ORDER SHEET

DEBTS RECOVERY TRIBUNAL, SILIGURI

SA/215/2025

Billy Pappalil Jacob — Applicants
Vs
ICICI Bank Ltd. — Respondents

Date of Order	Order with Signature	Office action with date and dated signature of parties when necessary.

Item No.40 **Order No.**
28.09.2026

Present :-

Counsel for the Applicant : Mr. Rishav Das, virtual mode.

Counsel for the Respondent : Mr. Sagnik Bhowmick, physical mode.

Judgment is passed in SA/215/2025 and a copy of the Judgment is kept on record.

Let the judgment be uploaded on website of the Tribunal and the Registry is directed to serve/send copy of this judgment to the parties free of cost.

Record be consigned to the record room along with the judgment.

(RAKESH PATI TIWARI)
Presiding Officer
DRT-Siliguri

IN THE DEBTS RECOVERY TRIBUNAL, SILIGURI

S.A. No.215/2025

1. Billy Pappalil Jacob, C/o Late Pappalil Varkey Jacob, residing at Ranidanga Uttar, Ranidanga, Bagdogra, Siliguri, District Darjeeling, PIN- 734012.

……Applicant

Vs.

1. AUTHORISED OFFICER, ICICI BANK Ltd., Landmark Building (4th Floor), 228A, AJC Bose Road, Kolkata-700020, West Bengal.
2. THE BRANCH MANAGER, ICICI BANK Ltd., Saharan House, Sevoke Road, near Anandalok Hospital, Upper Bhanu Nagar, Dasrath Pally, Bhanu Nagar, Siliguri, West Bengal 734001.

……..……Respondents

Counsel for the applicant : Mr. Rishav Das

Counsel for the respondents : Mr. Sagnik Bhowmick.

PRESIDING OFFICER: RAKESH PATI TIWARI

Date of Judgment -28.09.2026

J U D G M E N T

1. Instant SA has been filed by the applicant under section 17(1) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act), challenging the Ld. District Magistrate, Jalpaiguri order passed on dated 13.05.2025 and also the 13(2) & 13(4) notices issued by the secured creditor.

   Apart from the above, four (4) I.A's bearing no. 836/2025, IA/135/2026, IA/382/2026 & IA/383/2026 have also been filed by the applicant, out of which IA/836/2025 has been filed against the self-same District magistrate order passed under section 14 of the SARFAESI Act on dated 13.05.2025. Thus, first of all order is being passed on SA & IA No. 836/2025.

ORDER ON SA & I.A. No. 836/2025

2. The case of the Applicant is short is that the applicant being a senior citizen and co-borrower with Benson Jacob under a "Loan Against Property" facility bearing Loan Account No. LBSGI00006280248 (Loan Application No. 77212909041) availed from ICICI Bank, Siliguri Branch, for the business "M/s Hill Queen Mushroom" and for repayment of investors' dues, created an equitable mortgage over the scheduled immovable property, which is also stated to be used as a Church. The Applicant alleges that, at the time of availing the facility, the Bank obtained his signatures on unfilled documents, non-judicial

stamps and printed forms without furnishing copies of the sanction letter or loan documents despite repeated requests, and thereafter allegedly filled up and converted such documents into loan documents without his knowledge or consent. He further states that he made regular payments towards interest and instalments and repaid a substantial portion of the loan, but the Bank allegedly failed to give due credit for such payments and raised a excessive outstanding amount, including allegedly charging interest at a rate higher than agreed. According to the Applicant, owing to losses suffered by the business during the COVID-19 pandemic and the subsequent demands of investors, he approached the Bank for further financial assistance and settlement, and from 2024 onwards repeatedly requested the Branch Manager to settle/regularise the account, but the Bank allegedly did not cooperate. The Applicant alleges that the Bank classified the account as NPA on 08.08.2023 without prior notice or opportunity to regularise the account and issued a demand notice under Section 13(2) of the SARFAESI Act dated 06.10.2023, which, according to him, was never served upon him and was not accompanied by the requisite statement of account. Further case of the applicant is that he first came to know of the NPA classification and SARFAESI proceedings from the order dated 13.05.2025 passed by the District Magistrate, Jalpaiguri under Section 14 of the Act, which he subsequently obtained from that office, and alleges that the Bank had obtained the said order on the basis of false statements and without complying with the statutory affidavit requirements under Section 14. The Applicant further alleges that the District Magistrate passed the said order mechanically without examining the statutory requirements and the nine particulars contemplated under Section 14(1), and that the order was passed beyond the prescribed period without reasons being recorded for the delay. The Applicant states that he received on 25.11.2025 a Notice of Intimation of Possession dated 25.11.2025, the Possession Notice dated 20.11.2025 issued under Section 13(4) read with Rule 8(1) of the SARFAESI Rules, and a pre-sale notice dated 25.11.2025, and alleges that symbolic possession of the secured property was thereby taken. According to the applicant, the possession notice was neither published in two newspapers nor affixed on the conspicuous part of the property, was not served upon all concerned borrowers/guarantors, and contained an incorrect description of the scheduled property differing from the title deed. The applicant further alleges that the Authorised Officer was not duly appointed in accordance with the Act and Rules and that various documents were forged and manufactured. The Applicant also challenges the legality of

the Section 14 proceedings on the ground that the Bank allegedly failed to comply with the amended statutory requirements and that the District Magistrate did not independently satisfy the requirements of Section 14. Further case of the applicant is that that the mortgaged property is a religious place and also his residence, that both he and his wife are senior citizens, and that dispossession or sale would cause irreparable prejudice and affect his right to property under Article 300A of the Constitution.

3. The respondents filed their written objection stating inter-alia that the application is barred by the principle of waiver, estoppels and acquiescence. Further, the applicant has no locus-standi to file the instant application. The contention of the respondent bank is that the account was classified as NPA from 08.08.2023 and 13(2) notice issued on 06.10.2023 and the said notice was not only duly posted but also widely published in two leading newspapers “MORNING INDIA” in English and “GANASHAKTI” in vernacular on dated 02.12.2023. It has been contended by the respondents that the 13(2) notice dated 06.10.2023 included a detailed, itemised computation of the liabilities demanded, fully aligning with the requirements stipulated in Section 13(3) of the SARFAESI Act. The Bank further states that, after expiry of the statutory period of 60 days from the demand notice, the Symbolic Possession Notice dated 07.02.2024 was duly issued and served in compliance with Rules 8(1) and 8(2), and was published on 13.02.2024 in “Morning India” and “Aajkal”, thereby providing statutory and constructive notice. The Bank denies the Applicant’s assertion that he was unaware of the NPA classification or SARFAESI proceedings and contends that the borrowers had full knowledge of the proceedings since 2023–24. It further submits that, pursuant to its application under Section 14, the District Magistrate, Jalpaiguri, after considering the documents and compliance placed before him, passed the order dated 13.05.2025 authorising assistance for taking physical possession of the secured asset, and that the Applicant’s challenge to the said order is without substance. The Bank states that, thereafter, physical possession of the mortgaged property was taken on 20.11.2025 and intimation thereof was duly given to the borrowers, the intimation notice, pre-sale notice, vacation notice and 30-day sale notice were served upon the borrowers and published on 25.11.2025 in “Morning India” and “Uttar Banga”, and the notices were also affixed at the conspicuous part of the mortgaged property on 20.11.2025.

4. Rejoinder has also been filed by the applicant stating therein that the present S.A. is maintainable and within limitation, as the cause of action arose from the latest Section

13(4) notice dated 20.11.2025 and letter dated 25.11.2025. The applicant disputes the validity and service of the alleged Section 13(2) and 13(4) notices, contending that the publications were made in Kolkata newspapers having no proper circulation in the applicant's locality or the location of the secured property, and that the published particulars, loan account and property description do not correspond with the present case. The applicant further disputes the authenticity, signatures and seals of the notices and alleges absence of proper proof of service and affixation. The applicant challenges the District Magistrate's order dated 13.05.2025 as mechanical and passed without considering statutory requirements, prior repayments, representations and the fact that the property is a religious place. The subsequent possession and sale proceedings are also disputed for want of proper statutory compliance and necessary particulars in the sale notice. The applicant further alleges discrepancies in the bank's affidavit, outstanding amount and notices, suppression of material facts, and failure to consider repayment proposals. Accordingly, the applicant contends that the bank's SARFAESI measures are irregular, legally unsustainable and liable to be set aside.

5. Learned counsel of the applicant and learned counsel of the respondents have already been heard on SA as well as all the IA's pending in this matter including the IA No. 836/2025.

6. Applicant has admitted the sanction of loan against the property but his case is that during the covid the loan account become irregular.

7. **First plea** of the applicant in the SA is that the applicant had signed blank and unfilled documents in good faith but this plea is not tenable under the law and whenever signature is made on any document, the same is presumed to be signed only after going through its contents.

8. **Second plea** of the applicant is that without any prior information respondent bank issued 13(2) notice on dated 06.10.2023 demanding a fictional claim which was never served to the applicant.

9. Question arises that if 13(2) notice was not served to the applicant then how he came to know that claim is fictional?

10. Respondents plea on this point is that the 13(2) notice was duly dispatched and even in newspaper also it was published. In support of the claim respondents have annexed 13(2) notice as Annexure-A, registry slip of postal department as Annexure-A/1 and the track reports as Annexure-A/2 and the publication in the newspapers as Annexure-A/3 & A/4 of

their written objection. From perusal of the these annexures it transpires that 13(2) notice was sent to the applicant at his three addresses and all of them were delivered to the addressee on dated 18.10.2023, 01.11.2023 and 16.10.2023 respectively. Apart from the delivery of the post notice was also served through newspaper publication (Annexure-A/3 & A/4 of the written objection of the respondent bank). It is pertinent to mention that as per Rule 3 of the Security Interest (Enforcement) Rules 2002 service of demand notice can be affected through publication in two newspapers, one in vernacular language, having sufficient circulation in the locality.

11. Thus, there is no force in the submission of the applicant that 13(2) notice was not served.

12. **Third plea** of the applicant is that inspite of several proposals for settlement respondent no. 2 never pay any heed to such settlement proposals. Settled law on this point is that no borrower can, as a matter of right, pray for a grant for the benefit of OTS. However, the applicant is always at liberty to settle the loan account by approaching the respondent bank with reasonable settlement proposal.

13. Service of 13(4) notice has been admitted by the applicant and also the service of pre sale notice dated 25.11.2025. **Plea of the applicant** is that if along with 13(2) notice statement of account is not served and the same is not in accordance with 13(3) of the SARFAESI Act.

14. Sub section (3) of section 13 of the SARFAESI Act, 2002 provides the requirement of 13(2) notice and it simply says that the details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of the secured debts by the borrower are necessarily required to be mentioned in the 13(2) notice.

15. From perusal of the Annexure-B of the instant 13(2) notice (running page no. 18 of the written objection of the respondent bank) it transpires that every single detail is mentioned in Annexure-B including the principal outstanding, interest for the month, rate of interest and the penal interest.

16. It is not the requirement of the statute to provide the copy of statement of account along with the 13(2), rather only details of the amount payable by the borrower has to be mentioned and if in any case it has been held by the Hon'ble court that the statement of account has to be provided, the same would have been passed in a particular case and it may not be applicable in all the cases.

17. **Fifth plea** of the applicant is that the 13(4) possession notice dated 25.11.2025 was neither published in two newspapers nor affixed on the conspicuous part of the mortgaged properties.

18. Case of the respondent bank on this point is that the possession notice was duly published in two newspapers on dated 13.02.2024 in “Morning India” (English) and “Ajkal” (Vernacular). In support of their contention, respondent bank has filed copy of publication (Annexure-B/2 & B/3 of their written objection) and the affixation (Annexure—B/4 of their written objection). Thus, plea of the applicant regarding publication and affixation is not tenable. So far the notice dated 20.11.2025 is concerned, submission of the respondent bank is that it was only the intimation of taking physical possession, pre-sale notice and the vacation notice of 30 days, which were also published in two newspapers, “Morning India” (English) and “Uttar Banga” (Vernacular) on dated 15.11.2025.

19. As per the statute there is no such obligation upon the secured creditor to serve any pre-sale notice or to give any intimation notice but if it has been given by the respondent bank to the applicant, it would be just and fair for following the principle of natural justice.

20. **Next plea** of the applicant with respect to the Ld. District Magistrate order passed on dated 13.05.2025 that the order has not been passed within 30 days of the application and the applicant also relied upon a portion of judgment of the Hon’ble Supreme Court that although powers exercised by the CMM/DM is a ministerial act but he cannot brook delay as the time is essence.

21. Plea of the applicant is that the respondents submitted the affidavit on dated 15.01.2025 but the order has been passed 13.05.2025 and thus order has not been passed within 60 days of the application.

22. 3rd proviso of section 14(1) of the SARFAESI Act provides that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

23. In case of **NKGSB Corporative Bank Ltd. Vs. Subir Chakraborty & Ors {2022 LiveLaw (SC) 212}** that time is the essence and the CMM/DM can not brook delay but in this judgment (Supra) the very consequence of not passing the order within statutory period is not mentioned. On this point **C. Bright vs The District Collector [2021 2 SCC 392]** is relevant wherein the Hon’ble Supreme Court has held that a well settled rule of interpretation of the statute is that, the use of the word shall in a statute, does not

necessarily mean that in every case it is mandatory that, unless the word of the statute are literally followed the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word may has been used the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid.

24. Thus only on the ground that the order has not been passed by the Ld. DM within 60 days will not make the order invalid or void.

25. **Next plea** of the applicant with respect to the section 14 order is that without applying his mind and without applying the provision of the section 14 of the act and without satisfying with the contents of affidavit impugned order has been passed.

26. As per section 14(1) of the SARFAESI Act when the possession of any secured asset is required to be taken by the secured creditor, the secured creditor may, for the purpose of taking possession or control of any such required asset, request in writing to the Chief Metropolitan Magistrate or the District Magistrate under whose jurisdiction such secured asset is situated. On receipt of the application with affidavit from the authorized officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured asset.

27. From perusal of the operative portion of the impugned order it transpires that after careful consideration of the contents of affidavit including the nine clauses, the Ld. DM Jalpaiguri, after being satisfied, passed the impugned order. Operative portion of the order runs as under:

> *"Therefore, after careful consideration of the contents of the affidavit including the nine clauses mentioned under-Section 14(1)B of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and all other relevant documents, which the secured creditor filed duly affirmed by the authorized officer of ICICI BANK Limited, at 228A, AJC Bose Road, Kolkata700020 the secured creditor and being satisfied, it is hereby ordered that Sri Subhash Kumar Ghosh, WBCS (Exe), empowered as Executive Magistrate under Sub-Section (1) of Section 14 of the Bharatiya Nagarik Suraksha Sanhita 2023, presently posted in the Office of the District Magistrate, Jalpaiguri will take physical*

possession of the secured assets/property and forward the same to the secured creditor u/s 14(1A) of SARFAESI Act. 2002."

28. Thus, it cannot be said that without complying the provisions of section 14 of the SARFAESI Act, impugned order has been passed by the Ld. DM Jalpaiguri on dated 13.05.2025.

29. During the course of hearing Ld. Counsel of the applicant relied upon the judgment of Hon'ble Supreme Court passed in case of **Standard Chartered Bank & Ors Vs. V. Noble Kumar & Ors [(2013) 10 S.C.R 762]** wherein the Hon'ble Supreme Court has held in para no. 27 & 28 as Under :-

"27. An analysis of the 9 sub-clauses of the proviso which deal with the information that is required to be furnished in the affidavit filed by the secured creditor indicates in substance that (i) there was a loan transaction under which a borrower is liable to repay the loan amount with interest, (ii) there is a security interest created in a secured asset belonging to the borrower, (iii) that the borrower committed default in the repayment, (iv) that a notice contemplated under section 13(2) was in fact issued, (v) in spite of such a notice, the borrower did not make the repayment, (vi) the objections of the borrower had in fact been considered and rejected, (vi) the reasons for such rejection had been communicated to the borrower etc.

28. The satisfaction of the Magistrate contemplated under the second proviso to section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking or possession of the secured asset."

30. On the point of section 14 of the SARFAESI Act there is one leading judgment of Hon'ble Supreme Court passed in case of **Balkrishna Rama Tarle Dead Thr LRS & Anr Vs. Phoenix ARC Private Limited & Ors (reported in (2022) SCC online SC 1299)** and while relying upon the judgments of NKGSB **(supra)** and **M/S R.D. Jain And Co. vs Capital First Ltd & Ors (III 2022 BC SC 420)** the Hon'ble Supreme Court has held in para no. 9 as under:

"9. Thus, in view of the scheme of the SARFAESI Act, more particularly, Section 14 of the SARFAESI Act and the nature of the powers to be

exercised by learned Chief Metropolitan Magistrate/learned District Magistrate, the High Court in the impugned judgment and order has rightly observed and held that the power vested in the learned Chief Metropolitan Magistrate/learned District Magistrate is not by way of persona designata." Thus, the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial step and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act, before Debts Recovery Tribunal. Under the circumstances in the present case no error has been committed by the High Court in setting aside the order dated 27.08.2021 passed by the designated authority keeping the application pending till the secured creditor initiates the legal proceedings for eviction of the tenant cannot get the possession in an application under Section 14 of the SARFAESI Act. The High Court has rightly directed the designated authority to proceed further with the application under Section 14 of the SARFAESI Act, and to dispose of the same in accordance with the provisions of Section 14 of the SARFAESI Act."

31. Thus the powers exercised by the CMM/DM is a ministerial work and once all the requirements of Section 14 of the SARFAESI Act is complied, it is the duty of the CMM/DM to assist the secured creditor in obtaining the possession of the secured asset and the documents related thereto and hand it over to the secured creditor.

32. In view of the discussions made here-in-above in foregoing paragraphs, this Tribunal comes to the conclusion that the SA & IA/836/2025 filed by the applicant challenging the Ld. DM Jalpaiguri order passed on dated 13.05.2025 and the 13(2) & 13(4) notice has got no merit in the eye of law and thus required to be dismissed.

ORDER ON IA/135/2026

33. The instant IA has been filed by the applicant for passing injunction order in the SA but as the SA is going to be disposed of and thus it has got no relevance at all and accordingly, the same is dismissed.

ORDER ON IA/382/2026 & IA/383/2026

34. I.A. No. 382/2026 has been filed by the applicant for passing injunction order with respect to the sale scheduled on 09.04.2026, whereas, the I.A. No. 383/2026 is the main IA which has been filed by the applicant challenging the sale notice dated 17.02.2026 and the sale scheduled on 09.04.2026.

35. **First plea** of the applicant with respect to the sale notice is that secured asset is a functioning Church and in the LR Khatian it is classified as “Pirsthan” which means “Religious Place” or “Graveyard” and as such it cannot be mortgaged and/or transferred/alienated to any person through sale and the mortgage itself is bad in law.

36. Pleading of the respondent bank on this point is that the applicant himself has admitted the creation of mortgage of immovable property and now he himself is questioning the mortgage. Further pleading is that “Pirsthan” cannot be related with “Kabristhan” and the applicant has admitted the dual use of the property for residential as well as for religious purposes and thus there is no any embargo against the creation of mortgage.

37. It is pertinent to mention that the applicant himself had created the mortgage and the loan was sanctioned in his favour and how he himself is questioning the creation of mortgage. In case of **ITC Limited Vs. Blue Cost Hotels Ltd. & Others {(2018) 15 SCC 19}** the Hon’ble Supreme Court has held that since no security interest can be created in respect to agricultural lands but yet it was so created, goes to show that the parties did not treat the land as agricultural land. If the above principle is applied with this case also then how the applicant can question the validity of mortgage on the ground of religious land as he himself had crated the mortgage by depositing the title deed. So far the nature of the land being described as “Pirsthan” is concerned, without going into exact meaning of “Pirsthan” it can be said that revenue records itself is not sufficient enough to proof the nature of the land, rather only the use of the land at the relevant time would prevail.

38. In case of Hotel Blue Cost **(Supra)** the Hon'ble Supreme Court has held that merely because in the revenue records the secured property is shown as agricultural land is not sufficient to attract Section 31(i) of the SARFAESI Act.

39. On the same line Hon'ble Supreme Court has held in case of **K. Sridhar vs Rau's Construction Pvt. Ltd. & Ors {(2023) SCC Online (SC) 13}** that merely because in the revenue records the secured properties are shown as agricultural land is not sufficient to attract Section 31(i) of the SARFAESI Act. Relevant portion of the judgment runs as under:

> *"…. at the outset, it is required to be noted that except the revenue records, the borrowers did not file any evidence to show that the agricultural work was being done in the said properties.*
>
> *……The view taken by the High Court is just contrary to the two decisions of this Court in the case of Blue Coast Hotels Limited and Others (Supra) and K. Pappireddiyar and Another (Supra). In both the aforesaid decisions, this Court has specifically observed and held after considering the object and purpose of Section 31(i) of the SARFAESI Act that merely because in the revenue records the secured properties are shown as agricultural land is not sufficient to attract Section 31(i) of the SARFAESI Act. In the aforesaid decision, it is specifically observed and held that for the purpose of attracting Section 31(i) of the SARFAESI Act, the properties in question ought to be actually used as agricultural lands at the time when the security interest was created. In the case of Blue Coast Hotels Limited and Others (Supra), it is also further observed by this Court that 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."*

40. It is pertinent to mention that in the instant matter one Advocate Commissioner was also appointed on the request of the Ld. Counsel of the applicant to inspect the property and to give report regarding any religious construction available at the secured asset along with its age and also the photographs and as per the report of the Ld. Advocate Commissioner (Exhibit No. A), he did not found any religious construction on the said mortgaged property.

41. In this view of the matter plea of the applicant, that the mortgage property is religious property and cannot be mortgaged, has got no force at all.

42. **Second plea** of the applicant is that the sale notice was not affixed at any conspicuous part of the mortgaged property, which is violation of Rule 8(7) of the Security Interest (Enforcement) Rules 2002, (here-in-after referred to as Rules 2002).

43. This plea has been raised by the applicant in para no. 15 of the IA No. 383/2026 and in para no. 14 of the written objection of the secured creditor it has been replied but in the entire paragraph, there is nothing about the affixation of sale notice on the conspicuous part of the property or the compliance of Rule 8(7) of the Rules 2002, which requires affixation of sale notice on the conspicuous part of the immovable property. Rule 8(7) of the Rules runs as under:

> *"8. Sale of immovable secured assets.-*
>
> *X X X X X X*
>
> *[(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web- site of the secured creditor, which shall include;*
>
> > *(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;*
> >
> > *(b) the secured debt for recovery of which the property is to be sold;*
> >
> > *(c) reserve price of the immovable secured assets below which the property may not be sold;*
> >
> > *(d) time and place of public auction or the time after which sale by any other mode shall be completed;*
> >
> > *(e) deposit of earnest money as may be stipulated by the secured creditor;*
> >
> > *(f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.]"*

44. Thus this point is decided in favour of the applicant and against the secured creditor/respondent bank.

45. **Next plea** of the applicant is that the sale price fixed by the respondent bank is much lower to the actual price of the mortgaged property and the valuer, if any, may not have been the approved valuer within the meaning of Rule 2(d) of the Rules 2002.

46. This point has been raised in para no. 16 of the I.A. no. 383/2026 by the applicant and it has been replied by the respondent bank in para no. 14 of its written objection and very surprisingly, nothing has been pleaded on this point also by the Ld. Counsel of the respondent bank and actually, W.O. is silent on this point.

47. Rule 8(5) of the Rules 2002 specifies that before effecting the sale of the immovable property valuation report has to be obtained by the authorised officer and in consultation with the secured creditor, price of the property would be fixed. Sub-rule (5) of Rule 8 of the Rules 2002 runs as under:

> *"5. Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-*
>
> *a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or*
>
> *b) by inviting tenders from the public;*
>
> *c) [by holding public auction including through e-auction mode; or]* [Substituted by Notification No. G.S.R. 1046 (E), *dated 3.11.2016 (w.e.f. 20.9.2002).]*
>
> *d) by private treaty."*

48. The Respondent bank has not filed any valuation report to proof that in compliance of Rule 8(5), empanelled valuer was appointed and as per the report of the empanelled valuer price of the property was fixed.

49. From perusal of the sale notice it transpires that reserve price of the immovable property being land with tin shed construction is Rs. 1,61,00,000/- (Rupees One Crore Sixty One Lakhs Only) but there is no any basis of such reserve price.

50. Settled position of law is that any sale by auction or other public procurement method, once already confirmed or concluded ought not to be set aside or interfered with lightly except on ground that go to the core of such sale process, such as either being collusive,

fraudulent or vitiated by inadequate pricing or under bidding **{Celir LLP vs Mr. Sumati Prasad Bafna & Ors (reported in 2024 INSC 978)}.**

51. Although it has not been disclosed yet by any of the parties that whether the sale has taken place on 09.04.2026 or not and thus it cannot be said it is a case of undervalued but reserve price fixed is not supported by any valuation report by the empanelled valuer and thus it a clear violation of Rule 8(5) of the Rules 2002.

52. In view of the discussions made here-in-above in foregoing paragraphs, following order is passed:

i. SA & the IA/836/2025 are hereby **dismissed** being without any merit.

ii. IA/135/2026 is **rejected** as the SA itself has been dismissed.

iii. IA/383/2026 is **allowed** and if the sale has taken place on dated 09.04.2026 with respect to the sale notice dated 17.02.2026, the sale is set aside.

iv. IA/382/2026 filed for passing injunction order with respect to the sale scheduled on 09.04.2026 and as the sale notice and the e-auction, if any, has already been set aside and thus the IA/382/2026 is accordingly, **disposed of**.

v. Pending IA's, if any, stand disposed of.

vi. Respondent Bank/ Secured creditor would be at liberty to proceed a fresh for realization of the dues amount.

53. Registry is directed to send/serve copy of this order to both the parties free of cost.

54. Order be uploaded in the website of the Tribunal.

55. Let the record be consigned to the Record Room.

The judgment is signed and pronounced in the open Tribunal on 28th day of September, 2026.

(RAKESH PATI TIWARI)
Presiding Officer
DRT, Siliguri.