DEBTS RECOVERY TRIBUNAL No.1, MUMBAI

ORDER
In
TRANSFER SECURITISATION APPLICATION NO. 4 OF 2026
(Delivered on 11.09.2026)

Nitin Vasant Modak ... Applicant/s

Versus

Cholamandalam Investments ... Respondent

Advocate Charles De'Souza i/b Adv. Preeti Barde for the Applicant.
Advocate Sanjay Anabhawane a/w Adv. Medha Rane for the Respondent.
Advocate Yogesh Hari Jare for the Respondent no. 7 & 8.

ORDER

1. The averments raised by the applicant in brief are as follows:-

"Applicant is neither a borrower, mortgager nor a guarantor. The premises herein belonged to his late father Sri Vasanth Modak, which had devolved on him, his brother as R2 and mother as R4 as his legal heirs, as the father had passed away on 21.12.2024. The applicant was abroad and R2 and R4 along with R3 the wife of R2, had conspired together and had collusively mortgaged the property in favour of the Financial Institution as HDB, which loan was later on transferred to R1. By setting up a bogus Will, by the late father claiming the premises

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to have been bequeathed in favour of R4, and by creating forged records, they mortgaged the premises which contained a two storied building constructed by the late father with a total built up area of 162.50 sq.mts. On the loan getting declared as NPA, SARFAESI measures were initiated by R1, but no notice was issued to the applicant, despite him being a legal heir of the late father. Applicant on getting back to India, filed two suits before the Civil Court, as Suit No. 185 of 2019 for cancellation of mortgage and for correction of mutation entry and Suit No. 591 of 2021 challenging the Will. Police complaint was also filed by the applicant. R2 to R4 had admitted before the civil court expressing their inability to produce the original Will. Symbolic Possession was taken by R1, and physical possession was initiated, pursuant to the order of Ld. Magistrate u/s 14 of SARFAESI Act. After repeated attempts at auction of the premises, it was effected and finally confirmed on the seventh attempt on 25.03.2025 in favour of R7 and R8. The said sale conducted is in gross violation of Security Interest Enforcement Rules, herein after stated as SIE Rules. However, the possession could not be handover owing to the pendency of the SA".

2. So by way of the present petition the applicant seeks to grant the reliefs sought for in the amended petition, to set aside the auction

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conducted on 25.03.2025 and to restrain the respondent/bank from proceeding with further steps, pursuant to the said auction, which was not in accordance with rules and due procedure.

3. R1 filed a written statement raising the following averments which in brief are as follows:-

"R4 the mother of applicant had become the exclusive owner of premises herein by way of Will executed by the late father in her favour. Mutation was effected by her in 2006 and her name was got entered in the records of the society, housing the premises herein, as the owner. On the society issuing NOC in favour of HDB Financial Institution, mortgage was created in favour of HDB and the said loan was later taken over by R1. Fresh mortgage deed was executed by R2 to R4 on 10.02.2014, and it was registered on 11.02.2014. On the loan getting declared as NPA, SARFAESI measures were initiated by R1 and enforcement of security was effected by R1. The applicant has no locus now, to challenge the SARFAESI measures initiated by R1 and so the contention of applicant are to be dismissed with costs."

4. R7 and R8 raised objections on the following grounds:-

"R7 and R8 are the successful auction purchasers of the premises. The entire sale consideration was credited to the account of the bank by

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07.04.2025. The auction in favour of R7 and R8 is confirmed at the 7th attempt as the earlier intended auctions had failed for want of bids. The sale certificate is not issued owing to the pendency of IA 971 of 2025, filed by the applicant to stay the sale. The auction purchaser has been kept devoid of the possession and ownership of the premises, due to the pendency of IA 971 of 2025. They had paid the amount out of their hard earned money, and further stay on the issuance of sale certificate will result in undue hardship to the auction purchasers. So the present SA is only to be dismissed."

5. Based on the pleadings the following points arise for consideration:

1) Whether the applicant has a valid cause of action to sue?
2) Whether the auction conducted on 25.03.2025 suffers from any invalidity?
3) Whether the applicant is entitled to any relief as prayed for?
4) Relief or cost?

6. <u>Points 1 to 3</u>

Applicant contends that despite being a legal heir of the late father along with R2 and R4 who was the owner of the plot and

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bungalow herein, R2, R3 and R4 by setting up a bogus Will by the late father claiming the extent to have bequeathed to R4, and by creating false and fabricated documents, had created a mortgage for the premises in favour of the Financial Institution as HDB, which was later on transferred to R1.

7. Applicant further contends that, on the loan getting declared as NPA, SARFAESI measures were initiated and R1 obtained order u/s 14 from Ld. Magistrate, took symbolic possession of the premises and also effected physical possession of the same. After repeated attempts at auction, it was finally sold at the 7th attempt to R7 and R8. The entire proceedings initiated by R1 are in violation to the rules and procedure.

8. Applicant urges that, the name of R4 was entered in the records of the society, housing the premises and the loan is granted on the basis of the letter issued by society, which cannot confer any title on R4. Applicant who is unaware of the financial transaction, is neither a mortgager nor guarantor and has not signed in any loan records.

9. Applicant states that the first loan availed from HDB to the tune of Rs.37,50,000/- (Rupees Thirty-Seven Lakhs Fifty Thousand Only) is seen secured by mortgage on the ground floor having a built up

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area of 81.296 sq.mts., of the two storied bungalow having a total built up area of 162.50 sq.mts. The first floor is occupied and is in possession of the applicant. The respondent has produced a copy of NOC stated to be given by the applicant, but no such NOC was given by the applicant.

10. It is again contended by applicant that, the borrowers then had obtained a home equity loan for Rs.80;00,000/- (Rupees Eighty Lakhs Only) and Rs.60,00,000/- (Rupees Sixty Lakhs Only) for which, the entire property of the late father, over which applicant also is having a share is mortgaged. On the loans getting declared as NPA, SARFAESI measures were initiated and applicant on coming to know about the illegal act by R1 to R4, had preferred suits as Suit No. 185 of 2019 for cancellation of mortgage and Suit No. 591 of 2021 challenging the Will.

11. According to the applicant, the Respondent No. 2 to 4 cannot create a mortgage with respect to the entire plot and bungalow, on the basis of a forged will, or on a bogus NOC stated to be issued by him. As the entire proceedings are based on fraud, the mortgage and the auction conducted are to be set aside. Further NOC given by the society which has been dissolved in 2013, has no legal validity. So the entire transaction of the mortgage is created on false and fraudulent documents.

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12. It is again contended by the applicant, the entry of the name of the R4 mother in the records of the society does not confer any title for her over the premises. The applicant relies on the dictum of Hon'ble High Court of Bombay in Gopal Vishnu Ghatnekar Vs Madhukar Vishnu Ghatnekar, that the purpose of nomination is to make certain the person with whom the society has to deal, and not to create interest in the nominee, to the exclusion of those who in law will be entitled to the estate.

13. R1 contends that, applicant had initially assailed the sale fixed for the first floor of the mortgaged property and has challenged the physical possession of the secured asset concerning the first floor and sale of the first floor, on the ground that, he is the co-owner of the property herein. Credit facilities to the tune of Rs.60,00,000/- (Rupees Sixty Lakhs Only) and Rs.80,00,000/- (Rupees Eighty Lakhs Only) have been granted to R2 to R4 after executing loan agreement in favour of R1. On getting the account classified as NPA demand notice u/s 13(2) of SARFAESI Act was issued to R2 to R4. Symbolic Possession was taken. Order u/s 14 of SARFAESI Act was obtained and physical possession on the basis of Section 14 order was taken.

14. R1 further contends that without going into the question of the validity of mortgage, for which the Tribunal is not competent,

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whether a valid security interest exists for R1 to proceed under the SARFAESI measures cannot be considered by this forum. There is no denial offered by respondents, to the position that, civil suits are pending challenging the Will, mortgage and criminal proceedings are also pending alleging fraud. It is further contended by R1 that, the attempt of the applicant to stay the physical possession of the secured asset was unsuccessful as per the order of the Tribunal passed on 28.06.2024. The appeal on the said order before Hon'ble DRAT also did not succeed.

15. According to R1 the attempt by the applicant to challenge the same by urging for the very same relief again cannot be allowed. It is an admitted fact that two suits are pending before the Civil Court, which is the competent authority to decide as to the validity of the mortgage, validity of the will and the co-ownership right, if any, for the applicant. Whether the applicant can be treated as a co-owner to the premises along with R2 and R4 can be considered only by the Civil Court.

16. R1 further contends that, the applicant cannot challenge the validity of mortgage before DRT, which has no power to enter into a finding regarding the same. The jurisdiction for the same lies with Civil Court. As the suit filed by applicant for cancellation of mortgage is pending

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before Civil Court, he cannot urge the same issue before this forum which is incompetent to entertain the same.

17. Ld. Counsel for R1 is basing his arguments on Central Bank of India & Anr. Vs. Smt. Prabha Jain & Ors. 2025 INSC 95 urge that this Tribunal cannot go into the said records now, because such a course would result in this forum deciding on the validity of mortgage for which the forum has no competency. The action taken by respondent in the proceedings herein is valid and proper and so the contention of applicant is only to be dismissed.

18. According to R1 the two suits filed by the applicant before Civil Court for cancellation of mortgage deed and challenging the will, wherein applicant himself is a witness will have to be decided and the same cannot be considered by this forum. So the contentions of the applicant cannot be entertained.

19. Heard both sides.

20. It is true that this forum as DRT lacks jurisdiction to entertain and decide on question of validity or correctness of mortgage, on the question as to whether applicant is a co-owner as claimed by him, on

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the question as to whether a valid or proper Will had been executed by the late father, whether R4 the mother was having valid title over the premises and as to whether the mortgage created for the entire premises as is now claimed by respondent, is proper.

21. But the Tribunal can certainly look into the points as to whether the enforcement of security effected by the respondent for the premises herein is valid or proper. The demand notice issued by respondent u/s 13(2) of SARFAESI Act, which is the basic and primary step in the enforcement of security shall be examined. At the outset, it must be stated that, the schedule to the said notice, though states about a building having an extent of 81.296 sq.mts., it does not specify whether it is the first floor or ground floor of the two storied building.

22. Perusal of the notice u/s 13(2) of SARFAESI Act shows that, break up of the alleged outstanding dues, the principal, interest, penal interest, other charges, if any, the floating rate of interest applied by respondent periodically are not stated therein. Further the signatory in the said notice does not state the designation of the person who had signed in it.



23. So the notice u/s 13(2) which is bereft of details u/ss 13(3) and is seen in violation to the dictums laid down in Saraswat Co-op Bank Ltd. Vs. National Flank Industries Ltd. 2025 SSC Online Bom 3332 and in Punjab National Bank Vs. Mithilanchal Industries Pvt. Ltd. (2020) SSC Online Guj 3441. The spirit of both the dictums is that the notice without stating the details u/s 13(3) is bad in law.

24. Both the said dictums direct that the details as required u/s 13(3) of SARFAESI Act are to be mandatorily provided. It is further directed in the judgement in PNB Vs Mithilanchal Industries Pvt. Ltd., that the action taken u/s 13(4) by secured creditor would depend on its validity and legally justified action having been taken in the previous Sub-Sections of Section 13 under Sub-Section (1) (2) (3) and 3(A) of the SARFAESI Act.

25. It is further directed in the aforesaid dictums that, if the requirements provided under the said sub sections are not fulfilled by the secured creditor, the further steps proceeding from them are defective. It is also stated therein in the said decision that, if these details are not provided, which are mandatory in nature or which casts a mandate upon the secured creditor to provide such details, the notice would be bad in law. As the initial step as the notice u/s 13(2) of SARFAESI Act is bad in law, the

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entire further proceedings based on the said notice is to be taken as bad in law.

26. In the decision represented as (Chairman-Cum-Managing Director, Coal India Ltd & Ors. Vs. Ananta Shah & Ors. (2011) 5SCC 142), it is held as follows:-

> It is a settled legal position that if the initial action is not in consonance with law, subsequent procedure would not sanctify the same. In such a situation, the legal maxim sublato fundmento cadit opus is applicable, meaning thereby in case a foundation is removed the superstructure falls.

27. So it has to be held that the notice u/s 13(2) of SARFAESI Act is defective, for want of details u/s 13(3), designation of authorised officer as the signatory and for want of proper description of the scheduled extent. In obedience to the aforestated dictum all further actions pursuant and based on this defective notice u/s 13(2) must be stated to be improper.

28. Much arguments are offered by both sides regarding the right of the applicant as a co-owner, the validity of the Will, the right of R4 mother to create a mortgage on the basis of her name being entered in the society records, and on the existence or non-existence of a valid mortgage.

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As stated earlier, none of these contentions can be entertained by this forum which is incompetent to decide the aforesaid issues.

29. The issue now before this Tribunal is limited to the sole question as to whether enforcement by respondent of the security interest created for the auctioned property and whether auction conducted, are valid and proper. The notice u/s 13(2) dated 23.11.2018, describes the property in the schedule as Plot No. 11 admeasuring Plot area 209.11 sq.mts., thereon constructed bungalow admeasuring built up area 81.296 sq.mts in Abhyuday Co.Op.Hsg.Soc Ltd. Gangapur Road Beside S.T. Colony Survey No. 706/1A/1/1/11 within the limits of Nashik Municipal Corporation Nashik.

30. As stated earlier it is pertinent to note that, the description in the schedule to notice u/s 13(2) of SARFAESI Act does not specify whether the extent is of the ground floor or first floor. The Ld. Counsel for respondent at the time of hearing contends that, the description is for the first floor of the bungalow. What is the basis for such an argument for the respondent is not clear. Admittedly the bungalow is having a total built up area of 162.50 sq.mts.

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31. The description of the property in the schedule of section 13(2) of SARFAESI Act shows an extent of 81.296 sq.mts. So the security interest created in favour of the secured creditor, as is seen from the notice u/s 13(2) of SARFAESI Act is seen to be only for an extent of 81.296 sq.mts., of the total built in area of 162.50 sq.mts. But on 28.06.2024, respondent is seen to have taken possession of the entire bungalow, which includes an extent which is outside the secured extent.

32. Respondent now contends that, the first floor was under construction at the time of mortgage, and on production of completion certificate, the first floor and ground floor were taken possession by respondent. This argument cannot be accepted. The mortgage deed, notice u/s 13(2) of SARFAESI Act, sale notice all state the extent of security created as 81.296 sq.mts. Then how the respondent can take possession of an extent which is in excess of the extent, stated in the aforesaid records, is not properly explained by him.

33. The possession notice dated 20.03.2019 also gives the very same description of the scheduled premises. There is no substantiated case for R1 that, separate notice for the entire premises was issued as is now claimed by respondent had been issued. R1 can proceed against only

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that extent for which security interest was created which is for an extent of 81.296 sq.mts.

34. R1 contends that, for the first floor, proceedings are effected, on the basis of completion certificate furnished for creating security. This contention cannot be accepted. Respondent cannot legally take action against the premises which are not covered as the security interest. The secured creditor to auction a property under SARFEASI Act, extends strictly to the specific property defined as secured asset. Submission of completion certificate for an extent does not automatically create a security interest over the said extent, also, along with the secured extent for which mortgage is seen created.

35. Under section 13 of SARFAESI Act, banks can only proceed against that extent listed in the schedule of property, in the notice u/s 13(2) of SARFAESI Act. R1 cannot unilaterally expand its coverage of security interest to any other extent in the premises simply because it is part of the same structure, for which a completion certificate is stated to be filed.

36. Legal status of a completion certificate is only as an administrative document from local municipal authorities certifying that a

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building aligns with approved construction norms. Furnishing a completion certificate to a bank, is standard financial due diligence, to prove legal construction. It does not equal a transfer of property rights, nor does it function as an amendment to the security interest created.

37. Here respondent is seen to have taken possession of the entire 162.50 sq.mts., built area of the bungalow, which extent is not seen stated to be the security extent in the notice u/s 13(2) or any other records now relied on by respondent. Enforcement of a security interest, which is in excess of the extent that is stated in section 13(2) notice cannot be allowed to be effected. Without giving into the question of validity of mortgage, DRT is competent to enter into such a finding regarding the correctness of enforcement of security by respondent.

38. Banks at times attempt to claim additional construction under section 70 of the Transfer of property Act. This applies, if a modification cannot be separated from the original asset (eg. adding a room inside the house). Here, the completion certificate produced is for a structure, as a separate, distinct, residential unit with its own potential for independent use. So it is to be treated as a distinct property and does not automatically merge into the extent, already for which security interest is created. So the respondent can proceed against only that extent for which

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mortgage is created which in this case is seen to be for 81.296 sq.mts., built up area.

39. There is no denial to the position that, the construction of the bungalow was completed prior to the creation of the mortgage. The valuation report by R1 itself records the total built up area as 162.50 sq.mts., yet the security interest is seen to be created only for 81.296 sq.mts. So it is seen that even though there was a total built in area of 162.50 sq.mts., security interest is created only for an extent of 81.296 sq.mts. As stated above, whether the said extent of 81.296 sq.mts., is the ground floor or top floor is not clearly stated in the notice u/s 13(2) of the SARFAESI Act.

40. So without determining or fixing the exact extent for which mortgage is created, for which proceedings are pending before civil court, how R1 had taken possession of the entire extent of the bungalow, thereby taking possession of the extent of 162.50 sq.mts, is not explained by R1. Further the possession is taken by a circle officer which is illegal as Tahsildar had no right to delegate his power to another, as he himself is a delegatee. From the above, it is seen that, the procedure adopted by R1 in pursuing the SARFAESI measures, right from issuing notice u/s 13(2) of SARFAESI Act, without providing details u/s 13(3), without specifying the

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designation of authorised officer, taking possession of extent for which security interest is not created, is incorrect.

41. Further the auction conducted by R1 wherein the sale notice does not specify the encumbrance cannot be ratified. There need not be much deliberation on the point that existence of litigation with respect to the secured asset is an encumbrance to the premises. Here R1 is admittedly a party to the said litigations before the Civil Court filed by Mr. Nitin Modak, claiming co-ownership right over the premises herein. The said suit was pending on 20.07.2024 when sale notice was issued by respondent fixing the auction on 08.08.2024. So the proceedings initiated by R1 with respect to the premises herein without specifying the encumbrances cannot be ratified.

42. The records show that, Mr. Ramesh Pawar who was the successful bidder, and who had remitted 25% of the amount, had withdrawn from remitting the balance 75% of the amount, due to which R1 had forfeited the said 25% remitted by him. Mr. Ramesh Pawar had filed SA 6 of 2026 before this forum for return of the amount forfeited, stating that he had taken part in the auction, on the basis of the sale notice stating the encumbrances are not known.

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43. In SA 6 of 2026, the applicant therein as Mr. Ramesh Pawar claimed for refund of the amount, on the ground that, R1 had deliberately concealed the existence of litigation in the sale notice, despite R1 being a party to the litigation. The said matter as SA 6 of 2026 is also directed to be disposed off by Hon'ble High Court along with the present case.

44. The sale notice issued subsequently by R1 for the present auction which is conducted with respect to the premises herein, is silent on the point of stating about encumbrance, if any. But the auction purchasers as R7 and R8 have not raised any objection on that point.

45. The mere fact that the auction purchaser did not object to the lack of statement about the litigation does not by itself make the SARFAESI action by respondent legally proper. The important issue is whether the secured creditor complied with statutory duty to disclose encumbrances and material facts known to it before sale.

46. Under rule 8(7)(a) and (f) of SIE rules, the sale notice is required to include details of encumbrance for the premises and any other point necessary for a purchaser to know the nature of the property. The existence of litigation over the premises is definitely a matter coming under

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rule 8(7)(a) and (f) of SIE Rules. The Hon'ble Apex Court has emphasised that prospective purchasers should know the nature of the property and its encumbrances/material aspects before bidding. Here the R1 even though was actually a party to pending litigation, concerning the property, sale notice is seen issued without stating anything about pending litigations. The silence on the part of the auction purchaser does not cure the statutory violation by R1. If the secured creditor knowingly withheld a pending litigation from the sale notice, the lack of objection by purchasers cannot retrospectively convert an invalid or materially defective sale process into a valid one.

47. So on consideration of the entire matter it is seen that the proceedings initiated by R1 in enforcing the security interest are defective and in violation to the rules. The notice u/s 13(2) of SARFAESI Act, which does not specify the location of the premises as to whether it is first floor or ground floor, and which is bereft of details as required u/s 13(3) of SARFAESI Act, cuts at the root of the very case of R1.

48. The action of R1 taking over possession in excess of the extent that is stated in the notice u/s 13(2) of SARFAESI Act, the conduct of auction in violation of rule 8(7)(8) of SIE rules, in suppressing the details of encumbrance and in allowing the possession to be effected by circle office

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by way of delegation by Tahasildar are aspects which cannot be ratified in any manner.

49. The auction conducted by R1 with respect to the premises herein on 25.03.2025 therefore has to be set aside. The amount of Rs.1,51,00,000/- (Rupees One Crore Fifty-One Lakhs Only) with interest at 8% from 08.04.2025 which is the date of receipt of acknowledgement of amount by respondent shall be returned by R1 to R7 and R8 within a period of one month from the date of this order.

50. Applicant had sought for repossession of the first floor of the premises back to him. Such an order cannot now be ordered in view of the pending matter before the civil court regarding the rights of the parties as applicant, R2 and R4.

51. As of now, the entire action taken by R1 in enforcement of security interest is seen to be not in accordance with the SARFAESI Act and SIE Rules. So the contentions of the applicant are to be allowed.

52. SA is disposed off as follows:-

1) The notice u/s 13(2) of SARFAESI Act is found to be defective.

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2) The sale notice dated 03.03.2025 and the notices prior to the said date are not in accordance with the rules and are set aside.

3) The auction conducted on 25.03.2025 is set aside.

4) Within one month from the date of this order, R1 shall return the amount of Rs.1,51,00,000/- (Rupees One Crore Fifty-One Lakhs Only) to R7 and R8 at 8% interest, from 08.04.2025, which is the date of acknowledgement of receipt of the amount by R1 issued to R7 and R8.

5) The request of the applicant for restoration of possession of premises to him, is not being allowed in view of the matter pending before consideration by civil court.

6) Parties to suffer costs.

(Dictated to my Stenographer, transcribed by her corrected and signed by me and pronounced in open forum on 11.09.2026)

Date: 11.09.2026

Presiding Officer
Debts Recovery Tribunal,
Mumbai-I
(Sreekala Suresh)

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