Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 29th DAY OF SEPTEMBER, 2026

PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No.209/2015

1. S. Sudalaimuthu
   M/s Sri Sivasakthi Coconut Traders
   Rep. by Proprietor
   No. 2/260, Kuberan Pattinam
   Gunaramanallur Village
   Tenkasi Taluk, Tirnelveli District **... Applicant**

Vs

1. The Authorised Officer
Chief Manager (Rural)
State Bank of India
Regional Business Office
Tirunelveli

2. The Branch Manager
State Bank of India
Surandai Branch
Surandai Post
Tirunelveli **... Defendants**

Appearance of Advocates:

Mr. P. Mahendran ***... Counsel for the Applicant***
M/s R. Anandharaj ***... Counsel for the 1st & 2nd Defendant Banks***

This SARFAESI Application has heard in the presence of Counsels Mr. P. Mahendran for the Applicant and M/s R. Anandharaj for the 1st & 2nd Defendant

Banks and fixed for passing final order before me and upon hearing the arguments of the Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

O R D E R

1. This Application has been filed under Sec. 17(1) of the SARFAESI Act, 2002 by the Applicant praying that this Hon'ble Tribunal may be pleased to set aside the Auction Sale Notice dated 21.04.2015 issued by the 1st Defendant for the Schedule Mentioned Property and declare the same as illegal and to quash the entire SARFAESI Proceedings, and to restore the symbolic possession back to the Applicant.

2. The brief averments of the Application filed by the Applicant are as follows:-

A. The Applicant submitted that, he was unemployed and, with an intention to commence a coconut trading business, approached the 2nd Defendant Bank for financial assistance. Considering that the Applicant's father had agreed to stand as guarantor and had also offered his dwelling house as security for repayment of the loan, the 2nd Defendant sanctioned a loan of Rs.1,50,000/- to the Applicant on 29.09.2008.

B. The Applicant submitted that, after availing the loan, he commenced a coconut trading business in the name and style of *Sri Sivasakthi Coconut Traders*. However, within about six months of commencing the business, he met with a serious accident in the year 2009 and sustained grievous injuries. He remained bedridden for nearly one and a half years and, due to his prolonged illness and inability to attend to

the business, the business was eventually closed. According to the Applicant, he was consequently left without any source of income.

C. The Applicant submitted that during the period of his illness, his father took care of him and also approached the 2nd Defendant Bank, informed the Bank about the Applicant's accident and inability to continue the business, and made certain payments towards the interest due under the loan account.

D. The Applicant submitted that notwithstanding the above circumstances, the 2nd Defendant issued a Demand Notice dated 05.10.2012 under Section 13(2) of the SARFAESI Act, demanding a sum of Rs.2,07,674/- **(**Rupees two lakhs seven thousand six hundred seventy four only**)**. Thereafter, the Defendant Bank initiated further measures under Section 13(4) of the SARFAESI Act in respect of the secured property.

E. The Applicant submitted that thereafter he made further payments towards the loan account and requested the Defendant Bank to permit him to settle the outstanding liability by way of a one-time settlement, with a request for waiver of penal interest. According to the Applicant, the said request was not accepted by the Defendant Bank.

F. The Applicant submitted that the Defendant Bank thereafter proceeded to bring the secured dwelling house and vacant site to sale and issued an Auction Sale Notice dated 21.04.2015. The said notice was published in the Tamil Daily *Dinamalar*, Tirunelveli Edition, on 23.04.2015, calling for tenders and fixing the date of auction as 27.05.2015 at 4.00 p.m. at the office of the 2nd Defendant Bank.

G. The Applicant submitted that the Auction Sale Notice mentioned the outstanding amount as Rs.2,07,674/- **(**Rupees two lakhs seven

thousand six hundred seventy four only**)** and that the said amount was not the actual amount due as on the date of the auction proceedings. According to the Applicant, the statement of account dated 07.02.2013 reflected the outstanding amount as Rs.1,54,896/- **(**Rupees one lakhs fifty four thousand eight hundred ninety six only**)** as on 18.08.2012, after taking into account the payments made by him.

H. The Applicant further submitted that he had paid a total sum of Rs.1,20,000/- **(**Rupees one lakh twenty thousand only**)** in cash towards the loan amount of Rs.1,50,000/- **(**Rupees one lakh fifty only**)** and had also paid a further sum of Rs.45,000/- **(**Rupees forty five thousand only**)** after publication of the Auction Sale Notice. The Applicant therefore disputes the amount claimed by the Defendant Bank and states that the actual outstanding liability was substantially lower than the amount mentioned in the Auction Sale Notice.

I. The Applicant further submitted that the secured property, comprising the dwelling house and vacant site belonging to his father, had a market value of more than Rs.8,00,000/- **(**Rupees eight lakhs only**)**, whereas the Defendant Bank had fixed its value at Rs.4,00,000/- **(**Rupees four lakhs **only)** for the purpose of auction. According to the Applicant, the valuation was not supported by a valuation report obtained from an Approved Valuer as contemplated under Rule 8(5) of the Security Interest (Enforcement) Rules, 2002.

J. In the above circumstances, the Applicant has challenged the measures initiated by the Defendant Bank, including the Auction Sale Notice dated 21.04.2015, contending that the actual outstanding liability was not properly determined and that the secured property was sought to be sold at an undervalued price without following the procedure prescribed under the SARFAESI Act and the Rules made thereunder.

GROUNDS

a. The impugned Auction Sale Notice contains incorrect and misleading particulars regarding the amount due and payable by the Appellant, the value of the secured property, and the payments made by the Appellant. The Auction Sale Notice is therefore liable to be set aside as being irregular, illegal, arbitrary, and contrary to the mandatory provisions and procedures prescribed under law.

b. The impugned Auction Sale Notice is contrary to Rule 8(6)(b) of the Security Interest (Enforcement) Rules, 2002, which requires disclosure of the amount of the secured debt for the recovery of which the secured property is proposed to be sold. In the present case, the Defendants have failed to disclose the actual amount due and outstanding as on the date of publication of the Auction Sale Notice. The sum of Rs.2,07,674/- mentioned therein is merely the amount stated in the Demand Notice dated 05.10.2012 under Section 13(2) of the SARFAESI Act and does not represent the actual outstanding liability as on the date of the Auction Sale Notice. Consequently, the demand mentioned in the Auction Sale Notice is neither transparent nor supported by an updated statement of account.

c. The Appellant further submitted that even the sum of Rs.2,07,674/- claimed in the Section 13(2) Demand Notice is inconsistent with the Defendants' own statement of account dated 07.02.2013. As per the said statement of account, the amount due and outstanding as on 18.08.2012 was only Rs.1,54,896/-. The Defendants have therefore failed to establish

the basis for claiming Rs.2,07,674/- by producing any supporting statement of account or other material evidence.

d. The secured property, comprising the house and vacant site, had a market value of approximately Rs.8,00,000/-, whereas the Defendants fixed its value at only Rs.4,00,000/- for the purpose of sale. The Defendants failed to obtain a valuation report from an Approved Valuer before fixing the value and upset price of the property, as required under Rule 8(5) of the Security Interest (Enforcement) Rules, 2002. Such failure has resulted in an undervaluation of the secured property and constitutes a violation of the mandatory procedure prescribed under the Rules.

e. The Appellant had already paid a sum of Rs.1,20,000/- towards the loan amount of Rs.1,50,000/-, against valid receipts issued by the Defendants. The Defendants were therefore required to duly account for all such payments and determine the actual outstanding liability on the basis of a correct and updated statement of account. Failure to do so amounts to a failure to discharge their statutory and regulatory obligations.

f. Considering the exceptional circumstances arising from the serious accident suffered by the Appellant, which resulted in his inability to continue the business and earn an income, the Defendants ought to have considered his request for settlement of the loan under a One-Time Settlement Scheme, on the basis of the actual outstanding liability and with appropriate consideration of the request for waiver of penal interest. The default was neither wilful nor intentional but arose from circumstances beyond the Appellant's control.

g. The Defendants have not taken possession of the secured house property, in which the Appellant and his family members, including his wife and female children, continue to reside. The proposed sale of the residential property, without strictly complying with the mandatory statutory requirements and without correctly determining the outstanding liability and value of the property, adversely affects the Appellant's lawful interest in the property and is liable to be interfered with in accordance with law, having regard to the protection guaranteed under Article 300-A of the Constitution of India.

Description of property

Tirunelveli District, Tenkasi registration District, Tenkasi II Joint Sub Registrar Office, Gunaramanallor Village and Panchayat ward number 2 at Kuberanpattinam. Gunaramanalloor village Old Natham Survey number 200B/1D in which to an extent of Cents 3.44 measuring East West 24.75 feet and North South 60.5 feet. As per UDR this property has been assigned sub division survey number 200B/1D15 and as per Natham Land Tax Scheme this property is in new Natham Survey number 200B/18 and House there on bearing old door number 76E for which new door number 2/260, 261 which is bounded on the East by : Road, West by : Site of Chekkadiyan, North by : Site of Subbiah Thevar, South by : Site of Sankaralingam. (Schedule is owned by the Guarantor Mr. T.R.S. Subramania Thevar)

The Applicant has filed the following List of documents in support of his claim in the SA, which are as follows:

S.No.	Date	Description of documents
1.	05.10.2012	Notice under Sec. 13(2) of SARFAESI Act.
2.	07.02.2013	Statement of Accounts from 29.09.2008 to 07.02.2013 showing payments and dues
3.	07.03.2015	Payment receipt for Rs. 45,000/-

4.	21.04.2015	Impugned auction notice issued by the 1st Defendant and published on 23.04.2015 in the Tamil Daily "Dinamalar" in Tirunelveli Edition

3. On the other hand, notices were issued to the Defendant Bank, and the Counsel for the Defendant Bank appeared before this Tribunal and filed Vakalat, and Reply Statement. The Defendant has submitted that the Applicant availed Cash Credit Facilities for a sum of Rs. 1,50,000/- (Rupees one lakh fifty thousand only) and executed the necessary documents in favour of the Defendant Bank.

- Further the 2nd Defendant herein denies all the allegations, averments and contentions raised in the Application, except those which are specifically admitted herein. It is pertinent to mentioned here that the 1st Defendant has adopted the Reply Statement filed by the 2nd Defendant.

- The Defendant Bank submitted that the Applicant availed a Cash Credit Facility of Rs.1,50,000/- (Rupees one lakhs fifty thousand only) from the Defendant Bank and executed the necessary loan and security documents in favour of the Bank. However, the repayment performance of the Applicant was highly irregular and the Applicant failed to repay the loan instalments and other dues promptly as agreed.

- The Defendant Bank submitted that, owing to the Applicant's persistent default and in order to recover the public money due to the Bank, the Bank initiated measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). Accordingly, a Demand Notice under Section 13(2) of the SARFAESI Act was issued to the Applicant on 05.10.2012, calling upon him to discharge the entire outstanding liability together with

future interest and other applicable charges within 60 days from the date of receipt of the notice. The said Demand Notice was duly served upon the Applicant, who did not choose to submit any objection or representation thereto.

- The Defendant Bank submitted that the Demand Notice specifically informed the Applicant that, in the event of failure to discharge the outstanding liability within the stipulated period of 60 days, the Bank would be entitled to take possession of the secured assets and proceed with the sale thereof in accordance with law. Despite receipt of the Demand Notice, the Applicant failed to regularise the loan account or discharge the outstanding liability.

- The Defendant Bank submitted that, upon expiry of the statutory period and in view of the Applicant's continued default, the Bank had no other effective remedy except to initiate further measures under Section 13(4) of the SARFAESI Act. Accordingly, a Possession Notice dated 04.02.2013 was issued and possession of the secured property was taken in accordance with law. The Defendant Bank duly complied with the statutory requirements and the procedures prescribed under the Security Interest (Enforcement) Rules, 2002. The Applicant did not challenge the said Possession Notice before any competent court or before this Tribunal within the prescribed period.

- The Defendant Bank further submitted that, even after issuance of the Possession Notice, the Applicant failed to discharge the outstanding liability or come forward with any concrete proposal for settlement of the loan account. Consequently, the Bank issued a Tender-cum-Sale Notice dated 21.04.2015, fixing the date of sale as 27.05.2015. The said Sale Notice was duly served upon the Applicant and was also published in newspapers in accordance with the applicable statutory

requirements. The Sale Notice was published in the Tamil daily *Dinamalar*, Tirunelveli Edition, dated 23.04.2015, and in the English daily *The New Indian Express*, Madurai Edition, dated 23.04.2015. The Applicant has himself produced the said Sale Notice in his typed set at Page No.21.

- With regard to the averments contained in paragraphs (i) to (vii) of the Facts of the Case, the Defendant Bank submits that the same are false, incorrect and hence denied, except to the extent specifically admitted herein. Insofar as paragraph (i) is concerned, the Applicant has himself admitted availing the loan facility and creation of security in favour of the Defendant Bank. The said admission establishes the existence of the loan transaction and the secured interest of the Bank.

- The Defendant Bank submitted that the averments contained in paragraphs (ii) and (iii) relating to the accident allegedly suffered by the Applicant, his inability to continue the business and the consequent loss of income are matters personal to the Applicant and do not absolve him of his contractual liability to repay the loan. The alleged accident occurred in the year 2009, whereas the Demand Notice under Section 13(2) of the SARFAESI Act was issued only on 05.10.2012. The Applicant was thus afforded sufficient time and opportunity to regularise the loan account and discharge the outstanding dues. However, he failed to avail the same.

- The Defendant Bank denies the averments contained in paragraph (iv) of the Facts of the Case. The Applicant is put to strict proof of his allegation that he had approached the Bank and offered to settle the account under a One-Time Settlement (OTS). No valid or concluded OTS proposal was accepted by the Defendant Bank. The Applicant has, however, admitted receipt of the Sale Notice.

- The Defendant Bank denies the averments contained in paragraphs (v) to (vii) of the Facts of the Case. The Bank submitted that all payments received from the Applicant were duly credited to the loan account in accordance with the terms and conditions governing the loan facility. The amount demanded by the Bank was calculated in accordance with the contractual terms and the applicable interest and other charges. The Bank has not claimed any amount contrary to the terms agreed between the parties.

- The Defendant Bank further submitted that, upon classification of the loan account as NPA, interest was subsequently calculated manually in accordance with the Bank's applicable procedure. Therefore, the amounts reflected in the statutory notices issued by the Bank were duly calculated and are correct. The Applicant's allegation that the amount mentioned in the Sale Notice was not based on the actual outstanding liability is therefore untenable.

- The Defendant Bank denies the allegation that the secured property was undervalued or that the upset price was arbitrarily fixed. The value of the secured property was determined in accordance with the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002, after following the prescribed procedure. The Applicant has not produced any reliable or legally acceptable material to establish that the valuation adopted by the Bank was incorrect or that the upset price was fixed in violation of the statutory requirements.

- The Defendant Bank denies all the allegations contained in grounds (a) to (g) of the Application. The Sale Notice was issued in accordance with the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002, and contained the particulars required

under the applicable Rules. The outstanding amount stated therein was based on the Bank's records and the terms governing the loan account.

- The Defendant Bank submitted that the allegation that the Bank failed to give credit for the payments made by the Applicant is incorrect. All amounts received from the Applicant were duly accounted for and credited to the respective loan account. The Applicant has failed to establish any specific payment which was allegedly not given credit by the Bank.

- The Defendant Bank further submitted that the Applicant's contention regarding One-Time Settlement is misconceived. The Applicant has not produced any sanctioned or accepted OTS proposal demonstrating that the Bank had agreed to settle the account on the terms alleged by him. Mere submission of a request for settlement does not create any enforceable right in favour of the Applicant.

- The Defendant Bank submitted that there is no absolute bar under the SARFAESI Act against taking measures in respect of a residential property offered as security for the loan, subject to the applicability of the statutory provisions and the nature of the secured asset. The Applicant's reliance on Article 300-A of the Constitution of India is misconceived. The Bank has proceeded against the secured property in exercise of the statutory remedies available to it under the SARFAESI Act.

- The Defendant Bank submitted that the measures initiated against the Applicant were undertaken strictly in accordance with the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002. The Applicant has failed to establish any material or procedural

violation committed by the Defendant Bank warranting interference by this Tribunal.

- The Defendant Bank further submitted that the Applicant has approached this Tribunal without disclosing all material facts relating to the loan transaction, the persistent default, the Demand Notice, the Possession Notice and the subsequent Sale Notice. The Applicant has failed to establish any legally sustainable ground for setting aside the measures initiated by the Defendant Bank.

- In the circumstances stated above, the Application is devoid of merit and is liable to be dismissed. The Applicant is not entitled to any of the reliefs sought for in the Application, and the Defendant Bank therefore prays that this Hon'ble Tribunal may be pleased to dismiss the Application with costs and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

In view of the above facts, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above application with cost and thus render Justice.

4. On the basis of the above pleadings, the following issues have been framed:

(i) Whether actions initiated by the Defendant Bank in respect of the schedule mentioned property under the SARFAESI Act are illegal, void and contrary to the settled principles of Law?

(ii) Whether the applicant is entitled for relief as claimed for?

5. Having heard the parties and after going through the entire documents available on records, and also after considering the arguments by both the Counsels, I find that it is admitted fact that the Applicant has taken loan from the Defendant Bank but the Defendant Bank has submitted that since the Applicant has failed to repay the loan amount, the loan account became irregular and the account has been classified as NPA on 21.07.2011 and thereafter the Bank has issued Demand Notice u/s. 13(2) of the SARFAESI Act on 05.10.2012, thereafter he has also issued symbolic Possession Notice on 04.02.2013 and thereafter he has also issued impugned Sale Notice on 21.04.2015.

6. On the other hand, the Applicant has contended that he was regular in repaying the dues under the loan account. It is further alleged that, to his utter shock and surprise, the Defendant Bank proceeded to issue the Demand Notice, Possession Notice and Sale Notice. The Applicant has also contended that the Defendant Bank failed to furnish proper and updated particulars of the loan account. According to the Applicant, the amount mentioned in the impugned Auction Sale Notice was not based on the actual outstanding liability as reflected in the updated statement of account, but was merely the amount stated in the Demand Notice dated 05.10.2012 under Section 13(2) of the SARFAESI Act. Hence, the Applicant contends that the impugned Auction Sale Notice did not disclose the true and correct outstanding liability as on the date of the said notice.

7. Upon careful perusal of the pleadings and the materials available on record, it is observed that the Defendant Bank has not filed any typed set of papers or produced any documentary evidence in support of its defence. Though the Defendant Bank has denied the allegations raised by the Applicant and contended that the measures initiated under the SARFAESI

Act were in accordance with law, no supporting documents have been placed on record to substantiate the said contentions.

8. The Applicant has specifically disputed the correctness of the amount claimed by the Defendant Bank in the impugned Auction Sale Notice and has contended that the amount mentioned therein was not based on the actual and updated statement of account. The Applicant has also challenged the valuation of the secured property and the fixation of the upset price. These are matters which could have been established or rebutted by the Defendant Bank by producing the relevant loan account statement, Demand Notice, Possession Notice, Auction Sale Notice, valuation report and other connected records. However, despite the specific allegations raised by the Applicant, the Defendant Bank has failed to produce any documentary evidence before this Tribunal to establish the correctness of the outstanding amount claimed in the impugned Auction Sale Notice, the valuation of the secured property, or its compliance with the mandatory provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002.

9. It is well settled law that when a party specifically disputes the correctness of the measures initiated under the SARFAESI Act, the secured creditor is expected to place the relevant records before the Tribunal to demonstrate that the statutory requirements have been duly complied with. In the present case, the Defendant Bank has failed to discharge the said burden. Mere denial of the allegations made by the Applicant, without producing the relevant records in support of such denial, cannot be accepted as sufficient proof of compliance with the statutory requirements.

10. I therefore find that the Defendant Bank has failed to establish, by producing cogent and documentary evidence, that the amount mentioned in the impugned Auction Sale Notice represents the actual outstanding liability

as on the relevant date and that the valuation and fixation of the upset price of the secured property were carried out in accordance with the applicable statutory provisions. The Defendant Bank has also failed to submit that the notices were properly affixed on the conspicuous part of the property.

In view of the above facts and circumstances, this Tribunal is of the considered opinion that the Applicant has made out a case warranting interference with the impugned measures initiated by the Defendant Banks. Accordingly, the Application deserves to be allowed.

In the result,

1. **SA No.209/2015 is allowed**
2. The impugned **Auction Sale Notice dated 21.04.2015** issued by the Defendant Bank in respect of the secured property is hereby **set aside**.
3. The Defendant Bank is directed to proceed afresh, strictly in accordance with the provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002, after complying with all the mandatory statutory requirements.

Consequently, all pending IAs (if any) are also disposed of. No costs.

(Dictated to KKN taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 29th September, 2026).

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 06.10.2026