Fair Order

IN THE DEBTS RECOVERY TRIBUNAL - 1 AT ERNAKULAM

DATED THIS 07th DAY OF OCTOBER, 2026

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

S.A No.756 of 2025

Between

Vishnu K,
S/o K. Vijayan,
Kodathodi, Maruthoor Post,
Pattambi,
Palakkad- 679 306

--- Applicant

And

1. Canara Bank,
Regional Office,
Safe Way Complex,
Pirivusala,
Chandranagar P.O.,
Palakkad -678 007.

2. The Authorized Officer,
Canara Bank
Regional Office,
Safe Way Complex,
Pirivusala,
Chandranagar P.O,
Palakkad -678 007.

--- Defendants

This Securitization Application coming on 21.08.2026 for final hearing before me in the presence of Mr. Tony Thomas, Counsel for the Applicant and Mr. Saraswathy Counsel for the defendants 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 24.10.2025 praying to set aside Annexure-A1 demand notice, Annexure-A3 order and Annexure A4 notice issued by the Advocate Commissioner for taking physical possession of the secured assets and to permit the applicant to upgrade the overdraft facility by paying the defaulted interest and to permit them to regularize the term loan.

2. The applicant availed overdraft facility for an amount of Rs.16,00,000/- on 04.07.2019 and a home loan for an amount of Rs. 8,00,000/- on 04.09.2015 from the 1st defendant bank upon creation of equitable mortgage over his immovable property covered under the sale deed No. 2162/1993 of Pattambi SRO by depositing the title deed with 1st defendant bank. Since the applicant defaulted in repayment of the outstanding loan due, his loan accounts were classified as NPA on 28.09.2024. Annexure-B1 demand notice dated 17.03.2025 and Annexure-B3 demand notice dated 05.12.2024 were issued to the applicant and other borrower/ guarantor calling upon them to repay the outstanding loan due within a period of 60 days from the date of receipt of the demand notices. The applicant neither sent any objection/representation to the demand notice nor did he clear off his liability due to the defendants bank.

3. Therefore, the defendants approached the Chief Judicial Magistrate Court, Palakkad and filed Annexure-A2 application and affidavit under Section 14 (1) of the SARFAESI Act, 2002. Order came to be passed in MC No. 206/2025 appointing Advocate Commissioner for taking physical possession of the secured asset. The Advocate Commissioner issued Annexure-A4 notice dated 24.09.2025 to the applicant and other guarantors informing them that he would take physical possession of the secured asset on 13.10.2025. The applicant having aggrieved against the above measures filed this SA seeking for the reliefs stated supra.

4. The counsel appearing for the applicant submitted that the applicant was regularly repaying the outstanding due and that there occurred temporary irregularity in repayment and that without considering the past repayment, loan accounts were classified as NPA is illegally and that in Annexure-A1 demand notice, date was

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not mentioned and that it does not contain the mandatory redemption clause under Sec. 13 (8) of the SARFAESI Act, 2002 and that possession notice was not issued prior to the measures for taking physical possession of the secured asset and that the applicant after having obtained the certified copy of the Annexure-A2, he came to know that another demand notice dated 05.12.2024 was issued and that it was not served on the applicant or any other mortgagers and that it has been falsely stated in Annexure-A2 application that the demand notice dated 05.12.2024 sent to the borrower was returned as unclaimed and that security interest over the secured asset has not been registered with CERSAI Act and that no valid and enforceable mortgage has been created and that the date of outstanding amount is mentioned as 11.04.2025 in Annexure-A2 application and affidavit and that but it was signed on 09.04.2025 and that affidavit was sworn and signed prior to the actual date of filing before the Chief Judicial Magistrate Court, Palakkad and that in Annexure-A2 application it is stated that the loan availed by the applicant is a housing loan and that but in the affidavit it is stated that loan availed is overdraft cash credit facility and that the amount claimed in the demand notice is not correct and interest has been calculated against the RBI guidelines and that therefore SA may be allowed as prayed for.

5. The counsel appearing for the defendants submitted that the applicant has deposited his title deed pertaining to his property as the collateral security for the availment of both overdraft facility and home loan and that since he defaulted in repayment of outstanding loan due, his loan account was classified as NPA on 28.09.2024 and that demand notices in respect of the home loan and overdraft facility were issued separately and that Annexure-B1 is the demand notices in respect of the home loan and Annexure-B3 is the demand notice in respect of over draft facility and that both the demand notices were served to the applicant and the other borrowers and the guarantors and that the first page of the demand notice Annexure-A1 in respect of the home loan was not produced by the applicant and that the loan account pertaining to the home loan was not included in Annexure-A2 application and affidavit and that issuance of possession notice is not mandatory prior to initiating measurers for taking physical possession of the secured asset and that security interest has been registered with Central Registry and that defendants have proceeded against the secured asset in respect of the OD account availed by the firm Techmark Solution in which the applicant is the proprietor and the learned Chief Judicial Magistrate, Palakkad after having verified the documents and affidavit and having satisfying over the same appointed the Advocate Commissioner to take physical possession of the secured asset and that the defendants complied with the mandatory provisions of the

SARFAESI Act and Rules made thereunder and that therefore SA may be dismissed with costs to the defendants.

6. The availment of credit facility by the applicant from the defendant bank is admitted in the SA. The applicant has omitted to aver in the SA as to whether he has created equitable mortgage over his immovable property by depositing of title deed with the defendant bank as collateral security for the availment of the aforesaid credit facility. The applicant has himself admitted in the SA that there occurred temporary irregularity in repayment. In Annexure B1 as well as Annexure B3 demand notices, the creation of mortgage over the immovable property and the default committed by the borrowers in repayment of the outstanding loan due has been stated. Though, the applicant and other borrowers received both the demand notices as evidenced through Annexure B2 and Annexure B4 postal tract reports, they did not send any objection/ representation disputing the classification of the loan account as NPA and creation of equitable mortgage over the property. Therefore, this Tribunal does not find any force in the submission of the counsel for the applicant that classification of the loan account as NPA is against the RBI guidelines and that no valid and enforceable security interest over the immovable property has been created.

7. On perusal and comparison of Annexure A1 demand notice produced by the applicant and Annexure B1 demand notice produced by the defendant proves the contention of the defendant that the first page of the demand notice Annexure A1 has been omitted to be produced by the applicant. Therefore, the contention of the applicant that date is not mentioned in the Annexure A5 demand notice is false.

8. A perusal of Annexure B1 and Annexure B3 demand notices shows that Annexure B1 was issued in respect of home loan and that Annexure B3 demand notice was issued in respect of overdraft facility. Hence, it is evident that two separate demand notices were issued for two different credit facilities.

9. The applicant has contended in the SA that Annexure-A1 demand notice does not contain the mandatory redemption clause under Sec. 13 (8) of the SARFAESI Act, 2002. But, on perusal of both Annexure B1 and Annexure-B3 demand notices shows that the aforesaid clause is clearly stated.

10. Issuance of possession notice under Sec. 13(4) of the SARFAESI Act, 2002 is not mandatory prior to taking physical possession of the secured asset as held by the Hon'ble Supreme Court in ***Standard Chartered Bank v. V. Noble Kumar (2013) 9 SCC 620***. Hence the contention of the applicant that the mandatory

requirement of issuance of the possession notice under Sec. 13 (4) of the SARFAESI Act, 2002 before proceeding to take physical possession of the secured asset has not been complied with by the defendant does not hold good.

11. A perusal of Annexure A2 application and affidavit shows that the defendant proceeded against the secured asset for the default committed in respect of overdraft facility after issuance of Annexure B3 demand notice.

12. A perusal of Annexure A2 application and affidavit shows that the details such as availment of credit facility by the borrower upon creation of equitable mortgage over the immovable property by deposit of the title deed, default in repayment of loan due, issuance of demand notice to the borrower and service of the demand notice on them, failure to send any objection to the demand notice or to pay the outstanding amount, the aggregate amount of the financial assistance granted to the borrower and the total claim of the amount on the date of filing of Annexure A2 declaration with regard to the compliance of the provisions of the SARFAESI Act and Rules made thereunder, are clearly stated. Therefore, this Tribunal considers that there is substantial compliance of the statutory requirements contemplated under Sec. 14(1) of the SARFAESI Act, 2002 as laid down by the Hon'ble High Court of Thelugana in **Tulsi Rocks Pvt. Ltd and others. Vs. Bank of India and others (MANU/Term Loan 0034/2019**). Hence this Tribunal does not find any force in the submission of the counsel for the applicant that the amount stated as due on the date of signing of the application and affidavit Annexure A2 as 09.04.2025, while the date of filing of Annexure A2 is shown as 11.04.2025.

13. A perusal of Annexure A3 order shows that Chief Judicial Magistrate, Pallakkad and after having perused the contents of the affidavit and the documents produced in support of the affidavit and after having satisfied over the same, appointed Advocate Commissioner to take physical possession of the secured asset. This Tribunal does not find any infirmity or procedural irregularity in the above order.

14. A perusal of Annexure B5 shows that security interest over the secured assets has been registered with the central registry.

15. One of the reliefs sought for by the applicant in the SA is that to permit him to upgrade the overdraft facility by paying the defaulted interest and to regularise the term loan. This relief does not fall under the any category of measures as referred to in Sub-section 4 of Section 13 of the SARFAESI Act, 2002. It is for the applicant to approach the 1st defendant bank to get the aforesaid relief.

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

Resultantly, S.A No.756/2025 stands dismissed. However, there shall be no order as to costs.

Dictated to Steno, taken down, transcribed, typed by him, corrected and pronounced by me in the open court on this the 07th day of October,2026..

(Su. WILLYAHM)
PRESIDING OFFICER

Rn/

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

Sl. No.	Date	Particulars	
1.	----	Demand notice	Annexure-A1
2.	11.04.2025	Certified copy of the S.14 application along with affidavit filed by the Authorized Officer	Annexure-A2
3.	08.05.2024	Certified copy of the order in MC 206/2025 passed by the Chief Judicial Magistrate Court, Palakkad	Annexure-A3
4.	24.09.2025	Notice issued by the Advocate Commissioner	Annexure-A4
5.	05.12.2024	Demand notice	Annexure-A5

List of documents filed by the defendants along with the written statement

Sl. No.	Date	Particulars	
1.	17.03.2025	Demand notice u/S. 13(2) of SARFAESI Act, 2002	Annexure-B1
2.	---	Postal track report showing proof of service	Annexure-B2
3.	05.12.2024	Demand notice u/S. 13(2) of SARFAESI Act, 2002	Annexure-B3
4.	----	Postal track report showing proof of service	Annexure-B4 (Series)
5.	---	True copy of CERSAI Certificate	Annexure-B5
6.	21.08.2025	True copy of Valuation report	Annexure-B6
7.	26.05.2026	True copy of Statement of account	Annexure-B7

(Su. WILLYAHM)
PRESIDING OFFICER

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