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Fair Order

IN THE DEBTS RECOVERY TRIBUNAL - 1 AT ERNAKULAM

DATED THIS 29th DAY OF SEPTEMBER, 2026

PRESENT: Su. WILLYAHM, B.Sc., M.L.
[DISTRICT JUDGE - Retd]
PRESIDING OFFICER

S.A No.38 of 2018

Between

1. Varghese C.P, S/o Paily,
Chakiath House,
Vattaparambu,
Puliyanam P.O.,
Angamaly- 683 572

--- Applicant

And

1. Authorized Officer,
Canara Bank,
Kaloor Branch,
Ernakulam- 682 017.

2. M/s. V. International Import & Export,
Rep.by its proprietor,
Holy Tuesday Shopping Mall,
Near St. Antonys Church,
Kaloor- 682 017.

3. Joseph Thomas,
S/o Joseph P.H.,
Kizhakoodan House,
Bank of India Colony,
Kaloor- 682 017.

--- Defendants

This Securitization Application coming on 17.07.2026 for final hearing before me in the presence of Mr. Jithendran, Counsel for the applicant and Mr. Gopalakrishnan Nair Counsel for the D1 and the defendants 2 and 3 have been set exparte and upon hearing arguments of learned Counsels for both the parties and upon perusing the material on records, this Tribunal delivered the following:

O R D E R

1. This Securitisation Application was filed on 07.02.2018 praying to hold that the possession of the secured asset of the applicant by the 1st defendant bank is illegal and to set aside all the steps taken by the 1st defendant under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022 and order payment of compensation to the applicant.

2. The defendants 2 and 3 availed credit facility from the 1st defendant bank. The applicant and one Smt. Thressia stood as guarantors to the credit facility. The applicant created equitable mortgage over his immovable properties admeasuring 27.35 Ares comprised in survey No. 305/1/1, Parakkadavu Village Aluva Taluk Ernakulam District by depositing the title deed with 1st defendant bank.

3. Since the borrowers and guarantors defaulted in repaying of outstanding loan due, the loan accounts were classified as NPA. Annexure- D1(a) demand notice dated 08.12.2014 was issued to the applicant and the borrowers calling upon them to repay the outstanding loan due with accrued interest and other charges within a period of 60 days from the date of receipt of demand notice. The applicant and borrower did not send any representation/ objection to the demand notice and they also failed to discharge their liability due to the 1st defendant bank.

4. Therefore, the 1st defendant issued Annexure-D1(c) possession notice dated 05.03.2015 and another possession notice dated 09.03.2015 for symbolically taking possession of the secured assets.

5. Thereafter, the 1st defendant approached Chief Judicial Magistrate Court, Ernakulam and filed application and affidavit under Section 14 (1) of the SARFAESI Act, 2002. Order came to be passed in

MC No. No. 626/2017 appointing Advocate Commissioner for taking physical possession of the secured asset. The Advocate Commissioner issued AnnexureA2 notice dated 22.01.2028 informing them that he would take physical possession of the secured asset.. The applicant having aggrieved against the above measures filed this SA seeking for the reliefs stated supra.

6. The counsel appearing for the applicant submitted that the applicant is an illiterate man and that the 2nd defendant availed a loan from the 1st defendant bank and gave Rs. 30,00,000/- to the applicant and that for the availment of the above credit facility, the applicant and his mother mortgaged their immovable property with the 1st defendant bank and that the amount entrusted by the applicant with defendant 2 and 3 in order to remit the 1st defendant bank, was not remitted and that the defendant 2 and 3 subsequently availed open cash credit of Rs. 99,00,000/- which was later enhanced to Rs.1,65,00,000/- and that defendants 2 and 3 cheated the applicant and his mother and that similar cases are pending against the defendants 2 and 3 before this Tribunal and that the property mortgaged by the applicant is the agricultural land which is exempted under Section 31(i) of the SARFAESI Act, 2002 and that therefore SA may be allowed as prayed for.

7. The counsel appearing for the 1st defendant submitted that the 2nd defendant availed open cash credit facility to the extent of Rs. 80,00,000/- upon creation of equitable mortgage over the 1st applicants immovable property admeasuring 27.35 Ares comprised in survey No. 305/1/1, Parakkadavu Village Aluva Taluk Ernakulam District by depositing title deed with 1st defendant bank and also upon personal guarantee of Smt. Thressia and that the aforesaid open cash credit limit was enhanced to Rs.1,50,00,000/- upon execution of additional equitable mortgage by Sri.P.J George over his property and that subsequently, the aforesaid amount was enhanced to Rs. 1,65,00,000/- with the additional security of the property belonging to Sri. Tichu Tomy and that the applicant, Smt. Thressia, Sri.P.J George, Sri. Tichu Tomy and Sri. Joseph Thomas stood as guarantors for the aforesaid enhanced limit.

8. The counsel for the 1st defendant submitted further that since the operation of the loan accounts became irregular, loan accounts were classified as NPA and that though the applicant and the borrowers and the guarantors received the demand notice, they did not send any representation/ objection to the demand notice and they failed to respond to the terms of the demand notice and that therefore Annexure D1 © possession notices were issued and that possession notices were published and affixed and that secured asset of the applicant is not the agricultural land and that security interest over the secured asset has been registered with the Central

Registry and that the original application No. 314/2015 filed by the 1st defendant before this Tribunal was allowed on 30.12.2026 and that DRC No. 4724/2016 was also issued and that the measurers were initiated by the 1st defendant in compliance with the provisions of the Securitisation and Reconstruction of Financial Assets Act 2002 and Enforcement of Security Interest Rules, 2002 and that SA may be dismissed with costs of the 1st defendant.

9. The main contention raised by the applicant in the SA is that the secured asset is the agricultural land and that hence it is exempted under Section 31(i) of the SARFAESI 2002. At the instance of the applicant, the Advocate commissioner who was appointed by this Tribunal, inspected the secured assets on 22.07.2019 in the presence of the applicant, Canara Bank Manager Ms. Shubha and Agricultural Officer Ms.Dovelyn. After inspection of the secured assets, the advocate commissioner submitted a report dated 01.07.2019 Annexure A3 before this Tribunal.

10. In Annexure A3 report, the Advocate commissioner has stated that 4 Nos. coconut trees, 10 Nos banana plantain, 4 Nos, jackfruit trees, 42 Nos. nutmeg trees, and Pashion fruit creepers had been planted and that nutmeg trees and coconut trees were yielding and that there were two residential buildings in the land and that there is a well and water tank. She has also given her opinion that back side of the property was agricultural property and that agricultural activities were being carried on in the property.

11. It is pertinent to mention that the existence of the aforesaid trees which are fewer in numbers does not create the nature of the land as the agricultural land. Though the advocate commissioner has written in ink in her report as an " addition" that the agricultural activities were being done in the land, she has not stated as to whether what type of activities were being carried on in the property during her inspection. Hence, this Tribunal opines that the Annexure-A3 report submitted by the advocate commissioner cannot be considered as the conclusive proof in order to accept the contention of the applicant that the property is the agricultural land.

12. No document has been produced by the applicant in order to prove his claim that secured asset was the agricultural property on the date of creation of security interest over the same as laid down by the Hon'ble Supreme Court in ***Indian Bank and another v. K. Pappireddiyar and another - AIR 2018 SC 3540.*** Even assuming for argument's sake, that secured asset was agricultural property as claimed by the applicant, it should be presumed that he had not treated the property as agricultural property at the time of creation of mortgage over the same, as laid down by the Hon'ble Supreme Court in ***K.Sreedhar Vs. Raus***

Constructions Pvt. Ltd. (2023 SCC online SC 13) and ***ITC Limited Vs. Bluecoast Hotels Pvt. Ltd. & others [2018 (15) SC.***

13. Even assuming for argument's sake that the secured asset is agricultural property, as claimed by the applicant, he cannot claim the exemption under Section 31(i) of the SARFAESI Act 2002 in view of the dictum laid down by the Hon'ble Supreme Court in ***ITC Limited Vs. Blue Coast Hotel Limited & Ors.*** (AIR 2018 SC 3063) wherein it has been held as follows :

> ***"38. The purpose of enacting Section 31(i) and the meaning of the term "agricultural land" assume significance. This provision, like many others is intended to protect agricultural land held for agricultural purposes by agriculturists from the extraordinary provisions of this Act, which provides for enforcement of security interest without intervention of the Court. The plain intention of the provision is to exempt agricultural land from the provisions of the Act. In other words, the creditor cannot enforce any security interest created in his favour without intervention of the Court or Tribunal, if such security interest is in respect of agricultural land. The exemption thus protects agriculturists from losing their source of livelihood and income i.e. the agricultural land, under the drastic provision of the Act. It is also intended to deter the creation of security interest over agricultural land as defined in Section 2 (zf). Thus, security interest cannot be created in respect of property specified in Section 31.***
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> ***40. It is undisputed that these lands were mortgaged in favour of the creditor under a deed dated 26.02.2010. Obviously, since no security interest can be created in respect of agricultural lands and yet it was so created, goes to show that the parties did not treat the land as agricultural land and that the debtor offered the land as security on this basis. The undisputed position is that the total land on which the Goa Hotel was located admeasures 182225 sq. mtrs. Of these, 2335 sq. mtrs. are used for growing vegetables, fruits, shrubs and trees for captive consumption of the hotel. There is no substantial evidence about the growing of vegetables but what seems to be on the land are some trees bearing curry leaves and coconut. This amounts to about 12.8 % of the total area."***

14. The Hon'ble High Court of Kerala has held in ***Sharada Flour Products Pvt. Ltd. and Ors. vs. Dhanlaxmi Bank Ltd. and Ors.*** (MANU/KE/1979/2018), after referring to the judgment of the

Hon'ble Supreme Court in ***ITC Limited Vs. Blue Coast Hotel Limited & Ors.*** as follows :

> ***"52. Going by the holding of Blue Coast Hotels, Section 31 intends to protect agricultural land held for agricultural purposes by agriculturists. It also notes that the exemption protects agriculturists from losing their source of livelihood and income-- that is, the agricultural land-- under the drastic provision of the Act."***

In the present case on hand, admittedly the applicant is not an agriculturalist by profession. It is also not the contention of the applicant in the SA that he availed credit facility for agricultural purpose and that he eked out his livelihood from and out of the income derived from the agricultural sources. Therefore, he is not entitled to claim the aforesaid exemption even assuming for argument's sake that secured asset is agricultural property.

15. Though Annexure- D1(c) possession notices were issued in the month of 2015, the applicant did not file the SA challenging the aforesaid possession notices within the prescribed period of 45 days from the date of issuance of possession notices. In any event, the applicant has not pointed out any procedural irregularity in the SA in respect of issuance of the aforesaid possession notices.

16. 1st defendant has produced Ext. D1(k) copy of extract of CERSAI report in order to show that security interest over the secured asset of the applicant was registered with Central Registry. Therefore, the contention of the applicant that the security interest over the property was not registered with the Central Registry is incorrect.

17. Apart from the aforesaid contention raised by the applicant in the SA, there is no specific pleadings or contention in respect of filing of application and affidavit under Section 14(1) of the SARFAESI Act, 2002 before the Chief Judicial Magistrate Court, Ernakulam by the 1st defendant and also in respect of the order passed in MC No. 626/2017 by the learned Chief Judicial Magistrate, Ernakulam. Without challenging the aforesaid measures, the mere challenge in respect of Annexure- A3 notice issued by the Advocate commissioner is not sustainable.

18. In view of the foregoing reasons and discussions, this Tribunal holds that the applicant has failed to prove his case so as to get the reliefs sought for in the SA.

Resultantly, this SA No. 38/2018 stands dismissed. No costs.

Dictated to Steno, taken down, transcribed, typed by him, corrected and pronounced by me in the open court on this the 29th day of September, 2026.

(Su. WILLYAHM)
PRESIDING OFFICER

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List of documents filed by the Applicant along with the S.A.

Sl. No.	Date	Particulars	
1.	08.12.2014	Demand notice u/S 13(2) of SARFAESI Act, 2002	Annexure.A1
2.	22.01.2018	True copy of notice issued by the Advocate Commissioner	Annexurre.A2
3.	01.07.2019	Advocate Commissioner report	Annexure-A3

List of documents filed by the 1st defendant along with the written statement

1.	08.12.2014	Demand Notice	Annexure-D1(a)
2.	---	Acknowledgement card	Annexure-D1(b)
3	05.03.2015 & 09.03.2015	Possession notice	Annexure-D1(c)
4	05.03.2015	Paper publication in Mathrubhoomi daily	Annexure-D1(d)
5	11.03.2015	Paper publication in The Indian Express daily	Annexure-D1(e)
6	12.06.2015	Judgement in WP© 17616/2015 of the Hon'ble High Court of Kerala	Annexure-D1(f)
7.	27.06.2015	Letter No. 2942/261/17/215/TTV	Annexure-D1(g)
8.	30.06.2015	Acknowledgement card evidencing received the reply	Annexure-D1(h)
9	06.04.2015	Judgment in WP© 9474/2015 of the Hon'ble High Court	Annexure-D1(i)
10	24.07.2015	Judgment in WP© 19524/2015 of the Hon'ble High Court	Annexure.D1(j)
11	08.02.2018	True copy of CERSAI report	Annexure-D1(k)

(Su. WILLYAHM)
PRESIDING OFFICER

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