**Fair Order**

**IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI**
DATED THIS 12TH DAY OF OCTOBER 2026
**PRESENT: SEEMA SINHA**
**[PR. DISTRICT & SESSIONS JUDGE - Retd]**
**PRESIDING OFFICER**

**SA No. 402/2026**

1. Arul Pandi
S/o David
Presently residing at No. 93i/26/2A
5th Street, Ashok Nagar
Thoothukudi – 628 608 ..... **Applicant**

**Vs**

1. Shriram Fiance Ltd.
Represented by its Branch Manager
CIN: L65119TN1979PLC007874
Branch office at
No. 20A 1st Floor, 1st Street
Subaiyapuram, Thoothukudi – 628 008

2. Thirumurugan
S/o Balamurugan
No. 5-225/Na, Gumarasamy Nagar
Korampallam II
Thoothukudi Taluk and District – 628 005 ..... **Defendants**

**Appearance of Advocates:**
**M/s R. Revathi ---- Counsel for the Applicant**
**M/s R. Iyappan ---- Counsel for the 1st Defendant FI**
**M/s B. Kaliyarasan ---- Counsel for the 2nd Defendant**

This SARFAESI Application has heard in the presence of Counsels for the Applicant and the Defendant Bank 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:

**ORDER**

**1.** This Application has been filed under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with a prayer to declare that taking of possion of applicant's car bearing registration No. TN69AA6660 is illegal, fraudulent, invalid arbitrary, and not in accordance with the governing laws including SARFAESI Act and the SI(E) Rules.

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

**FACTS OF THE CASE**

**A.** The Applicant is a micro entrepreneur registered under the MSMED Act. The UDYAM Certificate No. is UDYAM-TN-26-006875. The 1st Defendant is a Non-Banking Finance Company.

**B.** The 1st Defendant lent a loan to the Applicant vide Loan Agreement No. TTRINT808310007 dated 01.09.2018. The 2nd Defendant is the guarantor of the said loan. The said loan is secured by hypothecation of the Applicant's Mahindra Scorpio Car bearing Registration No. TN69AA-6660.

**C.** The 1st Defendant also lent another loan to the Applicant vide Loan Agreement No. TTRINT010220002 dated 21.10.2020. The 2nd Defendant is the guarantor of the said loan. However, no security interest was created over the said car, either by way of hypothecation or otherwise, to secure the dues under the said loan agreement.

**D.** According to the Applicant, the dues under both the aforesaid loan agreements are barred by limitation and, therefore, do not constitute legally enforceable debts.

**E.** The said Mahindra Scorpio Car is the only car available to the Applicant's entire family consisting of the Applicant, his wife and three girl children, out of whom one is a major and two are minors. The said car was parked on the street outside the gate of the Applicant's residence at Thoothukudi. It is the only car owned by and available to the Applicant and his wife for their family and business purposes.

**F.** The Applicant had not slept during the previous night, i.e., on 12.02.2026, as he had been working at the project site on the outskirts of Thoothukudi throughout the night and until noon of the next day, i.e., 13.02.2026. Thereafter, the Applicant returned home in the afternoon at around 3.00 p.m. and was sleeping in the house. The key of the said car was with the Applicant. When the Applicant woke up from sleep, got ready for work and came out of the house to board the car to proceed to the said project site, he found that the car was missing from the street. Thereafter, the Applicant viewed the footage of the CCTV camera fixed in front of the house.

**G.** The CCTV footage showed that around ten agents and men of the 1st Defendant had allegedly stealthily towed the said car, loaded it onto a vehicle recovery truck and taken it away. Aggrieved by the said act, the Applicant approached the SIPCOT Police Station, Thoothukudi, to lodge a complaint against the 1st Defendant, its agents and men and to seek recovery of the said car and the articles and cash kept inside the car. However, the Station House Officer informed the Applicant that the 1st Defendant had removed and taken possession of the said car after giving prior intimation to the police and obtaining their permission and, therefore, they could not register an FIR against the

1st Defendant, its agents and men or take steps for recovery of the car, cash and articles contained therein.

**H.** The 1st Defendant also sent a letter dated 13.02.2026 to the Applicant, wherein it was stated that the said car had been hypothecated under Loan Agreement No. TTRINT808310007 and that the outstanding amount under the said loan as on 13.02.2026 was Rs.2,49,843/- comprising outstanding EMI of Rs.1,15,224/- and penal interest of Rs.1,34,619.48/-. The Applicant was called upon to pay the said amount within ten days to prevent the sale of the car and adjustment of the sale proceeds towards the loan dues.

**I.** The Applicant purchased an ICICI Bank Demand Draft bearing No. 500214 dated 19.02.2026 for Rs.2,49,843/-, being the amount stated in the said letter dated 13.02.2026, in favour of the 1st Defendant and sent the same to the 1st Defendant through an RPAD letter dated 19.02.2026. In the said letter, the Applicant denied the alleged debt and stated that he was willing to pay the said amount under protest and without prejudice to his lawful remedies against the 1st Defendant, its agents and men.

**J.** As stated in the said letter dated 19.02.2026, the Applicant sent the 2nd Defendant, who is his supervisor-cum-guarantor, along with his driver, Mr. Mariappan, to the office of the 1st Defendant to take back the car. However, the 1st Defendant stated that the car would not be returned unless and until the dues under both the loan accounts were paid.

**K.** The 1st Defendant retained the said Demand Draft for several days and thereafter returned the same to the Applicant vide its letter dated 25.02.2026. In the said letter, the 1st Defendant stated that the Applicant was also a borrower under Loan Agreement No. TTRINT010220002 and that the two loans were interlinked and, in terms of the loan agreement, default in one loan account constituted

default in all the loan accounts. The 1st Defendant further stated that, since the Applicant was liable under both the loan agreements, he was required to pay the entire dues under both loan accounts to obtain return of the car.

**L.** Thereafter, the Applicant issued an Advocate Notice dated 26.02.2026 to the 1st Defendant and its Directors. In the said notice, among other things, the Applicant stated that no security interest had been created in respect of Loan Agreement No. TTRINT010220002 and that none of the provisions of the SARFAESI Act and the Rules made thereunder had been followed while taking possession of the said car. The Applicant therefore alleged that the said act constituted a civil wrong and an offence.

**M.** The counsel for the 1st Defendant sent a reply notice dated 19.03.2026 to the Applicant's counsel. In the said reply notice, the 1st Defendant did not specifically answer the Applicant's allegation that the provisions of the SARFAESI Act and the Rules made thereunder had not been followed. However, it was stated that, in view of the terms and conditions contained in the loan agreement, the 1st Defendant was entitled to take possession of the vehicle without following the SARFAESI Act and the Rules made thereunder. The 1st Defendant further stated that the car would be sold if the outstanding dues under both the loan accounts were not paid immediately.

**N.** The Applicant had kept Rs.2,00,000/- in cash, automobile spare parts worth Rs.20,000/-, the original agreement for sale relating to an immovable property executed between the Applicant and one Mrs. Jenifer, photocopies of the title documents relating to the said property and several original weighbridge bills inside the car.

**O.** Due to the alleged illegal and sudden taking of possession of the car by the 1st Defendant, the Applicant is incurring an expenditure of about Rs.2,000/- per day towards hiring a vehicle for his day-to-day

and essential personal and business travel. The Applicant further states that, due to the said act of the 1st Defendant, he and his family suffered embarrassment and humiliation in the locality and before their neighbours.

**GROUNDS**

**a.** After the enforcement of the SARFAESI Act and the Rules made thereunder, a security interest is required to be enforced in accordance with the provisions of the SARFAESI Act and the Rules made thereunder, even if the loan agreement contains a clause permitting seizure of the secured asset upon default. However, the 1st Defendant allegedly ignored the provisions of the SARFAESI Act and the Rules made thereunder and took possession of the vehicle by relying solely upon the terms of the loan agreement.

**b.** The aforesaid act of the 1st Defendant is alleged to be contrary to and violative of the order passed by the Hon'ble Patna High Court in CWJC No.3456 of 2021 dated 19.05.2023 and the decisions of the Hon'ble Madras High Court relied upon by the Applicant.

**c.** The 1st Defendant took possession of the Applicant's car without issuing or complying with the applicable statutory notices and without following the procedure prescribed under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002.

**d.** No security interest was created in respect of Loan Agreement No. TTRINT010220002. The security interest was created only in respect of Loan Agreement No. TTRINT808310007. The 1st Defendant refused to accept the payment of the alleged dues under Loan Agreement No. TTRINT808310007 by way of ICICI Bank Demand Draft and insisted that the Applicant should also pay the dues under Loan Agreement No. TTRINT010220002 for return of the car, even though no security interest was created over the said car in respect of the latter loan.

**e.** The security interest created under Loan Agreement No. TTRINT808310007 is not registered with CERSAI. Therefore, according to the Applicant, the provisions of the SARFAESI Act are not applicable for recovery of the alleged dues under the said loan agreement.

**f.** The dues under both the aforesaid loan agreements are allegedly barred by limitation and, therefore, do not constitute legally enforceable debts. Hence, according to the Applicant, the powers under the SARFAESI Act and the Rules made thereunder were not available to the 1st Defendant.

**g.** The aforesaid loan accounts were allegedly not classified as Non-Performing Assets (NPA) and no such classification was intimated to the Applicant. Therefore, according to the Applicant, the subsequent act of taking possession of the vehicle is illegal.

**h.** No Demand Notice under Section 13(2) of the SARFAESI Act was issued to the Applicant in respect of either of the loan agreements. Therefore, according to the Applicant, the subsequent taking of possession of the vehicle without obtaining an order from the competent Court is contrary to law.

**i.** No Possession Notice was issued to the Applicant prior to taking possession of the said car.

**j.** No Panchnama was prepared at the time of taking possession of the car and no statement of inventory was prepared.

**k.** The intimation allegedly served after taking possession was not accompanied by a copy of the Panchnama and the inventory of the articles and, therefore, according to the Applicant, the procedure prescribed under the applicable provisions of the Security Interest (Enforcement) Rules, 2002 was not complied with.

**l.** The 1st Defendant failed to follow the applicable provisions of the Security Interest (Enforcement) Rules, 2002 and Sections 13(4) and 14 of the SARFAESI Act, as well as the other applicable provisions of the Act and the Rules, while taking possession of the Applicant's car.

**m.** The 1st Defendant is attempting to sell the car without following the procedure prescribed under the applicable provisions of the Security Interest (Enforcement) Rules, 2002 and also seeks to recover the dues under a loan agreement in respect of which no security interest was created over the said car.

**n.** The Applicant is allegedly suffering financial loss and other injuries due to the taking away of the car without following the procedure prescribed by law and without prior intimation.

**o.** The 1st Defendant cannot, according to the Applicant, rely solely upon a clause contained in the loan agreement to take possession of the vehicle by bypassing the statutory procedure applicable under the SARFAESI Act and the Rules made thereunder.

## SCHEDULE OF MOVABLE PROPERTY

Mahindra Scorpio Car bearing Registration No. TN69AA6660, Engine No. AAA1589, Chassis No. Mahindra 1589, Model – Mahindra VLX, and White colour.

### List of Documents

| Sl. No. | Date | Description of Documents |
|---|---|---|
| 1 | 13.02.2026 | Photo – While taking Possession of the Hypothecated Car Reg. No. TN69AA6660 |
| 2 | 13.02.2026 | Intimation-cum-Demand Letter to the Applicant after taking possession of the hypothecated car Registration No. TN69AA-6660 |
| 3 | 19.02.2026 | ICICI Bank Demand Draft No. 500214 taken by the Applicant for the amount mentioned in the Notice dated 13.02.2026 |
| 4 | 19.02.2026 | Applicant letter to the 1st Defendant submit Demand Draft |
| 5 | 25.02.2026 | 1st Defendant letter to Applicant to return Demand Draft |
| 6 | 25.02.2026 | Applicant Counsel's notice |
| 7 | 19.03.2026 | 1st Defendant Counsel's reply notice |
| 8 | — | Registration Certificate for hypothecated car Registration No. TN69AA-6660 |
| 9 | — | Statement of Account for Loan Agreement No. TTRINT808310007 for the period from 01.09.2018 to 10.08.2024 |

| | | |
|---|---|---|
| 10 | — | UDYAM Registration Certificate of the Applicant under the MSMED Act |

**3.** On the other hand, the Defendant bank appeared and filed Vakalath, Reply Statement along with type set and additional type set of papers.

- The 1st Defendant FI submited that the above SARFAESI Application has been filed with a prayer to declare that the taking of possession of the Applicant's car bearing Registration No. TN 69 AA 6660 is illegal, fraudulent, invalid, arbitrary and not in accordance with the governing laws, including the SARFAESI Act and the Security Interest (Enforcement) Rules thereunder, and consequently, to direct the 1st Defendant to restore possession of the said car to the Applicant, and further to direct the 1st Defendant to pay damages or compensation to the Applicant at the rate of Rs.2,000/- per day from 14.02.2026 till the date of restoration of possession of the car to the Applicant, and for other reliefs.

- The 1st Defendant FI submitted that the 1st Defendant denies all the averments stated in the above SARFAESI Application, except those which are specifically admitted herein.

- The 1st Defendant FI submitted that the Applicant had approached the 1st Defendant for availing a vehicle loan of Rs.4,50,000/- for the purpose of purchasing a vehicle bearing Registration No. TN 69 AA 6660, being a Scorpio car. The said loan was sanctioned by the 1st Defendant to the Applicant on 01.09.2018. Subsequently, the 1st Defendant sanctioned another loan under the facility of Floating Balance Working Capital Loan for a sum of Rs.1,50,000/- on 22.10.2020 for the purpose of meeting the fuel expenses of the

hypothecated vehicle. The 2nd Defendant, Mr. B. Thirumurugan, stood as guarantor for the said loans.

- The 1st Defendant FI submitted that, for availing the above said loans, the Applicant and the 2nd Defendant had executed the necessary loan documents in favour of the 1st Defendant FI. The hypothecated vehicle mentioned in the schedule of movable property in the SA is the secured asset for both the above said loans. Further, both the loans were availed against the security of the hypothecated vehicle. Without security, no loan was sanctioned by the 1st Defendant FI in any manner.

- The 1st Defendant FI submitted that, after availing the above said loans, the Applicant failed to repay the loan EMIs regularly as agreed. Hence, the 1st Defendant FI issued a demand notice dated 07.05.2025 to the Applicant and the 2nd Defendant, calling upon them to repay the loan arrears of Rs.2,59,046.67 in respect of the 1st loan dated 01.09.2018. However, the said notice was returned with the endorsement "No such person in the address" on 08.05.2025. Hence, the 1st Defendant FI, having no other option to recover the outstanding loan dues, took possession of the hypothecated vehicle on 13.02.2026 by following the guidelines prescribed by the Reserve Bank of India (RBI).

- The 1st Defendant submitted that, on the date of possession of the hypothecated vehicle, i.e., on 13.02.2026, the 1st Defendant issued a notice to the Applicant and the 2nd Defendant stating that the hypothecated vehicle had been repossessed and calling upon them to repay the loan arrears of Rs.2,49,843.48 in respect of the 1st loan. Further, the hypothecated vehicle was repossessed without causing any damage and without breaking open the car. If the Applicant had kept any articles in the car, the same would have been available in the said car. As per the guidelines of the RBI, the hypothecated

vehicle was repossessed and the same is presently in the safe custody of the 1st Defendant at its yard.

- The 1st Defendant FI submitted that, thereafter, the 1st Defendant received a letter dated 19.02.2026 from the Applicant along with a Demand Draft for a sum of Rs.2,49,844/-. In the said letter, the Applicant had stated that, "This Demand Draft is paid only towards settlement of amount found mentioned in the above referred letter (13.02.2026) and only to take back my car." Further, certain vexatious allegations were made in the said letter dated 19.02.2026. The 1st Defendant thereafter sent a reply letter dated 25.02.2026 to the Applicant, denying all the averments stated in the letter dated 19.02.2026.

- The 1st Defendant FI submitted that, in the said reply, the 1st Defendant had given a detailed explanation in Paragraph Nos. 2 and 3 that the Applicant had availed two loans and that both the loan agreements contain interlinked liability and cross-default clauses. As per the agreed contractual terms, default in one account constitutes default in all connected accounts. The Applicant and the 2nd Defendant are jointly and severally liable for the said loan liabilities. The Applicant was fully aware of these contractual obligations at the time of execution of the loan documents. Further, as stated in Paragraph Nos. 8 and 9 of the reply, the Applicant was liable to pay an amount of Rs.2,51,097/- towards the vehicle loan and Rs.3,40,712/- towards the Floating Balance Working Capital Loan, totalling Rs.5,91,809/- as on 25.02.2026. Only upon full settlement of both the loan accounts would the Applicant be entitled to claim return of the hypothecated vehicle. Hence, the Demand Draft for Rs.2,49,844/- was returned to the Applicant along with the reply letter dated 25.02.2026.

- The 1st Defendant FI submitted that the Applicant, without settling both the loan accounts and while claiming liability only in respect of one loan account, cannot seek return of the vehicle. The liabilities under both the loan accounts are interlinked and arise out of the contractual terms agreed between the parties. Further, the repossession of the hypothecated vehicle was undertaken strictly in accordance with the contractual rights arising under the loan agreement. A lawful contractual enforcement of security cannot be termed as "coercive action" within the meaning of the Tamil Nadu Lending Entities (Prevention of Coercive Actions) Act, 2025. In the absence of any material showing the use of criminal force, intimidation, unlawful entry or violence as contemplated under the said Act, the Applicant's allegation is unsustainable in law.

- The 1st Defendant FI submitted that Section 17(1) of the SARFAESI Act, 2002 provides as follows:

  *"Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, (may make an application along with such fee, as may be prescribed) to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken."*

- The 1st Defendant FI has not issued any Demand Notice or Possession Notice under the SARFAESI Act, 2002. As per the Loan-cum-Hypothecation Agreement, the 1st Defendant initiated recovery proceedings and repossessed the hypothecated vehicle. No notice was issued under the SARFAESI Act, 2002. If any measure had been taken under the SARFAESI Act, the Applicant could have filed an application under Section 17(1) of the SARFAESI Act, 2002 before this Hon'ble Tribunal. In the absence of any measure having been taken under Section 13(4) of the SARFAESI Act, the present

application filed under Section 17(1) of the SARFAESI Act, 2002 is not maintainable. Hence, the present SA is liable to be dismissed in limine as not maintainable.

**Documents filed by the 1st Defendant in the Typed set of papers**

| Sl. No. | Date | Particulars |
|---|---|---|
| 1. | 07.05.2025 | Demand Notice issued by the 1st Defendant to the Applicant |
| 2. | 08.05.2025 | Postal Returned Cover of the Applicant |
| 3. | 13.02.2026 | Photographs showing the possession of the hypothecated vehicle |
| 4. | -- | Statement of Account as on 19.05.2026 for vehicle loan No. TTRINT808310007 |
| 5. | -- | Statement of Account as on 19.05.2026 for Floating balance working capital loan (FBWCL) No TTRINT010220002 |

**Additional Typedset of papers filed by the 1st Defendant:**

| Sl. No. | Dates | Original of particulars |
|---|---|---|
| 1. | 01.09.2018 | Hypothecation cum loan agreement regarding 1st Loan |
| 2. | 22.10.2020 | Floating Balance Working Capital Loan Agreement regarding 2nd Loan |
| 3. | 22.10.2020 | Letter of Guarantee regarding 2nd Loan |

**Counter Filed by 2nd Defendant**

- ✓ The 1st Defendant lent a loan to the Applicant vide Loan Agreement No. TTRINT808310007 dated 01.09.2018. The 2nd Defendant is the guarantor of the said loan. The said loan is secured by the hypothecation of the Applicant's Mahindra Scorpio Car bearing Registration No. TN 69 AA 6660.

- ✓ The 1st Defendant also lent another loan to the Applicant vide Loan Agreement No. TTRINT010220002 dated 21.10.2020. Neither the Applicant nor the 2nd Defendant signed any document or agreement in respect of the said loan. The 1st Defendant had forged the loan agreements for the said loan in the names of the Applicant and the 2nd Defendant. In any event, the 2nd Defendant is not a guarantor for the said loan. Further, no security interest was created over the said car, either by way of hypothecation or otherwise, to secure the dues under the said loan agreement.

- ✓ The said two loans are barred by limitation and, therefore, do not constitute legally enforceable debts.

- ✓ The said Mahindra Scorpio Car is the only car available to the entire family consisting of the Applicant, his wife and their three girl children, out of whom one is a major and two are minors. The said car was parked on the street, outside the gate of the Applicant's residence at Thoothukudi. It is the only car owned by and available to the Applicant and his wife for their family and business purposes.

- ✓ The Applicant's home CCTV footage showed that around ten agents and men of the 1st Defendant stealthily towed away the said car, loaded it onto a vehicle recovery truck and left the place.

- ✓ The 1st Defendant also sent a letter dated 13.02.2026 to the Applicant, wherein the 1st Defendant stated that the said car was hypothecated under Loan Agreement No. TTRINT808310007 and that the outstanding dues under the said loan as on 13.02.2026 were Rs.2,49,843/- (outstanding EMI amount of Rs.1,15,224/- plus penal interest payable on the said outstanding EMI amounting to Rs.1,34,619.48/-). The 1st Defendant further called upon the Applicant to pay the said amount within 10 days, failing which the car would be sold and the sale proceeds would be appropriated towards the said loan dues.

- ✓ The Applicant purchased an ICICI Bank Demand Draft bearing No. 500214 dated 19.02.2026 for Rs.2,49,843/- being the amount stated in the said letter dated 13.02.2026, in favour of the 1st Defendant, and submitted the said Demand Draft to the 1st Defendant vide RPAD letter dated 19.02.2026. In his letter dated 19.02.2026, the Applicant had stated that he denied the said debt and further agreed to pay the said amount under protest and without prejudice to his lawful remedies against the 1st Defendant, its agents and men.

- ✓ As mentioned in the said letter dated 19.02.2026, the Applicant had sent his supervisor-cum-guarantor, the 2nd Defendant, and the Applicant's driver, Mr. Mariappan, to the 1st Defendant's office to take back the car. However, the 1st Defendant stated that it would not return the car unless and until the Applicant repaid the dues under both the said loan accounts.

- ✓ The 1st Defendant retained the said Demand Draft for several days and returned the same to the Applicant vide its letter dated 25.02.2026. In the said letter, among other things, the 1st Defendant stated that the Applicant was also a borrower under another Loan Agreement No. TTRINT010220002 and that the said loans were interlinked, and that default in one loan account would be deemed to constitute default in all the loan accounts. Further, even though no hypothecation or security interest was created in respect of the said second loan, the 1st Defendant stated that, since the Applicant was liable under both the loans, he ought to pay the entire dues under both the loan accounts in order to take back the car.

- ✓ Thereafter, the Applicant sent an advocate's notice dated 26.02.2026 to the 1st Defendant and the Directors of the 1st Defendant. In the said notice, among other things, the Applicant stated that no security interest had been created over the car in respect of the second Loan Agreement No. TTRINT010220002. The Applicant

further stated that none of the provisions of the SARFAESI Act and the Rules made thereunder had been followed for taking possession of the said car and, therefore, the said act constituted a criminal offence and a civil wrong.

- ✓ The 1st Defendant's counsel sent a reply notice dated 19.03.2026 to the Applicant's counsel. In the said reply notice, the 1st Defendant did not specifically reply to the Applicant's allegation that none of the provisions of the SARFAESI Act and the Rules made thereunder had been followed. However, in the said reply notice, it was stated that, in view of the terms and conditions contained in the loan agreement, the 1st Defendant was entitled to take possession of the vehicle without following the SARFAESI Act and the Rules made thereunder. The 1st Defendant further threatened the Applicant that it would sell the car if the outstanding dues under both the loans were not repaid immediately.

- ✓ To the knowledge of the 2nd Defendant, the Applicant had kept Rs.2,00,000/- in cash, automobile spare parts worth Rs.20,000/-, the original agreement for sale in respect of an immovable property executed between the Applicant and one Mrs. Jenifer, photocopies of the title documents relating to the said property, and several original weighbridge bills in the said car.

- ✓ The 1st Defendant had not issued any notice either to the Applicant or to the 2nd Defendant under the SARFAESI Act and the Rules made thereunder, either before or after the stealthy seizure of the said car. The action of the 1st Defendant is therefore outright illegal.

- ✓ Therefore, it is prayed that the action of the 1st Defendant may be set aside, the car bearing Registration No. TN 69 AA 6660 may be returned to the Applicant, costs may be imposed on the 1st Defendant, and the 2nd Defendant may be compensated from the amount of costs awarded.

**4.** ***ON THE BASIS OF ABOVE PLEADINGSTHE POINT WHICH ARISES FOR CONSIDERATION IS:-***

***WHETHER THE APPLICANT IS ENTITLED TO GET THE RELIEFS AS PRAYED FOR?***

**5.** Having heard the parties and after going through the entire documents available on the records, this Tribunal find that the Applicant has challenged action of the Defendant for taking possession of the Mahindra Scorpio Car bearing Registration No. TN-69-AA-6660 and has contended that the 1st Defendant Finance Institution has taken possession of the said vehicle without issuing a Demand Notice under Section 13(2) of the SARFAESI Act and without following the procedure contemplated under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002.

**6.** On the other hand, the 1st Defendant Finance Institution has categorically stated that no Demand Notice or Possession Notice was issued under the SARFAESI Act and that the vehicle was repossessed pursuant to the contractual terms contained in the Loan-cum-Hypothecation Agreement and in accordance with the guidelines prescribed by the Reserve Bank of India. The Defendant has specifically contended that no measure under Section 13(4) of the SARFAESI Act was taken and, therefore, the present S.A. filed under Section 17(1) of the SARFAESI Act is not maintainable.

**7.** On perusal of the pleadings and documents, I find that the 1st Defendant has produced the Demand Notice dated 07.05.2025 issued in respect of the vehicle loan. However, the said notice has not been issued under Section 13(2) of the SARFAESI Act. The Defendant has also admittedly not issued any Possession Notice under the SARFAESI Act. The

Defendant's specific case is that the vehicle was repossessed on 13.02.2026 by exercising its contractual right under the Loan-cum-Hypothecation Agreement and not by invoking the provisions of the SARFAESI Act.

**8.** Section 17(1) of the SARFAESI Act provides a remedy to any person aggrieved by any of the measures referred to in Section 13(4) taken by the secured creditor or his authorised officer. Therefore, the jurisdiction of this Tribunal under Section 17(1) is attracted when the impugned action constitutes a measure taken under Section 13(4) of the SARFAESI Act. The Hon'ble Supreme Court has also held that the remedy under Section 17(1) is available in respect of measures taken under Section 13(4).

**9.** In the present case, I find that the material on record does not establish that the 1st Defendant invoked the provisions of the SARFAESI Act or that the impugned repossession was effected as a measure under Section 13(4) of the Act. On the contrary, the consistent stand of the 1st Defendant is that the vehicle was repossessed under the contractual terms of the loan agreement and not under the SARFAESI Act. The absence of a Demand Notice under Section 13(2), the absence of a Possession Notice under the SARFAESI Act and the Defendant's specific admission that it did not initiate proceedings under the SARFAESI Act support the said averment of Defendant.

**10.** Merely because the Applicant alleges that the Defendant ought to have followed the provisions of the SARFAESI Act, such allegation by itself would not convert a contractual repossession into a measure under Section 13(4) of the SARFAESI Act. The jurisdiction under Section 17(1) depends upon the nature of the measure actually taken by the secured creditor and not merely upon the allegations made by the Applicant.

**11.** Therefore, this Tribunal is of the considered view that the impugned repossession of the vehicle, as pleaded and established from the record, was not a measure taken under Section 13(4) of the SARFAESI Act.

Consequently, the remedy under Section 17(1) of the SARFAESI Act is not attracted to the present case.

**12.** In view of the above finding, the Securitisation Application **No. 402/2026** filed under Section 17(1) of the SARFAESI Act is **dismissed as not maintainable before this Tribunal.** No order as to costs.

(Dictated to KKN taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 12th October, 2026).

Sd/-
**(SEEMA SINHA)**
**PRESIDING OFFICER**

Uploaded on 21.10.2026