Case Citation: (2026) ibclaw.in 5926 HC

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2026

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI
and
THE HONOURABLE MR. JUSTICE N.DILIP KUMAR

W.P(MD)No.2186 of 2024

K.Muneeswaran ... Petitioner

Vs

1.The Authorized Officer,
Bank of Baroda,
Anna Nagar Branch,
HIG 16, 80, Feet Road,
Anna Nagar, Madurai-625 020.

2.R.Devi Rani ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the Debts Recovery Appellate Tribunal, Chennai in RA (SA) 66/2019, dated 17.11.2023, quash the same and consequently direct the respondents to handover the possession of the residential house constructed on Plot No.21 measuring 1920 sq.ft. bearing Survey No.49/1, Rasi Jai Garden, Kodikulam 2nd Street, Suriya Nagar, Madurai to the petitioner.

For Petitioner : Mr.R.Subramanian
for Mr.M.Saravanan

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For R-1 : Mr.K.Muraleedharan

For R-2 : Mr.M.Ponniah

ORDER

(Order of the Court was made by N.DILIP KUMAR.J.)

The present writ petition is filed challenging the order of the Debt Recovery Appellate Tribunal, Chennai in RA (SA) 66/2019, dated 17th November, 2023, thereby dismissing the said appeal and confirming the order passed by the Hon'ble Debt Recovery Tribunal, Madurai, dated 5th January 2019 in S.A.No.288 of 2017.

2. In the said SARFEASI Application filed under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter shortly stated as SARFAESI Act) the writ petitioner / borrower had challenged the sale notice dated 16th June 2017, issued by the first respondent / a public sector bank in its capacity as the secured creditor and also sought to set aside the auction that was conducted on 5th July 2017, in

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which the second respondent herein was declared as the successful bidder.

3. We heard Mr.R.Subramanian, learned counsel for Mr.M.Saravanan, learned counsel appearing for the petitioner, Mr.K.Muraleedharan, learned counsel appearing for the first respondent and Mr.M.Ponnaiah, learned counsel appearing for the second respondent and perused the materials available on record.

4. Mr.R.Subramanian, learned counsel appearing for the petitioner would primarily raise a plea that both the Debt Recovery Tribunal as well as the Debt Recovery Appellate Tribunal in the orders impugned herein, had failed to consider that there is a serious infirmity in the action of the secured creditor in complying with the statutory requirements provided under Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 in as much as there was no clear 15 days notice between the date on which the sale notice was issued to the borrower and the date on which the public auction sale was held. In view of such flagrant violation, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal ought to have interfered with the proceedings conducted by the secured creditor

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under the SARFEASI Act and the dismissal of his SARFEASI Application by the Debt Recovery Tribunal and further appeal by the Debt Recovery Appellate Tribunal are therefore liable to be interfered with.

5. Mr.K.Muraleedharan, learned counsel appearing for the respondent Bank is not disputing the facts of the case. He fairly admits that the auction sale notice dated 16th June 2017 was despatched to the borrower only on 20th June 2017 and the sale happened on 05th July 2017 i.e., the 15th day and though there is no clear 15 days between the date of issuance of the notice and the date on which the public auction sale took place, in the light of the judgment of the Co-ordinate Bench of this Hon'ble Court in ***M/s. Lucky Footwear Components, represented by its Partner Vs. The Authorized Officer, Indian Bank*** in C.R.P.No.5237 of 2025 dated 29.10.2025, the borrower having failed to establish any substantial prejudice insofar as his right to redeem the property, the orders of the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal need not be interfered with.

6. Mr.M.Ponniah, learned counsel appearing for the second respondent /

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auction purchaser would submit that he is adopting the submissions of the counsel for the respondent Bank and in addition would plead that he had successfully complied with the conditions of the public auction sale and in fact, a Sale Certificate was issued in his favour as early as on 20th July 2017 and if at all any adverse order is passed, the interest of his client may be protected by ordering the respondent Bank to refund the said amount with appropriate interest at least at 12%.

7. The facts are not in dispute and they are as follows:

7.1. The writ petitioner claims to be a staff member of the District Judiciary; he availed a housing loan and another loan towards home improvement from the first respondent Bank; towards the credit facilities availed by the writ petitioner, his wife V.Nageswari, stood as a guarantor; they availed a housing loan of Rs.5,73,000/- and a home improvement loan of Rs.3,10,000/- in 2012; the loan accounts were declared as Non performing asset on 30th April 2013; the secured creditor initiated proceedings under the SARFAESI Act, by issuing the statutory demand notice under Section 13(2) of the SARFAESI Act on 05 August 2013; and the possession notice was issued on 11th February 2016 under Section 13(4)

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of the SARFAESI Act; followed by another possession notice dated 14th March 2016; the first sale notice was issued on 16th June 2016 which attracted no bidders, warranting the issuance of a second sale notice on 25th February 2017 which also failed for want of bidders and the subject third sale notice dated 16th June 2017 was published in two newspapers, viz., an english daily "Indian Express" and a vernacular daily "Dinamani" on 16.06.2017; the auction sale was scheduled to be conducted on 05th July 2017; and it was also stated to have been affixed on the secured asset; the sale notice was sent under the registered post to the borrower and the guarantor on 20th June 2017; against the upset price fixed towards fixing at Rs.26,70,000/-, the second respondent was the highest bidder for Rs.33,10,000/- and he was declared as the successful bidder and upon payment of the said amount, a sale certificate was also issued in favour of the second respondent by the secured creditor on 20th July 2017. A sale deed was also registered in Document No.2251 of 2017. The Bank adjusted the sale proceeds of Rs.33,10,000/-as follows:

"i. Towards Loan Account N0.06/302 a sum of Rs.8,50,000/- was credited.

ii. Towards Loan Account No.06/688 a sum of Rs.4,20,000/- was credited.

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iii. Towards Recovery agent charges a sum of Rs.3,06,678/- was adjusted and further the legal charges of Rs.10,000/- was also adjusted from the sale proceeds. The loan accounts were accordingly closed.

iv. There was a balance sum of Rs.17,23,322/- which was declared as surplus."

8. The borrower challenged the SARFAESI proceedings before the Debt Recovery Tribunal, Madurai, by filing a SARFAESI Application in S.A.No.288 of 2017 and the Hon'ble Debt Recovery Tribunal, Madurai, vide order dated 05.01.2019 dismissed the same.

9. With regard to the contention regarding the non-compliance of Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002, the Debt Recovery Tribunal referred to the paper publication that was made on 16.06.2017 and concluded that there is a clear availability of more than 15 days. The Debt Recovery Tribunal held that the notice dated 17.06.2017 referred by the borrower is not the sale notice, but it is only a covering letter which enclosed the publication of the sale notice. The other contentions pointed out by the borrower

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were also negatived and his SARAESI Application was dismissed. The appeal filed by the borrower before the Debt Recovery Appellate Tribunal in RA(SA).No.66 of 2019 was also dismissed on 17.11.2023 on similar grounds. The Debt Recovery Appellate Tribunal held that the sale notice sent to the borrower returned as 'unclaimed' and that there was sufficient compliance of the statutory procedure insofar as the sale notice was published in the vernacular-"Dinamani" and English daily-"Indian Express" and from the date of the said sale notice, 15 clear days is available.

10. The only point that arises for consideration in this writ petition is whether the order of the Debt Recovery Appellate Tribunal confirming the order of dismissal passed by the Debt Recovery Tribunal, Madurai is justified and whether the Bank had complied with the statutory requirements prescribed under the SARFAESI Act, 2002.

11. Rules 8 and 9 of the Security Interest (Enforcement)Rules, 2002 read as under:

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"8. Sale of immovable secured assets.

(1) Where the secured asset is an immovable property, the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspaper, one in vernacular language having sufficient circulation in that locality, by the authorized officer.

(2A) [All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.] [Inserted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]

(3) In the event of possession of immovable property is actually taken by the authorized officer, such property shall be kept in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorized officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they

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are sold or otherwise disposed of.

(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.

(6) the authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5): [Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.] [Substituted by Notification No. G.S.R. 1040(E), dated 17.10.2018 (w.e.f. 20.9.2002).]

(7) [every notice of sale shall be affixed on the conspicuous part of

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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.]

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled [between the secured creditors and the proposed purchaser in writing] [Substituted 'between the parties in writing' by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).].

9. Time of sale, issue of sale certificate and delivery of possession, etc.

- [(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the

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date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.] [Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorized officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of [rule 8] [Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]:

Provided further that if the authorized officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) [On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money

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deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;] [Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months] [Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).].

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [to the secured creditor] [Inserted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).] and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorized officer may, if he thinks fit, allow the

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purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

(8) On such deposit of money for discharge of the encumbrances, the authorized officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorized officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

12. Under the above Rules, before the Authorised Officer effects the sale of the immovable property, he is bound to serve to the borrower a notice of 30 days for sale of the immovable secured assets and when the sale is effected either by inviting tenders from the public or by holding the public auction, the secured creditor is under a mandatory requirement to cause a public notice to be published in two leading newspapers including one in vernacular language having vide

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circulation in the locality and there is also a statutory requirement that every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer is also bound to upload the detailed terms and conditions of the sale, describing the immovable property to be sold, including the details of the encumbrances known to the secured creditor; mentioning the the secured debt, for recovery of which the property is to be sold; the reserve price of the immovable secured assets below which the property may not be sold; the time and place of public auction; stipulate the earnest money to be deposited; and any other terms and conditions that may be mentioned by the authorized officer, which he considers necessary for a purchaser to know regarding the nature and value of the property. The requirement of thirty clear days notice is applicable only when the sale notice is issued for the first time and for the subsequent sale notices, it is sufficient if 15 days notice is provided.

13. The Hon'ble Supreme Court in the judgment delivered in ***Mathew Varghese Vs. M.Amirtha Kumar and Others*** reported in ***(2014) 5 SCC 610*** has categorically held that there should be a strict compliance of the mandatory procedures prescribed under the SARFAESI Act and the Rules made thereunder.

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It held that any sale of transfer of a secured asset cannot take place without duly informing the borrower about the proposed auction sale in order to enable the borrower to redeem his property by repaying all the loan dues with all costs, charges and expenses and if there is any violation of the statutory requirement it would amount to a constitutional violation and would render the ultimate sale, a nullity. The Hon'ble Supreme Court held that no sale of an immovable property shall take place before the expiry of 30 days / 15 days as the case may be as to whether it is a first sale or a subsequent sale. The Hon'ble Apex Court also explained that the requirement of issuing an individual notice to the borrower serves the purpose of providing him an opportunity to exercise his right of redemption by allowing him to take all efforts to repay the loan dues and retain his property. The Hon'ble Apex Court held that the requirement of issuing a public sale notice in newspapers is to enable the intending purchasers to know the nature of the property, the extent of liability pertaining to the property, any other encumbrances pertaining to the property, the minimal price below which cannot be made a bid and the total liability of the borrower to the secured creditor. The Hon'ble Apex Court cautioned that enormous powers vested with the secured creditor should not be exercised arbitrarily or whimsically to the utter

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disadvantage of the borrower, as there is power vested with the secured creditor to sell the property without the intervention of the Court. The Hon'ble Apex Court concluded that it is imperative, for the sale to be effected under Section 13(8), the procedure prescribed under Rule 8 read along with Rule 9 (1) has to be necessarily followed, in as much as that is the prescription of law for effecting the sale as has been explained in detail.

14.In a recent judgment of the Hon'ble Supreme Court of India in ***M.Rajendran and Others Vs. KPK Oils and Proteins India Private Limited and Others in 2026 3 SCC 505,*** the Hon'ble Supreme Court of India held as follows:

> *"173.3. Similarly, the stipulation under Rule 9(1) of a thirty-day gap between the date of publication of notice of sale and the date of actual sale does not impute a distinct characteristic to the public notice in the newspaper in contrast to the notice of sale that is served to the borrower. As is evident from Appendix IV-A to the SARFAESI Rules, the public notice of sale in newspaper as well the notice of sale served to the borrower are one and the same, for the purpose of Rule 9(1).*
>
> *174.4. The embargo enshrined under Rule 9(1), that no sale, in the first instance shall take place before the expiry of thirty days, would be reckoned from the date of issuance of the "notice of sale",*

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which would include both the public notice of sale in the newspaper and the service thereof to the borrower, whichever is later.

173.5. The notice of sale both under Rule 8(6) read with Rule 9(1) respectively can be served as published in the newspaper, simultaneously on the same date. All that is required under Rule 9(1) is that a thirty-day gap is maintained between the date the notice of sale is served, affixed and published, ***whichever is later,*** *as the case may be, till the date of actual sale*."

15. The above judgment makes it categorical that the gap of 30 days / 15 days should be maintained between the date and notice of sale is served, affixed and published whichever is later, as the case may be, till the date of the actual sale. In the subject case, the paper publication was made on 16.06.2017. The date of affixture is claimed to have been done on 16.06.2017. However, the individual sale notice to the borrower was despatched only on 20.06.2017 and the same returned as "unclaimed". Even if the date of despatch i.e., 20.06.2017 is taken to reckon the availability of 15 days, it is clear that only 14 days was available and even before the expiry of 15 clear days the sale happened on 05.07.2017. The judgment of the Hon'ble Co-ordinate Bench of this Court in ***Lucky Foot Components represented by its Partner*** decided on 29.10.2025 had

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not taken into account the order of the Hon'ble Supreme Court of India dated 22.09.2025 in the case of ***M.Rajendran vs. KPK Oils and Proteins India Private Limited*** reported in **(2026) 3 SCC 505**. The same having been rendered without taking into consideration the binding precedent of the Hon'ble Apex Court, it cannot be applied.

16. A Three Judges Bench of the Hon'ble Supreme Court in the case of ***Canara Bank Vs. Amarendar Reddy and another*** reported in ***(2014) 4 SCC 735*** in reference to Rules 8 and 9 of the Security Interest (Enforcement) Rules 2002, after referring to the ***Mathew Varghese case*** concluded that the secured creditor is bound to serve a notice of 30 days of borrower intimating him about its intention to sell the immovable secured asset and the mode and date fixed for the sale; and also to issue a public notice in two leading newspapers, if the sale of such secured asset is effected either by inviting tenders or by holding the public auction, noticing the date of sale after thirty ***clear days from such notice***.

17. Further in the present case, pursuant to the interim order granted by this Court on 20th June 2025, the borrower had complied with the conditional orders.

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We are conscious that the subsequent payment of money by the borrower cannot be a ground to set aside the already concluded auction sale. We referred to the said fact only for the completion of narration of evidence.

18. The compliance of the statutory mandate and requirement to issue notices to the borrowers and guarantors giving a clear 15 days is very much essential, considering the fact that enormous powers are vested with the secured creditor and they are allowed to sell the secured assets, even without the intervention of the Court. When enormous powers are provided to the secured creditor, they are bound to strictly complying with the statutory requirements. When the law prescribes an act to be done in a particular manner, it shall be done only in that manner and not otherwise.

19. We are unable to sustain the order of the Debt Recovery Appellate Tribunal and also the order of the Debt Recovery Tribunal insofar as they failed to consider the failure of the secured creditor to comply with the mandatory requirement of issuing a sale notice with clear 15 days time gap from the date of delivery of the notice to the date of conducting of the auction sale.

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20. In fine, the Writ Petition is allowed and the order passed by the Debt Recovery Tribunal, Madurai in S.A.No.288 of 2017 dated 05.01.2019 and the Debt Recovery Appellate Tribunal Chennai in RA (SA) 66/2019, dated 17.11.2023 are hereby set aside.

21. The auction sale notice dated 16.06.2017 and the public auction held on 05th July 2017 in favour of the second respondent auction purchaser are hereby cancelled.

22. The first respondent Bank is hereby ordered to repay the sale consideration amount deposited by the auction purchaser with simple interest at 9% from the date of deposit to the date of repayment, which shall be within a period of two weeks from the date of receipt of a copy of this order.

23. The Bank is at liberty to proceed against the writ petitioner / borrower if there are dues still pending in loans borrowed by the writ petitioner / borrower. In case all the dues are settled, the Bank shall handover all the title documents

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back to the borrower along with the execution of necessary documents towards redemption of the mortgage. No costs.

[M.D.I.,J] [N.D.K.,J]
28.09.2026

NCC : Yes / No
Index : Yes / No
TSG

To

1.The Debt Recovery Tribunal, Madurai.

2.The Debt Recovery Appellate Tribunal, Chennai.

M.DHANDAPANI, J
AND
N.DILIP KUMAR, J

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