IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.30629 of 2026
&
W.M.P.Nos.33650 & 33651 of 2026

C.Elavazhagan
S/o. Chinnarasu,
No.237, 3rd Cross, 4th Avenue,
Sri Raghavendra City, Vadalur,
Cuddalore District - 607 303. .. Petitioner

Vs.

1. The Chief Manager and Authorised Officer,
Bank of India,
Kurinjipadi Branch,
No.9, Sivankoil Street,
Kurinjipadi,
Cuddalore District - 607 302.

2. The Senior Branch Manager
Bank of India,
Kurinjipadi Branch,
No.9, Sivankoil Street,
Kurinjipadi,
Cuddalore District - 607 302.

3. M/s. SRE Agency
Rep. by its Proprietor,
Mr. M. Rajalingam,
No.95, 4th Avenue, Ground Floor,
Sri Raghavendra City,
Vadalur, Cuddalore District - 607 303.

4. M. Rajalingam
Proprietor, SRE Agency,
Door No.574, Muthu Kannu Salai,
Kalaignar Nagar, Vadalur,
Cuddalore District- 607 303. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus calling for the records of the 1st respondent relating to the Demand Notice dated 21.05.2026 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the consequential proceedings dated 07.07.2026 bearing Reference No. ARH/FY2026-27/01 passed under Section 13(3A) of the said Act, *insofar as they demand the petitioner, as guarantor, to pay the entire outstanding dues of Rs.1,93,27,741/- payable by the principal borrower,* and quash the same to that extent as being contrary to the express terms of the Deed of Guarantee dated 28.10.2024, Section 128 of the Indian Contract Act, 1872 and Article 14 of the Constitution of India, and consequently direct the respondents 1 and 2 to receive from the petitioner the petitioner's limited contractual liability of Rs.40,00,000/-, together with the contractual interest, costs, charges and expenses payable under the Deed of Guarantee dated 28.10.2024, in full and final discharge of the petitioner's liability as guarantor, and thereafter forthwith discharge the mortgage created by the petitioner, release the petitioner's secured asset, return the original title deeds relating thereto.

For Petitioner : Mr.P.R.Thiruneelakandan

ORDER
(Order of the Court was made by
G.Arul Murugan,J)

The writ petition is filed challenging the notice dated 21.05.2026 issued by respondent bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the order dated 07.07.2026 passed under Section 13(3A) of the Act.

2. It is the case of petitioner that he stood as guarantor to the loan availed by respondents 3 and 4 herein from respondents 1 and 2. The borrowers committed default in repayment of the dues, pursuant to which, the account was classified as non performing asset and proceedings were initiated under the Act. The demand notice under Section 13(2) came to be issued on 21.05.2026 to the

principal borrowers and also to petitioner for having stood as guarantor. Petitioner had submitted a reply to the notice on 22.06.2026 and the bank, by an order under Section 13(3A) of the Act dated 07.07.2026, rejected the said reply of petitioner. Assailing the order of rejection dated 07.07.2026, petitioner has preferred the above writ petition.

3. Learned counsel appearing for petitioner contended that when petitioner stood as a guarantor only for a sum of Rs.40.00 lakh, petitioner cannot be made liable for the entire loan dues of the borrowers and further, unless and until the proceedings are undertaken against the borrowers for realisation of the debts, the bank/secured creditor cannot be allowed to proceed against petitioner, who is only the guarantor.

4. Learned counsel for petitioner further submits that if the entire recovery is made from petitioner, it would amount to violation of the very guarantee executed by the petitioner to the bank and in such circumstances, the very notice issued and the rejection order

passed under Section 13(3A) of the Act are bad and are liable to be interfered with. He also submits that petitioner is ready to make deposit of Rs.40.00 lakh along with interest towards his liability.

5. Heard learned counsel for petitioner and considered the materials available on record.

6. It is not in dispute that respondents 3 and 4 herein are the borrowers who availed financial assistance from respondents 1 and 2/secured creditor. The dues were not repaid and in view of default, the account was classified as non performing asset and proceedings came to be initiated under the Act. The demand notice under Section 13(2) of the Act dated 20.05.2026, was issued to the borrowers and the petitioner.

7. Petitioner, by his reply dated 22.06.2026 to the notice issued under Section 13(2) of the Act, particularly claimed that when his guarantee is only to a sum of Rs.40.00 lakh, the bank/secured creditor can only proceed against the borrowers and

only after adjusting all the amounts recovered from the borrowers, if any balance has to be recovered, then, the bank can proceed against petitioner being the guarantor. The relevant portion of the reply submitted by petitioner reads as under:

> *"5. So you are hereby called upon not to take any action as against my client's property under Sarfaesi Act until the said Rajalingam property was brought into Auction into Sarfaesi Act and if you do so in spite of this notice my client will take appropriate legal action as against you before DRT and deposit the said amount of Rs.40,00,000/- before DRT and my client reserves his right to take separate legal action before the State consumer Redressal Commission Chennai for Deficiency of your service and kindly avoid unpleasant situation."*

8. The bank considered the reply submitted by petitioner under Section 13(3A) of the Act and taking note of the fact that liability of petitioner guarantor is co-extensive with that of principal borrower, rejected the same by order dated 07.07.2026. The order of rejection reads as follows:

> *"5. It is a settled principle of law that the liability of a guarantor is co-extensive with that of the principal borrower.*

The Bank is, therefore, legally entitled to enforce its rights against the borrower, the guarantor and the secured assets in accordance with law. The Bank is under no legal obligation to exhaust its remedies against the principal borrower of the securities offered by the borrower before proceeding against the guarantor or the security created by the guarantor. The demand notice issued under Section 13(2) of the SARFAESI Act has been issued strictly in accordance with the provisions of the Act and the Security Interest (Enforcement) Rules, 2002. No illegality or procedural infirmity has been pointed out warranting withdrawal or modification of the said notice.

6. The request made in your notice to refrain from initiating or continuing proceedings against your client's secured asset until the borrower's property is sold is not acceptable and is accordingly rejected.

7. Without prejudice to the foregoing, the Bank reserves its right to enforce all the securities created in its favour and to initiate or continue such proceedings as may be permissible under the SARFAESI Act, 2002 and other applicable laws for recovery of its lawful dues. Accordingly, the objections/representations contained in your notice are not acceptable and stand rejected under Section 13(3A) of the SARFAESI Act, 2002."

9. At this juncture, it is relevant to refer to Section 128 of the

Indian Contract Act, 1872 which reads as under:

> *"**128. Surety's liability**.—*
>
> *The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."*

10. As per Section 128 of the Indian Contract Act, the liability of the guarantor is co-extensive with that of the principal borrower unless it is otherwise provided by the contract. In the instant case, the contract of guarantee executed by petitioner does not make any special circumstances and the liability of petitioner as guarantor would be co-extensive with the borrowers/respondents 3 and 4.

11. In such circumstances, the reply submitted by petitioner contending that the bank could only proceed against the principal borrowers and only if the dues are not able to be realised from the principal borrowers, it can be realised from the properties of the guarantor, is not sustainable in view of Section 128 of the Indian Contract Act, which has been rightly considered by the bank while passing the order rejecting the claim.

12. It is further to be noted that except the above ground raised by petitioner guarantor, nothing is stated in the reply that he was ready to make payment of Rs.40.00 lakh, for which he executed guarantee. It is only when a notice under Section 13(4) of the Act is issued by the bank, petitioner would have an opportunity to challenge it before the Debts Recovery Tribunal under Section 17 of the Act.

13. Further, it is not a case where petitioner had submitted that he was ready to deposit the amount for which he executed the guarantee nor a stage has arrived where the bank has issued notice to proceed against the properties of petitioner by auction sale for recovering the entire dues payable by the borrowers. Therefore, the challenge to the rejection order passed by the bank is not maintainable and the prayer is premature.

14. In view of the above, the writ petition stands dismissed. It is made clear that if any such proceedings are initiated, it is open to

petitioner either to make payment for the amount for which he has executed guarantee or challenge it in the appropriate forum in the manner known to law. Consequently, the interim applications are also dismissed.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)
05.08.2026

Index : Yes/No
Neutral Citation : Yes/No

kpl

To

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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

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