IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated this the 22nd day of September, 2026

SECURITIZATION APPLICATION No.282/2022

Between

K.Sivaprasad,
S/o.late Kumara Pillai,
Siva Bhavan, 39/1833,
New Byepass Road, Chalai,
Thiruvananthapuram – 695 036. …Applicant

And

1. M/s.South Indian Bank Ltd.,
Represented by its Branch Manager,
Tuticorin Branch,
Perara Street, Tuticorin – 628 001.

2. M/s.South Indian Bank Ltd.,
Represented by its Branch Manager,
Chalai Branch, Power House Road,
East Fort, Chalai Bazar, Chalai,
Thiruvananthapuram – 695 036.

3. Authorised Officer,
Asset Reconstruction Company (India) Ltd.,
IG, 1st Floor, Century Plaza,
No.560-562, Anna Salai,
Teynampet, Chennai – 600 018. …Defendants

This Securitization Application having been heard on 20.07.2026 in the presence of Advocate Sri.P.R.Milton for the

applicant, Advocate Sri.Mathew Jacob for defendants 1 and 2 and Advocate Savio, representing counsel for Advocate Sri.B.S.Suresh Kumar, for the 3rd defendant and stood over to this day for consideration, the Tribunal delivered the following:

F I N A L O R D E R

Challenging the securitization proceedings initiated by the defendants under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), the applicant/guarantor has filed this SA under S.17(1) of the SARFAESI Act seeking relief to declare Annexure-A4 demand notice and Annexure-A6 possession notice as illegal and set aside same. By way of amendment, the applicant sought for a declaration that since the suit bearing OS No.93/2021 is pending before District Court, Thoothukudi, order of the CJM is illegal and unsustainable.

Brief facts of the case:

2.1 The applicant, being one of the legal heirs of late Sri.S.Kumara Pillai, proprietor of M/s.SKP Timbers, has filed this SA challenging the securitization measures initiated by the defendants. It is claimed by the applicant that his father, being a proprietor of M/s.SKP Timbers, had availed various loans from different banks.

After closing all the loans, he availed a letter of credit facility of Rs.1.75 crores and a cash credit facility from the defendant bank. Being satisfied with the business activities and repayment of the loans promptly, the defendant enhanced the letter of credit facility up to Rs.70.50 crores and cash credit of Rs.10 crores. He was regularly repaying the loans. Subsequently, due to some restriction in importing timber from outside country, the turnover was reduced and consequently the letter of credit was scaled down from Rs.70.50 crores to Rs.10 crores. Subsequently, his business was affected due to unprecedent flood in the State of Kerala causing financial loss to his business and there was delay in repayment of the loan. In June, 2020, the facilities were restructured by the defendant bank and it was found that M/s.SKP Timbers was indebted to Rs.29.63 crores. Subsequently, after auditing the account from the year 2010, it came to the notice of the father of the applicant that the defendant has charged exorbitant interest in the loan accounts and collected excessive interest during the audit period from 2010 to 2020 amounting to Rs.31.16 crores.

2.2 The father of the applicant filed C.S.No.58/2020 before the Commercial Court, Thiruvananthapuram which was returned for presentation before the court of competent jurisdiction.

Accordingly, the case was filed before District Court, Tuticorin vide OS No.93/2021, which is pending.

2.3 The defendant classified the loan as NPA and issued a demand notice under S.13(2) of the SARFAESI Act calling the father of the applicant to discharge the outstanding amount of Rs.27,84,45,375.08. The objection to such demand notice was submitted by his father on 16.07.2021 pointing out illegalities in charging excessive interest in the loan accounts, for which a suit is pending before the Commercial Court, Tuticorin.

2.4 The father of the applicant passed away on 04.02.2022 being affected by Covid. The defendant issued possession notice against the dead person and took possession of the secured assets which is *ab initio* void. During pendency of the case, the applicant amended the SA claiming that the loan was declared as NPA on 31.03.2021 which is in violation of the master circular issued by RBI. In the SA the applicant has also challenged the proceeding initiated before the CJM, Thiruvananthapuram in MC No.1162/2022. The applicant has prayed to set aside the entire securitisation proceeding including the notice issued by the Advocate Commissioner in pursuance to the order passed by the CJM in MC No.1162/2022.

3. The 3rd defendant filed written statement claiming that the original lender South Indian Bank Ltd. has assigned the loans by assignment agreement dated 28.09.2021. The following are the details of loans availed by M/s.SKP Timbers on execution of the documents:

Nature of facility	Limit	Date of document or date of AOD	Balance outstanding as on 09.06.2021
CCOL (0090083000001282)	Rs.4,50,00,000/-	12.06.2020	Rs.4,22,04,620.67
WCTL-1 (0090652000000885)	Rs.21,20,00,000/-	12.06.2020	Rs.21,78,62,898.43
WCTL-2 (0090652000000886)	Rs.28,80,000/-	12.06.2020	Rs.29,59,881.96
FITL (0090652000000883)	Rs.3,32,35,000/-	12.06.2020	Rs.1,54,17,974.02

The father of the applicant acknowledged the debt and security in favour of the original lender bank. As the borrowers neglected to pay the dues and committed default in repayment, the original lender classified the accounts as NPA on 31.03.2021 and issued demand notice under S.13(2) of the SARFAESI Act calling the original borrower to pay the outstanding loan amount. The demand notice was issued as per the statutory requirement, and all other measures are taken in accordance with law. There is no illegality in any manner in the proceedings initiated before the CJM under S.14

of the SARFAESI Act. In absence of any illegality, the SA, being devoid of any merit, may be dismissed.

4. After amendment of the SA, the 3rd defendant filed additional written statement with relevant documents and claimed *inter alia* that there is no illegality in classifying the loans as NPA. In absence of proof of any illegality in the securitisation proceedings, the SA may be dismissed.

5. From the respective case of the applicant and the defendants, the following points emerged for adjudication in this case:

(i) Whether there is any illegality or irregularity or defect in the securitization proceedings initiated by the defendants to interdict with the same?

(ii) Whether the applicant is entitled to get any relief in this case?

FINDINGS:

Point Nos.(i) & (ii):

6. For the sake of convenience, both the points, being interlinked with each other, are taken up together for adjudication. During argument, learned counsel for the applicant contended that the loans were restructured on execution of relevant documents on

12.06.2020 and offered 18 months as interest-free period and the repayment period was extended up to eight years which was agreed by the defendant. The cash credit facility was converted into two other loans i.e., working capital term loan and funded interest term loan but the said amount was adjusted towards interest in the loan account during the interest-free period of 18 months. Since there was postponement of charging of interest for a period of 18 months after restructuring of loan, classifying the loan as NPA is illegal and against the guidelines of RBI. Further, the defendant has not considered the objection of excessive charging of interest as raised by the father of the applicant. Without resolving the issue, action of the defendants to proceed with the securitisation proceeding is purely arbitrary. So also, issuance of possession notice against the dead person is invalid under the law. There was also illegality in the proceedings initiated before the CJM. During pendency of civil suit for settlement of account, the defendant cannot proceed with securitization proceeding. In such premises, the applicant cannot be evicted from the secured asset, and the defendant is not entitled to recover the money from him.

7. The 3rd defendant would contend that after restructuring the loan facility on 12.06.2020, it was found that

M/s.SKP Timbers is indebted to the defendant bank to the tune of Rs.29.63 crores. The contention raised by the applicant is that as there was a holiday period of 18 months in view of the sanction intimation letter dated 12.06.2020 marked Annexure-D5, classifying the loan as NPA is illegal. From the documents placed, holiday period in paying the interest is only for WCTL and FITL facilities but the same is not applicable to CCOL account. Due to non-service of interest, CCOL account was turned to NPA. Consequently, other facilities were also classified as NPA in view of the master circular issued by RBI. Hence the contention of the applicant regarding illegal classification of all the accounts as NPA is not acceptable. The applicant has also admitted that commercial suit is pending before the competent court alleging charging of excessive interest. Hence raising the similar contention in this proceeding is not legally sustainable. All the statutory measures are duly compiled. In absence of any illegality, the SA may be dismissed.

8. Admittedly, father of the applicant availed CCOL limit from the original lender South Indian Bank Ltd. which was restructured during his life time on 12.06.2020. Other loans i.e., WCTL-1, WCTL-2 and FITL were also renewed on the same day on

12.06.2020 as per the documents filed by the defendant marked Annexures-D2 to D4. Sanction letter is produced by the defendant as Annexure-D5, letter of acknowledgement of debt dated 12.06.2020 marked Annexure-D6, copy of agreement of hypothecation dated 12.06.2020 marked Annexure-D7 and Annexure-D8 is the agreement of guarantee executed by the deceased borrower and others on the same day on 12.06.2020. It is contended by the learned counsel for the applicant that as per the terms of restructuring of facilities, 18 months interest free holiday period was given from the date of revival and hence classifying the loan as NPA during that period w.e.f. 31.03.2021 is illegal.

9. Whereas, learned counsel for the defendants would contend during oral argument and in the written notes that holiday period was not granted for interest repayment and the CCOL loan exceeded the limit of Rs.4.50 crores which turned into NPA. Consequently, other loans were also classified as NPA and hence there is no illegality in the classification of accounts. In support of such contention, learned counsel has produced relevant account statement marked Annexure-D11 which indicates that the loan was irregular which exceeded the limit from 31.12.2020 and interest

was not serviced. On 31.03.2021, the outstanding was Rs.4,71,82,540.91 and hence the same was classified as NPA. No counter affidavit is filed by the applicant in denying correctness of such account statement.

10. As per clause 4.2.7 of RBI circular No.DBR.No.BP.BC.2/21.04.048/2015-16 dated 01.07.2015, loans are to be classified as borrower-wise and not facility-wise. Since all the loans availed by the applicant are under one customer ID, classifying other loans as NPA cannot be said to be illegal in any manner. Further, after receipt of the demand notice, the father of the applicant submitted a reply marked Annexure-A5 dated 16.07.2021 wherein he has not whispered any illegality in classifying the loan as NPA. Only claim was advanced in disputing the excessive charging of interest. In such premises, raising the contention by the applicant after death of his father in this forum is not entertainable and sustainable.

11. The next point was raised by the learned counsel for the applicant that father of the applicant, the sole proprietor of the business, raised objection after receipt of the demand notice that on verifying the loan accounts through a chartered accountant, he came to know that an amount of Rs.14.45 crores was charged

excessively towards interest in the loan account from 2010 to 2020, which the defendant is not entitled to realize. Hence the applicant filed civil suit bearing CS No.58/2020 before the Sub Court, Thiruvananthapuram for settlement of the accounts. The said suit was returned for presentation before proper forum. Accordingly, the suit was filed before the competent forum which was registered as OS No.93/2021. Hence the defendant is not entitled to claim excess amount and cannot proceed with the securitization proceeding.

12. The learned counsel for the defendants would contend that the applicant and his father, the sole proprietor of the business concern, renewed the loans and restructured the CCOL limit and availed other loans by executing relevant documents. They also executed agreement of hypothecation marked Annexure-D7 and agreement of guarantee. The present applicant is also a signatory to such agreement and now he cannot turn back in disputing or challenging the claim in the loan account.

13. On consideration of the submissions, there is no dispute that the applicant and his father and other guarantors renewed all the loans and executed relevant documents on 12.06.2020 as produced by the defendant. Since the applicant accepted the outstanding in the loans at the time of renewal by executing

relevant documents, now they are estopped to claim excessive charge of interest in the loan account from the year 2010 based upon the principle of estoppel.

14. Even if the contention of the learned counsel for the applicant has any relevancy in excessive charge of interest, the same cannot be a ground to interdict with the securitizations proceeding and the said issue also cannot be adjudicated in this forum. In a Full Bench judgement of the Hon'ble Madras High Court in the case of ***M/s.Lakshmi Shankar Mills (P) Ltd. & others vs. The Authorised Officer/Chief Manager, Indian Bank & others*** *[judgement dated 15.04.2008 in W.P.Nos.37148 & 37534/2007]*, at paragraph 21 it is held as follows:

> *"21. ……. However, we hasten to add that while considering the question of validity of the action of the bank, it is not necessary for the Tribunal to adjudicate the exact amount due to the secured creditors. In other words, the purpose of an application under Section 17 is not the determination of the quantum of claim per se as the Tribunal is concerned with the issue of the validity of the measures taken by the banks/financial institutions under Section 13(4). In our opinion, the judgment of the Division Bench in Mison Leathers Ltd., lays down the law correctly and does not require any reconsideration*."

In view of this ratio, scope of adjudication of the Tribunal is limited and it is only required to consider and adjudicate any illegality in the securitization proceeding. Hence the contention of the learned counsel for the applicant has no force and is not acceptable.

15. The father of the applicant, proprietor and borrower of the loan, has specifically stated in paragraph 8 of the reply to the demand notice marked Annexure-A5 that existing loan amount of Rs.25.70 crores, being the cash credit facility, was converted into term loan of Rs.21.20 crores and cash credit of Rs.4.50 crores. It is admitted that he has also availed other loans and executed relevant documents to avail such facilities. In such premises, the contention raised by the learned counsel for the applicant disputing the claim amount is not acceptable.

16. It is claimed by the applicant that possession notice marked Annexure-A6 was issued to father of the applicant S.Kumara Pillai, the sole proprietor of M/s.SKP Timbers on 11.05.2022. By the time of issuance of the possession notice, S.Kumara Pillai died and hence the possession notice is void. Consequently, all the securitization proceedings render illegal.

17. Annexure-A6 possession notice was issued to father of the applicant and all the guarantors, who are legal heirs of the deceased S.Kumara Pillai. The legal heirs being the guarantors were informed in taking of the measure under S.13(4) of the SARFAESI Act and hence the possession notice cannot be treated as void.

18. The applicant has also filed civil suit bearing OS No.93/2021 before the District Court, Tuticorin for settlement of the account. Learned counsel for the applicant contended that since the OS is filed before the competent forum, securitisation proceeding may be kept in abeyance till final disposal of the said OS. This contention is not acceptable. Merely because the applicant has filed OS before the commercial court, the same cannot be a ground to keep the securitisation proceeding in abeyance. In a judgment of the Hon'ble Apex Court reported in *2022 (6) KLT SN 32* in the case of ***Bank of Rajasthan Ltd. vs. VCK Shares & Stock Broking Services Ltd.***, it was considered that due to filing of suit before civil court, defendant is not permitted to stay on the decision of the DRT awaiting the verdict of his suit before the civil court. The said principle is applicable to the present case. Due to such filing of the civil suit, the applicant has no valid contention to keep the proceeding in abeyance and the same is not accepted.

19. No material illegality is noticed in the application and affidavit filed by the defendant before the CJM to interdict with the same. The applicant has failed to establish any substantial illegality in the securitization proceeding to interdict. Both the points are answered against the applicant.

Hence it is ordered:

ORDER

20. In view of the foregoing reasons and with the above observation, the SA, being devoid of any merit, is hereby dismissed with cost of Rs.20,000/- (Rupees twenty thousand only) for causing unnecessary delay in the securitisation proceeding.

(Dictated to my PA, corrected and pronounced by me in the open Tribunal on this the 22nd day of September, 2026)

[SOVAN KUMAR DASH]
PRESIDING OFFICER

Documents on the part of the applicant

Annexures	Date	Particulars of documents
Annexure-A1	23.02.2022	Copy of death certificate issued by Thiruvananthapuram Corporation.
Annexure-A2	15.12.2020	Copy of plaint in OS No.93/2021 filed before the District Court, Tuticorin.
Annexure-A3	16.02.2021	Copy of written statement filed by the 1st defendant in OS No.93/2021.
Annexure-A4	10.06.2021	Copy of demand notice issued under S.13(2) of the SARFAESI Act.
Annexure-A5	16.07.2021	Copy of reply issued by M/s.SKP Timbers.
Annexure-A6	11.05.2022	Copy of possession notice issued by the 3rd defendant.
Annexure-A7	17.05.2022	Copy of paper publication of possession notice in The New Indian Express daily.
Annexure-A8	25.05.2022	Copy of order of the Hon'ble Madras High Court, Madhurai Bench.
Annexure-A9	15.09.2022	Copy of MC No.1162/2022 filed by the 3rd defendant before the CJM, Thiruvananthapuram.
Annexure-A10	10.10.2022	Copy of order in MC No.1162/2022 of the CJM, Thiruvananthapuram.
Annexure-A11	07.08.2023	Copy of notice issued by the Advocate Commissioner in MC No.1162/2022 and its English translation.
Annexure-A12	…	Copy of audited statement of account belonging to the applicant.
Annexure-A13	28.08.2020	Copy of letter issued by the applicant to the defendant bank.
Annexure-A14	18.09.2020	Copy of the letter issued by the applicant to the defendant bank for appointing a conciliation officer.

Annexure-A15	25.09.2020	Copy of reply issued by defendants 1 and 2 to the applicant.
Annexure-A16	13.10.2020	Copy of letter issued by the defendant bank to the applicant.
Annexure-A17	24.11.2020	Copy of non-starter report issued by the District Legal Services Authority, Thoothukudy.
Annexure-A18	04.05.2024	Copy of notice issued by the Advocate Commissioner.

Documents on the part of the 3rd defendant

Annexure-D1	12.09.2021	Copy of assignment deed.
Annexure-D2	12.06.2020	Copy of credit facility agreement executed by the borrower in respect of CCOL facility.
Annexure-D3	12.06.2020	Copy of credit facility agreement in respect of WCTL-1.
Annexure-D4	12.06.2020	Copy of credit facility agreement in respect of FITL facility.
Annexure-D5	12.06.2020	Copy of sanction letter issued by the defendant bank.
Annexure-D6	12.06.2020	Copy of letter acknowledging the debt and security.
Annexure-D7	12.06.2020	Copy of agreement of hypothecation executed by the borrower.
Annexure-D8	12.06.2020	Copy of agreement of guarantee.
Annexure-D9	10.08.2021	Copy of reply issued by the 1st defendant to the representation submitted by the applicant.
Annexure-D10	17.05.2022	Copy of possession notice published in Mangalam daily.

PRESIDING OFFICER

IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated the 22nd September, 2026

SA No.282/2022

Between

K.Sivaprasad,
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