banashankari 3rd Stage,
3rd Phase, Kathriguppe,
Bangalore – 560085

2. M/s. LivinModulars
A Partnership Firm,
Having its factory at No.24,
2nd Cross, 2nd Main Road,
S J C Industrial Area,
Yelachenahalli, War No.185,
Kanakapura Main Road,
Bangalore – 560062

3. Smt. Kavitha K
W/o. Sri. B Vishnuvardhana Reddy
Partner, M/s. LivinModulars
No.24, 2nd Cross, 2nd Main Road,
S J C Industrial Area, Yelachenahalli,
Ward No.185, Kanakapura Main Road,
Bangalore – 560062

Residing at Nipuna Heritage
Flat No.G6, 'A' Block,
Virupakshapura, Kodigehalli,
Bangalore – 560097

4. Sri. Mallikarjuna Rao J
S/o. Sri. Nagendra Rao
Partner, M/s. LivinModulars
No.24, 2nd Cross, 2nd Main Road,
S J C Industrial Area,
Yelachenahalli, Ward No.185,
Kanakapura Main Road,
Bangalore – 560062

Residing at No.43/160-1,
N R Peta, Kurnool – 518004

5. Kum. Deepika J
D/o. Sri. Mallikarjuna Rao J
Parner, M/s. LivinModulars
No.24, 2nd Cross, 2nd Main Road,
S J C Industrial Area,
Yelchenahalli, Ward No.185,
Kanakapura Main Road,
Bangalore – 560062

Residing at No.43/166-A,
N R Peta, Kurnool - 518004 **. . . Respondents**

Ld. Counsels on record / appeared :-

Counsel for Applicant :- Sri. E. Devaraja
Counsel for Respondent No.1 :- Sri. P Udayashankar Rai

: - O R D E R - :

1. This Securitization Application, SA is filed under section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act; herein after been referred to as SARFAESI Act or the Act, as the case be impugning the measures initiated and

continued by the respondent leading to the procurement of section 14 order from the Addl. Chief Judicial Magistrate Bangalore in Crl.Misc.No.2138/2024 dated 02.12.2024.

2. The case of the applicant in nutshell is as follows: The 2nd respondent is a partnership firm engaged in the business of processing of wood, plywood and its related activities. The applicant as well as respondent Nos. 3 to 5 are the partners of the 2nd respondent firm which commenced business in pursuance of a Deed of Partnership dated 16.07.2015.

3. It is further contended by the applicant that, the applicant being a senior citizen was approached by 3rd respondent who induced him to join in the partnership business and the applicant had reluctantly joined the business, whereby Partnership Deed came to be executed. It is admitted case of the applicant that, the respondent Nos.3 and 4 intended to avail loan from the respondent bank as Working Capital for the partnership and persuaded the applicant to offer his immovable property as security. It is also admitted that, a mortgage was also created as induced other partners of firm. The applicant further admits that, no repayments were made by the firm and the applicant was not allowed to take active participation in the activities of the firm.

4. The applicant further admits that, the defaults were committed by respondent Nos.2 to 5, the 1st respondent had issued the notice

dated 12.08.2022 and 22.11.2022 for which the applicant contends that, the applicant had suitably replied to the said notice. It is further alleged by the applicant that, the demand notice is only issued against the applicant and not against the other partners. Even though a possession notice dated 10.03.2023 is issued which the applicant claims it is defective and was under challenge in SA.111/2023 which came to be dismissed and the 1st respondent had issued one more possession notice dated 01.02.2024, which also duly replied by the applicant. in respect of the challenge as to the said possession notice, the applicant contends that, the SA filed is still in dairy stage. The applicant is also having a further case that, as the applicant is not intending to continue the partnership and had already lodged a complaint to the jurisdictional Police. It is also alleged by the applicant that, the partnership firm which availed the loan was later been converted into a sole Proprietorship concern with 3rd respondent as its Proprietor. The applicant is also putting forth a case that, the bank had failed to proceed against the hypothecated movables and take appropriate action to seize and take hypothecation and recover the outstanding dues before proceeding against the assets of the applicant.

5. In the grounds to the SA, the applicant is putting forth a case that, the applicants are prompt in repayments and proceedings have

been initiated in violation of RBI circular. The further contention of the applicant that, the applicant cannot be proceeded against unless the hypotheca is proceeded against and is also reiterated in the grounds. The applicant further alleges that, the demand notice and possession notice is not served on the applicant and the application filed before the Ld. Magistrate is defective as the mandate of S.14 about the mentioning of the amount due as on date of filing of application is not complied. Further contention taken by the applicant is that, there is no registration with the Central Registry and that the Ld. Magistrate failed to verify the documents. Along with the SA, the applicant had produced the following documents:

i. Order copy Under Sec.14 of the Act dated 02.12.2024 – A1
ii. Application under section 14 of the act – A2
iii. Affidavit filed by bank – A3
iv. Vacating notice dated 04.01.2021 – A4

On the above, premises the applicant is filing this SA.

6. The respondent bank filed their objections contending that, the SA is liable to be rejected on the threshold as no sufficient cause is made out. The respondent further admits the disbursement of the Cash credit of Rs.3,00,000/- and Term loan of Rs.16,00,000/- in the name of the partnership firm, the cash credit facility had been repaid and Term loan is continuing. It is also stated that, a Working Capital

Term loan of Rs.4,19,546/- was later extended to the partnership firm. It is also the case of the respondent that, the payments were defaulted and the MSME account and Working Capital Term loan was classified as NPA on with effect from 29.07.2022, 29.12.2022 and subsequently the demand notice dated 31.10.2023 was issued. Since no repayments were forthcoming the possession notice dated 01.12.2024 was issued and published. The 1st respondent further contends that, since being the secured creditor, the 1st respondent is entitled to approach the Ld. Magistrate and as permitted under the law procured in the impugned order. The respondent bank further denies the contention of the applicant that, there is no service of demand notice and point out that the applicant had promptly replied to the demand notice by filing a representation. The respondent further contends that, having executed the loan documents and offered the secured asset as security for the credit facility, the applicant cannot now turn back and contend that the said security ought not to be proceeded against. It is pointed by the respondent that the bank is at liberty to proceed against the hypotheca as well as the secured assets and the case of the applicant in this regard is to be discarded. In respect for the possession notice also the respondent contends that, the same is duly published and affixed as required under the statute.

7. The contention of the applicant as to the non-registration of security interest registration with the Central Registry is also refuted by the respondent by providing the security ID No. 400011510208, Asset ID No. 200011487400. Along with the objections, the respondent produced the following documents:

i. Copy of the loan sanction letter dated 10.12.2015

ii. copy of the term loan agreement dated 10.12.2015

iii. copy of the memorandum of deposit of title deeds dated 11.12.2015

iv. copy of the demand notice dated 30.10.2023

v. copy of the postal receipts

vi. copy of the postal online track report for delivery of item

vii. copy of the reply of the applicant dated 11.12.2023

viii. copy of the paper publication in New Indian Express dated 03.02.2024

ix. copy of the paper publication in Samyuktha Karnataka dated 03.02.2024

x. Copy of the photograph for affixing the possession notice

8. Heard the submissions of both sides and perused the available records.

9. The only issue that is to be gone into and decide is as to the legality measures leading and continued till the procurement of S.14 Order?

10. In the case in hand, the applicant is not disputing the availment of the credit facility and the disbursement of the loan in favour of the second respondent, wherein the applicant is admittedly one of the partners. The creation of the mortgage as security for the borrowing is also not in dispute. The main contention raised by the applicant is that there is an inter se dispute between the partners and that the applicant has been excluded from the day-to-day affairs of the firm. However, such an inter se dispute between the partners cannot, by itself cannot be a ground to stall the measures initiated by the respondent Bank. It is for the applicant to work out his remedies, if any, against the other partners before the appropriate forum in accordance with law.

11. The second contention raised by the applicant is that the respondent Bank is not proceeding against the hypothecated assets and is proceeding only against the secured asset. This Tribunal finds no legal merit in the said contention. The Bank is the best judge to decide against which securities it should proceed first and in what order. It is not for this Tribunal to substitute its wisdom for that of the Bank or to dictate the manner in which the securities are to be

proceeded against. The law permits the secured creditor to proceed simultaneously against the hypothecated assets as well as the mortgaged property, subject to the applicable statutory provisions. The applicant put forth a contention that, no service of demand notice, the respondent had along with their objections produced the demand notice and postal receipts and postal track evidencing the service of the demand notice. However, even though no contention in this regard as taken by the applicant, the respondent had produced the reply purportedly issued by the applicant to the demand notice as Annexure R7 it is dated 11.12.2023, even though the bank is admitting that the applicant had submitted reply to the demand notice and the same is not claimed be considered by the bank before continuation of the measures. This Tribunal had gone into contents of the objections raised by the applicant to the demand notice which came to be produced by the respondent bank wherein the applicant had taken as specific plea that the bank had not issued the notice to the other borrowers and sought for withdrawal of the demand notice on other grounds also. Even going by the pleadings in the statement of objections, there is no whisper as to the consideration of the said representation and disposal of the same before proceeding further. The above scenario leads to a position where this Tribunal is compelled to go into the legality of the measures as admitted the representation

under Sec.3-A of the Securitisation act is filed by the applicant, which mandates the respondent to consider the same and reply before proceeding further. Even though there is no specific plea in this regard is made by the applicant. it is within the purview of this Tribunal to go into and to consider the legality of the measures and to interfere if the same if the procedures is not followed by the secured creditor. To a query raised when the matter is heard as to whether any evidence as to the compliance of Rule 3-A is available, no satisfactory answer has been put forth from the side of respondent to lead this Tribunal to held that, the representation filed by the applicant was duly considered and disposed of as mandated by the statute.

12. The above scenario leads to a position that the measures are continued without disposal of the representation duly filed by the applicant to the demand notice which in turn leads to the finding that, there is no compliance of Rule 3-A of Security Interest (Enforcement) Rules.

13. Even though, the applicant had taken a contention that, there is no service of possession notice, this Tribunal is not going into the same, as the issuance and service of the possession notice is not a sine qua non for continuation of the measures under Section 14 of the SARFAESI Act. The proceedings under Section 14 operate in a different field, whereas the procedure for taking symbolic possession are

governed by Rule 8(1) and 8(2) of the Security Interest (Enforcement) Rules and that of taking actual possession is governed by Rule 8(3). In view of the above, there is no force in the contention of the applicant that there is no proper service of possession notice.

14. The contention of the applicant as to the non-registration of the asset with the Central Registry also stands rebutted by the respondent as the respondent has produced the proof as to the registration of the Security interest registration with the Central Registry.

18. The discussions as held above, leads to the irresistible conclusion that the measures were initiated without following the mandate of Rule 3-A of the Security Interest (Enforcement) Rules and said non-compliance vitiates the entire proceedings. Consequently, the challenge made by the applicant to the impugned measures deserves to be upheld.

16. In the result,

The SA.No.14/2025 stands allowed,

(i) The measures leading to the procurement of S.14 order is set aside.

(ii) The respondent Bank is directed to restore the actual physical possession of the secured asset to the applicant,

if possession has already taken pursuant to the impugned measures.

(iii) It is open to the respondent Bank to re-initiate the measures in accordance with law, after duly complying with the mandatory requirements prescribed under the Security Interest (Enforcement) Rules.

(iv) No order as to costs.

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

(Dictated to the Stenographer (PR), after her transcription and necessary corrections, signed and Order passed on this 27th day of August 2026)

Sd/-

(T. RAJESH)
PRESIDING OFFICER