Presented on : 29.08.2022
Registered on : 04.10.2022
Decided on : 04.07.2026
Duration : Y M D
03-08-07

IN THE DEBTS RECOVERY TRIBUNAL
AT AURANGABAD

<u>SECURITISATION APPLICATION NO.395 OF 2022</u>

Bhagwan Arjun Pachpinde,
Prop. Of M/s Elgar Super Mart,
Age : 70 years, Occu. Business,
R/o Plot No.4, Sangita Colony,
Bhavsingpura Road, Aurangabad – 431 001 ..**Applicant**

Versus

1. The Authorized Officer,
   The Ajanta Urban Cooperative Bank Lt.,
   Branch office at Jadhav Mandi,
   Aurangabad – 431 001

2. Sau. Sangeeta Prashant Shegaonkar,
   Age : 46 years, Occu. Household,
   R/o Vimal Kunj, Krantinagar,
   Behind District Court,
   Aurangabad – 431 001

3. Kusum Shankarrao Bansode,
   Age : 50 years, Occu. Household,
   R/o Plot No.1855, Nandanvan Colony,
   Bhavsingpura, Aurangabad – 431 001

4. Muneshwar Devidas Pundlik,
   Age : 52 years, Occu. Nil,
   R/o Plot No.15, Flat No.4,
   Monika Apartment, Shantipura,
   Aurangabad – 431 001 ….**Respondents**

<u>APPEARANCE</u> :

Applicant : Mr. Kamlakar J. Suryawanshi, Advocate

Respondent No.1 : Mr. Sachin S. Katariya, Advocate

Respondent Nos.2 to 4 : None present

CORAM: DR. J.R. CHAUHAN, PRESIDING OFFICER

<u>JUDGMENT</u>

(Pronounced on : 04.07.2026)

1. This Securitisation Application (S.A.) under Section 17 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") has been filed by the applicant against the respondents for the following reliefs:

   (i) It may kindly be held and declared that the demand notice dated 31.01.2015 issued by the respondent no.1 bank and order dated 19.08.2017 passed by the District Magistrate, Aurangabad in Securitisation Application

No.76/2017 is illegal and same may kindly be quashed and set aside;

(ii) It may kindly be held and declared that the physical possession taken by the Talathi Sajja Bhausingpura and Circle Officer, Bhausingpura, Aurangabad of property of the applicant bearing Old Municipal No./Bungalow No.306188, bearing Plot No.04, CTS No.20741/94, Sheet No.127 and 129, Survey No.50/03, admeasuring 178 sq.meter, situated at Sangita Colony, Near Nandanwan Colony, Bhavsingpura, Aurangabad on 29.05.2019 is illegal, null and void and same may kindly be quashed and set aside;

(iii) It may kindly be held and declared that the auction sale conducted by respondent no.1 on 24.08.2021 and issuance of sale certificate dated 01.09.2021, which is registered on 03.09.2021 in the name of respondent No.2, is illegal, null and void and same may kindly be quashed and set aside.

(iv) It may kindly be held and declared that the respondent no.1 is liable and responsible to pay compensation amount of Rs.10,000/- per day to the applicant from the date of taking illegal physical possession of the property on 29.05.2019;

(v) *It may kindly be held and declared that the respondent No.1 is liable and responsible to pay an amount of Rs.8 lakhs with interest @ 17% w.e.f. 01.06.2019 towards the value of movable property and articles, which are illegally taken in possession by the respondent No.1 on 29.05.2019;*

AND/OR

(vi) *The respondent No.1 be directed to pay an amount of Rs.66,16,315/- with interest thereon @ 17% w.e.f. 01.09.2021 to the applicant within stipulated period;*

(vii) *Any other suitable or equitable relief may kindly be granted in favour of the present applicant for which he is found fit and entitled for, under the circumstances and oblige."*

2. The brief facts of this Securitisation Application are that the applicant is a proprietor of M/s Elgar Super Mart and running a kirana shop. Respondent No.1 bank sanctioned Cash Credit facility of Rs. 5 lakh and Term Loan of Rs.10 lakhs in the year 2009 for the purpose of business. The respondent bank issued demand notice dated 21.01.2011 to the applicant under Section 13(2) of the SARFAESI Act for an amount of Rs.11,48,141/- and Rs.5,89,545/-,

thus totaling an amount of Rs.17,37,686/-, due as on 31.12.2010. Respondent No.1 had taken possession of the said property on 14.11.2021 without following due process. However, the possession was restored to the applicant on 16.11.2011 after the said accounts were regularized by depositing overdue amount by the applicant. Thereafter, respondent No.1 bank again issued possession notice dated 10.02.2012 to the present applicant and further put to sale the said property by issuing sale notice dated 23.02.2013. The applicant, being aggrieved by the said sale notice dated 23.02.2013, filed Securitisation Application (S.A.) No.21 of 2013, in which the applicant was protected by an interim order dated 12.03.2013, subject to depositing an amount of Rs. Two Lakhs, which was deposited by the applicant. Thereafter, this Tribunal allowed the said S.A. No.21/2013 on 07.01.2015.

3. It is further stated that respondent bank, through its Authorized Officer, again issued demand notice dated 31.01.2015 under Section 13(2) of the SARFAESI Act for an amount of Rs.13,24,749/- and Rs.9,48,549/- i.e. for total of Rs.22,73,298/-.

The present applicant submitted a written application on 08.04.2015 to the respondent bank in response to the demand notice and requested for settlement of the loan account under One Time Settlement (OTS). The demand notice is contrary to the respondent bank's earlier figures. The demand notice was not issued as per prescribed format contained in the SARFAESI Act and the Rules made thereunder. The demand notice was issued by the competent person of the bank. The respondent No.1 bank had published the possession notice dated 15.07.2015 in Marathi newspaper "Lokmat". Thereafter, the sale notice was published in Marathi newspapers "Punyanagari" on 03.10.2015 and "Divya Marathi" on 04.10.2015 and the said property was put to sale on 04.11.2015. The applicant being aggrieved by the sale notice dated 03.10.2025, filed S.A. No.99/2015. Subsequently, the applicant deposited an amount of Rs. Two Lakhs in the loan account on 25.10.2017. Respondent No.1 bank had appeared in the said S.A. No.99/2015 and made statement that they have withdrawn the measures of the symbolic possession and also the sale notice dated 03.10.2015 and even the fresh sale notice made thereafter. As per the statement made by respondent No.1, S.A. No.99/2015 was disposed of as infructuous.

4. It is further averred that respondent No.1 bank, through its Authorized Officer, obtained an order dated 19.08.2017 under Section 14 of the SARFAESI Act from the District Magistrate, Aurangabad for taking actual physical possession of the secured assets. The Circle Officer, Bhavsingpura, Aurangabad issued notice dated 29.11.2017 for taking physical possession of the property as per order of the District Magistrate, whereas the Circle Officer has no authority to take possession of the property as he was not authorized by the District Magistrate. The applicant filed S.A. (Diary) No.10220/2017 with M.A. No.32/2017 for condonation of delay, challenging the order dated 19.08.2017 passed by the District Magistrate, which is disposed of on 01.03.2022 with liberty to the applicant to file fresh S.A.

5. It is further stated that during pendency of M.A. No.32/2017, the Circle Officer, took the possession of the property on

29.05.2019 without any authority. Since the post of Presiding Officer of this Tribunal was vacant in the year 2018 and possession notice dated 10.04.2018 was issued by the Circle Officer, the applicant had filed Writ Petition No.4471/2018 before the Hon'ble High Court praying for stay to the possession notice and seeking direction to the respondent No.1 bank to settle the account under OTS. The said Writ Petition is disposed of on 25.08.2022 with liberty to the applicant to avail alternate remedy. It is stated that meanwhile, respondent No.1 issued auction sale notice dated 19.07.2021 and the property was put to sale on 24.08.2021. The said sale notice was not delivered to the applicant as per Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 (for short, "Rules of 2002"). The said sale notice was not published in two newspapers as per Rule 9(2) of the Rules of 2002. The respondent No.1 bank has shown that the property has been sold to respondent No.2 on 24.08.2021 for an amount of Rs.75,25,000/- . It is alleged that the sale certificate is issued on 01.09.2021, which was registered on 03.09.2021. The valuation of the property was more than Rs.1.5 Crore, but respondent No.1 had illegally fixed the reserve price of Rs.74,68,500/-. The applicant raised an objection to the sale of property by giving written application on 23.08.2021, contending therein that the Civil Suit filed by one Shri Hari Chikse in respect of same property is decreed and R.C.A. No.93/2016 is pending before the learned District Judge, Aurangabad and bank has not maintained the account legally and charged illegal interest, excess interest, interest on interest and that the applicant is willing to settle the account in OTS.

6. It is further stated that as per terms and conditions of the sale notice, respondent No.2 purchaser did not deposit 25% amount of sale on 24.08.2021 i.e. on the date of sale and still, respondent No.1 illegally confirmed the sale and issued sale certificate on 01.09.2021. From statement of account, it is noticed that the sale amount of Rs.72,06,732/- is deposited in Cash Credit loan account on 03.09.2021 and Rs.3,18,268/- in Term Loan account on 03.09.2021, which clearly shows that before depositing the entire sale amount, the sale certificate was issued by respondent No.1.

7. It is further averred by the applicant that the demand notice dated 31.01.2015 was issued for total amount of Rs.22,73,298/-. After issuance of said notice, the applicant deposited an amount of Rs. Two lakhs with the bank on 25.10.2017. The property has been sold for an amount of Rs.75,25,000/-. Thus, respondent No.1 bank received total amount of Rs.77,25,000/- after issuance of demand notice dated 31.01.2015 and still, the respondent No.1 bank is showing that an amount of Rs.44,38,204/- is due as on 31.07.2022 against the applicant. Hence, respondent No.1 has committed fraud in the account of the applicant. It is further stated that as per the contention of respondent No.1, the account was NPA from 2010. If the interest is calculated on NPA amount as per RBI guidelines from the date of NPA, the outstanding amount in Term Loan would come to Rs.5,67,248/- and in Cash Credit account, it would come to Rs.3,41,437/- upto 30.08.2021. Therefore, on the date of sale, the outstanding amount against the applicant as per NPA norms was Rs.9,08,685/-. After deducting the said amount from the sale amount of Rs.75,25,000/-, the surplus sale amount is Rs.66,16,315/-

. It is further averred that considering the outstanding amount as per NPA norms, it was not necessary to sell the entire property of the applicant. If the respondent No.1 could have sold two shops only, their outstanding amount would have been satisfied. The property is consisting of four commercial shops, one internet café and 2 BHK residential house as well as open space, which were not properly valued by the bank, whereas the value of the property was more than Rs.1.5 Crores. The respondent No.1 bank has not handed over the movable property/articles of the applicant, value of which is more than Rs.8 lakhs and those articles have been retained by the bank illegally and the respondent bank is liable to pay this amount along with interest from 29.05.2019. It is further stated that the amount under demand notice was for Rs.22,73,298/- and the applicant deposited Rs. Two lakhs in the year 2017, whereas the demand notice was issued on 31.01.2015 and if the amount of Rs.Two lakhs deposited by the applicant is deducted, the balance amount comes to Rs.20,73,298/-. If the interest on balance amount of Rs.20,73,298/- is calculated from 01.02.2015 till the date of sale i.e. 24.08.2021, the amount of interest @ 17% comes to rs.23,20,366/-, being total outstanding amount of Rs.43,93,664/-. Therefore, the respondent bank should have paid surplus sale amount of Rs.31,31,336/- to the applicant in the month of August, 2021, but that was not paid to the applicant. Even on the date of possession i.e. 29.05.2019, the Authorized Officer of the bank told to the revenue authorities that as on today, outstanding amount is Rs.63,58,637/-. As per admission of respondent No.1 bank, there is surplus amount of sale of Rs.11,66,363/-. Respondent No.1 has played fraud in the account of the applicant. The applicant has already made complaint to the Commissioner for Cooperation and Registrar, Cooperative Societies, M.S., Pune on 04.11.2020 from time to time and the inquiry is pending. The applicant has also made complaint to the Commissioner of Police, Aurangabad on 27.09.2021 in respect of fraud played by respondent No.1 bank.

8. It is further submitted that from the conduct of respondent No.1 bank, it is well gathered that the bank does not have any intention to recover the legitimate outstanding dues, but is

interested in disposing of the said properties of the applicant. The measures taken by the respondent bank are illegal and without any right or authority and the sale of the properties is also illegal, against the provisions of the SARFAESI Act and the Rules made thereunder and deserves to be quashed and set aside and it is prayed by the applicant to allow the present Securitisation Application for the reliefs as claimed in para 2 of the S.A.

9. The respondent No.1 bank has filed its reply dated 19.09.2023 vide Diary no.5242/2023 and contested this S.A. on the grounds that the Term Loan was sanctioned for Rs.10,00,000/- and Cash Credit facility was sanctioned for Rs.5,00,000/- to the applicant and the applicant created security interest in favour of the respondent bank virtue of registered Mortgage Deed No.6250/2009 dated 14.12.2009. Mrs. Kusum Shankarrao Bansode and Mr. Muneshwar Devidas Pundlik are the guarantors of the said loan facility and executed guarantee documents in favour of the respondent bank. The applicant had undertaken to repay the aforesaid loan facility as per the terms and conditions mentioned in the security documents.

However, the applicant failed and neglected to pay the aforesaid credit facilities, interest and other dues to the bank. Consequently, the said loan facility was classified as Non-Performing Asset (NPA) on 21.12.2010 in accordance with the directions/guidelines issued by the Reserve Bank of India. It is stated that the S.A. is not maintainable and guarantors are not made party in the present S.A. The bank had issued demand notice dated 21.01.2011 and initiated action under SARFAESI Act. However, the said demand notice and proceeding thereunder is declared as illegal by the Hon'ble Tribunal vide its judgment and order dated 07.01.2015 in S.A. No.21/2013, which was allowed because the applicant paid the overdue amount only.

10. It is further alleged that the respondent bank again issued demand notice under Section 13(2) of the SARFAESI Act on 31.01.2015 to the applicant and the guarantors were called upon to pay to the respondent an amount of Rs.22,73,298/- within 60 days together with future interest at the contractual rates. A copy of the said demand notice was duly served upon the applicant and the

applicant, by his reply dated 08.04.2015, sought some time to repay the loan amount, but failed to pay the same. Therefore, the respondent bank, by virtue of possession notice under Section 13(4) of the SARFAESI Act, took possession of the secured assets on 15.07.2015. The possession notice was also affixed on the said secured property and at that time, no objection was taken by the applicant. The said secured property was sold in auction by serving sale notice and prospective purchaser has also deposited the sale amount, but as the physical possession of the property was not taken, sale certificate was not issued in favour of the prospective purchaser and considered the request of the prospective bidder, the sale was withdrawn by the respondent bank.

11. It is further alleged that as the applicant has failed to repay the amount and in view of the demand notice, the the bank had filed an application for taking physical possession udnere Section 14 of the SARFAESI Act before the Collector, Aurangabad bearing S.A. No.76/2017 for obtaining an order from the District Magistrate. The learned District Magistrate has passed an order for taking

physical possession and in view of the said order of the District Magistrate, the Tahsildar, Aurangabad issued notice dated 29.11.2017 to the applicant to hand over the physical possession of the property. The secured asset was taken in possession by the competent Authority. The applicant has committed fraud with the Court, suppressed the material fact and mislead this Tribunal in order to get the interim relief in his favour. It is stated that in the year 2011, the overdue amount was repaid. However, it was irregular and possession notice was issued, which was challenged by way of S.A. No.21/2013, which was allowed. The possession of the secured asset was taken in the year 2019 and the said order of the District Magistrate was not challenged. The applicant filed Writ Petition No.4471/2018 before the Hon'ble High Court and the Hon'ble High Court observed that since the applicant failed to comply the order of this Court, passed in the year 2018 itself by not depositing Rs.15,00,000/- and on 25.08.2022, the Hon'ble Division Bench disposed of the same as the possession of the property was already taken and it was sold also. The applicant time and again approached various courts, but failed to comply with the order by not depositing the amount with the bank. The respondent bank obtained valuation report of the said property and the same was sold out to highest bidder on 24.08.2023 as per law. The copy of the sale certificate was already filed on record by the applicant with S.A.

12. It is further alleged that the applicant had executed an agreement to sale in respect of the secured property mortgaged with the bank with one Hari Punjaji Chikse without permission of the bank, thereby committed fraud with the bank. The said Hari Chikse filed Civil Suit No.259/2013 for specific performance of the mortgaged property on the basis of alleged agreement to sale. That suit was decreed in favour of Hari Chikse. The applicant/ borrower has filed Regular Civil Appeal No.93/2016 against the judgment of the Civil Court, whereas in the civil litigation and in the appeal, the bank was not party and hence, the judgment of the Civil Court is not binding on the bank. The applicant is trying to create third party litigation in respect of the mortgaged property so that the

respondent bank faces hurdle by transferring the mortgaged property by due course of law. The highest bidder deposited the amount with the bank as per law and it was kept in other account/suspense account as per law and there was no irregularity in it and the same was credited in loan account on date of sale certificate. The government valuation of said property was Rs.65,00,000/- and it was sold to Rs.75,25,000/- and denied the valuation of the said property being more than Rs.1.5 Crore. Still, an amount of Rs.44,38,204/- is due against the applicant as on 31.07.2022 as per the account maintained by the respondent bank as per law. The applicant, for last eleven years, is going for litigation, but he failed, which does not mean that the respondent bank stopped to charge the interest on the applicant's loan account and the bank is charging the interest as per law and directions of he RBI. The present S.A. has been filed after almost more than one year from the date of auction/sale certificate, which shows that the applicant does not want to pay the amount outstanding against him in his loan account and again he has filed this S.A. only to grab money from the respondent bank by illegal means. The respondent No.1 bank denied all other allegations made in the S.A. and dismissal of S.A. was prayed for along with cost of Rs.20,000/-.

13. The applicant has produced following documents as per list of documents (Exh-4):

Sr. No.	Particulars of document	Exhibit
1	Copy of judgment and order dated 7.1.2015 in S.A. No.21/2013	A-1
2	Copy of demand notice dated 31.1.2015 issued under Section 13(2)	A-2
3	Copy of OTS application dated 8.4.2015	A-3
4	Copy of judgment and order dated 14.12.2017 passed in S.A. No.99/2015	A-4
5	Copy of order dated 19.8.2017 passed by District Magistrate in S.A. No.76/2017	A-5
6	Copy of notice dated 31.8.2017, issued by respondent No.1 for taking possession	A-6
7	Copy of order dated 1.3.2022 in M.A. No. 32/2017 in Securitisation Application. (Diary) No.10220/2017	A-7
8	Copy of possession panchanama and inventory dated 29.5.2019	A-8
9	Copy of applications dated 15.6.2019, 30.9.2021 and 18.10.2021	A-9
10	Copy of auction sale notice dated 19.7.2021	A-10

11	Copy of sale certificate dated 1.9.2021 and registered on 3.9.2021	A-11
12	Copy of objections dated 23.8.2021 and 21.11.2020	A-12
13	Copy of calculation of due amount as per NPA norms	A-13
14	Copies of OTS applications	A-14
15	Copy of complaint dated 24.02.2020 and 7.3.2022 made to the Commissioner for Cooperation, M.S., Pune	A-15
16	Copy of complaint dated 27.9.2021 and 4.10.2021 made to Commissioner of Police, Aurangabad	A-16
17	Copy of statement of loan account	A-17
18	Copy of medical certificate dated 9.8.2022	A-18
19	Copy of order dated 10.1.2022 in Civil Writ Petition No.3/2020 passed by the Hon'ble Apex Court	A-19

14. The respondent No.1 bank has filed following three documents as per list of documents dated 19.9.2023, on record:

Sr. No.	**Particulars of document**	**Exhibit**
1	The RBI order	A
2	Copy of order of Hon'ble High Court passed in writ Petition No.4471/2018	B

3	Copy of sale notice alongwith RPAD receipts and daily newspaper copies (2)	C (colly)

15. It is admitted fact in this case that the applicant raised Term Loan of Rs.10,00,000/- with interest at the rate of Rs.17.5% per annum and Rs.5,00,000//- as Cash Credit Loan with interest at the rate of 15.4% per annum on 04.12.2009.

16. Before proceeding further, it may be noted here that the respondent bank has taken the plea that the present applicant borrower executed an agreement to sale in respect of the property mortgaged with the respondent bank, in favour of one Hari Punjaji Chikse without the permission of the respondent bank and said Hari Punjai Chikse had filed Civil Suit No.259/2017 for specific performance of the agreement to sale and that suit was decreed and now the present applicant borrower has filed Regular Civil Appeal (RCA) No.93/2016 against the judgment and decree delivered in the aforesaid suit, which is pending for adjudication. If the applicant borrower has executed any agreement to sale pertaining to

the mortgaged property without the permission of the respondent bank, it was for the respondent bank to initiate necessary proceedings and this Tribunal has no power to make any comments pertaining to the pending litigation before the Civil Court. Under the provisions of the SARFAESI Act and the Rules made thereunder, this Tribunal has to decide, in the given facts and circumstances of the case, as to whether the respondent bank has conducted possession proceedings as well as sale proceedings against the applicant borrower as per law. Further, it has to be decided by this Tribunal as to whether the applicant is entitled to receive refund of surplus amount, if any received by the bank out of sale proceeds of the mortgaged property. It may be noted here that the Civil Court has jurisdiction over complicated title, ownership of the property and partition disputes therein, which can be dealt with and adjudicated upon by the Civil Court independently, while this Tribunal is specifically empowered under Special Statute to determine the legality of actions taken by the bank under the SARFAESI Act like, possession, sale of a property, etc. In the circumstances, this Securitisation Application is being decided to the extent of above two aspects/issues as to whether the possession proceedings and sale proceedings conducted by the respondent bank are legal one or as per the provisions of relevant law and whether the applicant is entitled to receive refund of surplus amount, if any received by the bank out of sale proceeds of the mortgaged property.

17. The applicant – borrower has challenged the possession taken by the respondent bank on 29.05.2019 in views of possession notice dated 10.04.2019. After taking possession by the respondent bank, the sale of the secured asset was conducted on 24.08.2021 in view of sale notice dated 17.07.2021 and the applicant has challenged these proceedings. The respondent No.1 bank issued demand notice (Exh-A2) under Section 13 (2) of the SARFAESI Act on 31.01.2025 for Rs.22,73,298/- of both the accounts showing term loan amount as Rs.13,24,749/- and amount of Cash Credit loan account as Rs.9,48,549/-. The respondent bank moved an application under Section 14 of the SARFAESI Act before the

District Magistrate, Aurangabad, who issued an order dated 19.08.2017 (Exh-A5) for taking possession of the secured asset and the possession of the secured asset was taken by the respondent bank on 29.05.2019 as per copy of possession panchanama and inventory dated 29.05.2019 (Exh-A8). Thereafter, an application dated 15.06.2019 was moved by the applicant for handing over the daily need articles and clothes. Similar application was moved on 30.09.2021 and 18.10.2021 and copies of the same have been placed on record as Exh-A9 from pages 82 to 87 of the S.A. When the applicant did not pay any amount or no settlement was effected, the respondent bank issued auction sale notice dated 19.07.2021 (Exh-10) and sale was conducted on 24.08.2021. The respondent No.2 was highest bidder as he offered sale price of Rs.75,25,000/- against reserve price of Rs.74,68,000/-. The sale certificate in favour of respondent No.2 was issued on 01.09.2021 and it was registered in favour of respondent No.2 on 03.09.2021 (Exh-A-11). The present Securitisation Application has been filed by the applicant on 30.08.2022. It may be noted here that this S.A. has been filed by the applicant much after conclusion of the sale.

18. The respondent bank has produced on record sale notice dated 17.07.2021 (Exh-C colly) along with postal receipts proving that the sale notice was duly served to the applicant through R.P.A.D. The respondent bank has also produced notice dated 17.07.2021, published in English Daily `The Times of India' on 19.07.2021 and in Marathi Daily `Divya Marathi' on 19.07.2021.

19. It may be noted here that when possession notice was issued to the applicant in the year 2018, the present applicant filed Writ Petition No.4471/2018 in the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad, which was disposed of on 25.08.2022 (Exh-B) with the findings that the interim protection was granted to the petitioner (therein) on 04.05.2018 only on the condition that he would deposit Rs.15,00,000/- with the bank. Since he did not deposit the amount, the ad-interim protection stood auto-vacated. It was submitted by the learned counsel for the petitioner that the bank has already taken the physical possession of

his property and has also sold it and therefore, he desired to withdraw the said petition and take recourse to a remedy as is permissible in law and accordingly, the said Writ Petition was disposed of as withdrawn. From this order of the Hon'ble High Court, it reflects that the protection was granted to the applicant on the condition to deposit the amount of Rs.15,00,000/- as directed by the Hon'ble High Court, but the applicant failed to honour the directions of the Hon'ble High Court and therefore, the respondent bank has proceeded further against the applicant borrower as per law. From the entire documentary evidence produced on record by the applicant and the respondent bank, it is established that the physical possession of the suit property has been taken by the bank and sale thereof has been conducted as per the provisions of the SARFAESI Act and the Rules made thereunder and therefore, the possession proceedings and sale proceedings are not liable to be set aside on any of the grounds as raised by the applicant. More so, even the sale certificate dated 01.09.2021 has already been registered in favour of auction purchaser – respondent No.2 on 03.09.2021.

20. In this case, the applicant has also claimed that as on 03.09.2021, when the sale certificate was registered in favour of auction purchaser on receipt of the entire sale consideration of Rs.75,25,000/-, the outstanding amount against the applicant borrower was the amount mentioned in demand notice along with interest, which was less than the sale price. It was also submitted on behalf of the applicant that total demand notice amount was Rs.22,73,298/-. The applicant deposited an amount of Rs.2,00,000/- in the year 2017 and balance amount was Rs.20,73,298/-. If the interest at the rate of 17% per annum is calculated on the balance amount from 31.01.2015 till the date of sale i.e. 24.08.2021, which comes out to Rs.23,20,366/- and thus, the total outstanding would be Rs.43,93,664/- and the respondent bank should have paid surplus amount of Rs.31,31,336/- to the applicant, but it was not paid by the bank. It was also argued that even on the date of possession i.e. 29.05.2019, the Authorized Officer of the bank told the revenue

authorities that as on date of possession, the outstanding amount against the applicant was Rs.63,58,637/- and as per this admission of respondent No.1 bank, there was still surplus amount of Rs.11,66,363/- and the respondent bank has played fraud in the account of the applicant regarding which he has made complaint and the applicant is entitled for refund of the surplus amount from the respondent bank.

21. The applicant has produced the latest calculation at Exh-8 and the relevant part of the said calculation is reproduced as under:

<u>"Outstanding balance as on 03.09.2021</u>

Loan A/c No.	Principal Loan Amount (Rs.)	Interest – NPA Interest Memorandum A/c	Outstanding balance (Principal Interest)
STL-1320	2,36,141	8,86,575	11,22,716
CC-271	4,11,772	7,06,079	11,17,851
		Total :	22,40,567

Total amount payable : Rs.22,40,567/- (A)

Amount deposited through sale proceeds:

STL-1320 : Rs.03,18,268
CC-271 : Rs.33,69,631
Total Amount : Rs.36,87,899
Excess Amount paid : 36,87,899 – 22,41,450 = Rs.14,46,649

Sale proceeds of mortgaged property : Rs.75,25,000 (B)
as on 03/09/2021
Less : : Rs.22,40,567
Amount Receivable (B-A) : Rs.52,84,433 (C)

Interest applicable @ 17% on the
amount receivable by the bank for the
period 03/09/2021 to 22/05/2026 : Rs.42,35,799 (D)

Thus total amount receivable (C+D) : Rs.95,20,232"

22. No doubt, the calculation was earlier produced by the respondent bank got conducted through Chartered Accountant but the latest calculation (Exh-9) has been submitted by the respondent bank as issued by the District Deputy Registrar, Cooperative Societies, Chhatrapati Sambhajinagar, through re-verification report dated 25.03.2026, which has shown outstanding amount against the applicant as Rs.2,88,799/- and the relevant part of this report is also given as follows:

Sr. No.	Special	Original Balance Rs.	Interest Balance Rs.	Other Charges
1	Cash Credit	410772.00	2037778.90	1551191.00
	After depositing The auction amount	2958859.00 (Extra)	1799322.10 (Extra)	
2	Term Loan	236141.00	3320330.00	203111.00
	After depositing the Auction amount	- 82127.00	3320330.00	203111.00

23. If the relevant part of above both calculations (Exh-8) and (Exh-9) are appreciated, it is established that in both the reports, original balance/principal amount is almost same, but there is difference in calculation of interest and further, in report (Exh-9) submitted by the respondent bank, other charges have been shown without giving details thereof on a very higher side.

24. It may be noted here that the applicant borrower initially challenged the demand notice dated 21.01.2011 issued for Rs.17,37,686/- and possession of the secured assets was taken on 14.11.2011 by the bank, but the same was restored on 16.11.2011 on regularization of the loan account and this S.A. No.21/2013 was allowed on 07.01.2015 as per copy of the Judgment Exh-A1 in the

list of documents (Exh-4) submitted by the applicant. It was held that the demand notice dated 21.01.2011 is illegal and not maintainable and the proceedings of the sale were not conducted as per the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002 and in view thereof, the S.A. No.21/2013 was allowed.

25. The respondent bank again issued demand notice dated 31.01.2015 for Rs.22,73,298/-. The applicant submitted representation on 08.04.2015, requesting therein for consideration of his application under OTS Scheme, but still the possession notice was issued on 15.07.2015 and thereafter sale notice was issued on 03.10.2015. The applicant filed S.A. No.99/2015 and the respondent bank had withdrawn all the measures of symbolic possession and sale notice on 03.10.2015 and S.A. No.99/2015 was disposed of as infructuous on 14.12.2017, copy of which is produced on record at Exh-A4. Therefore, when the proceedings initiated by the respondent bank were declared illegal and the respondent bank had withdrawn all the measures of symbolic

possession and sale notice, in such circumstances, for this period, the applicant is not liable to pay the penal interest, expenses and other costs/charges, etc. But if the calculation submitted by the respondent bank at Exh-9 is appreciated, it would reveal that it is nowhere mentioned that the respondent bank has taken care of all these factors of earlier litigation while calculating the final amount outstanding against the applicant as on 03.09.2021. Therefore, even other charges in the report (Exh-9) submitted by the respondent bank without details thereof are not sustainable. After excluding the other expenses, the total amount as per Exh-9 pertaining to Cash Credit Loan account and Term Loan account comes out to Rs.60,04,991/-. The respondent bank, vide calculation (Exh-9), claimed that Cash Credit Loan account shows original balance of Rs.4,10,772/- plus interest of Rs.20,37,778.90, which comes out to Rs.24,48,550/-.The respondent bank, in calculation (Exh-9), has taken Term Loan original balance amount of Rs.2,36,141/- plus interest of Rs.33,20,330/-, total of which comes to Rs.35,56,471/- and total of both loan accounts comes out to Rs.60,04,991/- as on

03.09.2021. The respondent bank admittedly received total sale proceeds of mortgaged property as on 03.09.2021 of Rs.75,25,000/-. If the outstanding amount of Rs.60,04,991/- is deducted from the amount of sale proceeds, the balance amount comes to Rs.15,20,009/- to be refunded to the applicant by the respondent bank.

26. Thus, as stated above, the respondent bank is liable to refund an amount of Rs.15,20,009/- to the applicant along with interest at the rate of 17% per annum (simple) w.e.f. 03.09.2021 till its final payment. In view of above, the present Securitisation Application deserves to be allowed partly.

27. To conclude, having regard to the legal position discussed hereinabove, the finding rendered and analysis made by me above with regard to calculation of the amount of refund, which is liable to be refunded by the respondent bank to the applicant towards surplus amount received by it out of sale proceeds, the present Securitisation Application deserves to be allowed partly to that extent. As far as the other/remaining reliefs sought for by the

applicant in the present Securitisation Application, in the facts and circumstances of the case and the evidence produced on record by the respondent bank, which could not be rebutted by the applicant on the basis of evidence, if any, those reliefs do not deserve to be granted. In the circumstances, I pass the following order:

28. In the result, I pass the following order:

ORDER

(A) The Securitisation Application No.395 of 2022 is hereby allowed partly to the effect that the applicant is entitled to receive the amount of refund from the respondent bank to the tune of Rs.15,20,009/- (Rupees Fifteen Lakh, Twenty Thousand and Nine only) along with interest at the rate of 17% per annum (simple) w.e.f. 03.09.2021 till its final payment and accordingly the respondent bank is directed to refund the aforesaid amount along with interest immediately.

(B) The other/remaining reliefs sought for by the applicant in the present Securitisation Application are hereby rejected.

(C) Both the parties shall bear their own costs.

(D) Interlocutory applications, if any pending, stand disposed of in terms of this judgment.

(E) File be consigned to the Record Room.

(F) Copy of this judgment and order be uploaded on the website.

(Dr. J.R. Chauhan),
PRESIDING OFFICER,
DEBTS RECOVERY TRIBUNAL,
AURANGABAD

Aurangabad

Date : 04.07.2026