

IN THE DEBT RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 27th Day of January, 2026

**PRESENT: HON'BLE MR. JUSTICE G. Chandrasekharan
CHAIRPERSON**

RA(SA) 42/2013

&

RA(SA) 137/2013

(Arising out of SA No.274/2012 on the file of DRT-III, Chennai)

I. RA(SA) 42/2013

Between

The Authorised Officer,
ICICI Bank Ltd.
ICICI Bank Towers –RMAG,
SP-24, South Phase,
4th Floor, West Wing,
Ambattur Industrial Estate,
Ambattur, Chennai 600 058.

.....Appellant

And

1. Mr. Ponniah Sudakaran,
No.17, Grayling Crescent,
Keysborough, VIC-3173, Australia,
Represented by his duly constituted
Power of Attorney, G. Chandra,
Tamil Nadu.
2. Mr. R. Rajalakshmi (died)
Flat No.A2, Sri Vaari Apartments,
No.11, Venkatakrisna Road,
R.A. Puram, Chennai 600 028.

3. B. Ravichandran
Flat No.A2, Sri Vaari Apartments,
No.11, Venkatakrishna Road,
R.A. Puram, Chennai 600 028.

4. Saigeetha Sankar
Flat No.A2, Sri Vaari Apartments,
No.11, Venkatakrishna Road,
R.A. Puram, Chennai 600 028.

(R3 and R4 who are the legal heirs of deceased 2nd respondent
brought on record as per order dated 22.9.2025 passed in
IA No.1043/2025.)

...Respondents

Counsel for Appellant Bank : Shri T. Srinivasaraghavan & Associates
Counsel for 1st Respondent : Shri K.J. Parthasarathy
Counsel for 2nd Respondent : M/s R. Usha Priya & Co.

II. RA(SA) 137/2013

1. Mrs. R. Rajalakshmi
Flat No.A2, Sri Vaari Apartments,
No.11, Venkatakrishna Road,
R.A. Puram, Chennai 600 028.
2. B. Ravichandran
Flat No.3, 1st Floor, Kauvery Apartments,
No.10, Sundararajan Street, Abhiramapuram,
Chennai 600 018.
3. Saigeetha Sankar
Flat No.3, 1st Floor, Kauvery Apartments,
No.10, Sundararajan Street, Abhiramapuram,
Chennai 600 018.

(Appellants 2 and 3, who are the legal heirs of deceased
1st appellant brought on record as per order dated
22.9.2025 passed in IA No.1040/2025.)

And

1. Mr. Ponniah Sudakaran,
No.17, Grayling Crescent,
Keysborough, VIC-3173, Australia,
Represented by his duly constituted
Power of Attorney, G. Chandra,
Tamil Nadu.

2. The Authorised Officer,
ICICI Bank Ltd.
ICICI Bank Towers –RMAG,
SP-24, South Phase,
4th Floor, West Wing,
Ambattur Industrial Estate,
Ambattur, Chennai 600 058.

...Respondents

Counsel for Appellants	: Shri Sam Arul Prasath
Counsel for 1 st Respondent	: Shri K.J. Parthasarathy
Counsel for 2 nd Respondent Bank	: Shri T. Srinivasa Raghavan

COMMON ORDER

1. First respondent filed SA No.274/2012 to set aside the sale conducted on 20.6.2012 and for other relief. After contest, this SA was allowed on 18.2.2013 by Learned Presiding Officer, DRT-III, Chennai. Aggrieved against this order, both the appellants, viz., the Authorised Officer, ICICI Bank and the Auction Purchaser, R. Rajalakshmi filed these appeals viz. RA(SA) 42/2013 and RA(SA) 137/2013 respectively, under Section 18 of the SARFAESI Act.

2. The grounds raised in the SA were, that first respondent had not received the notice issued under Section 13(2) and Section 13(4) of the SARFAESI Act. Therefore, the valuable right to raise objections/representation under Section 13(3A) was lost. Possession notice was not served in accordance with Rule 8(1) of Security Interest (Enforcement) Rules, 2002 and publication was not effected as per Rule 8(1) of the SIE Rules. There was no affixture of possession notice. Similarly, sale notice was not served as required under Rule 8(6) and 8(7) of SIE Rules and compliance of Rule 8(5) was not followed. Sale of the property by private treaty was held without express consent of the appellant, therefore, sale held is untenable. Property worth Rs.80.00 lakhs was sold for a paltry sum Rs.49.00 lakhs only. First respondent is residing in Australia and without taking notice to Australia address, sale was held. Though these allegations were denied by the respondent bank, Learned Presiding Officer allowed the SA on the ground that,

- a) As per sub-rule 8 of Rule 8, sale by private treaty should be held only on such terms as may be settled between parties in writing. No such writing was available in this case, especially, the consent of the appellant for sale of the property by private treaty.
- b) Service of notice under Section 13(2) was not done as required under Rule 3 of SIE Rules.
- c) Notices issued through post were not served. It is required that notice must be served through publication and affixture. That was not done in this case.
- d) There is no explanation for classification of the account as NPA when first respondent claimed that account was classified as NPA without following the RBI Guidelines.

On these grounds, the Securitization Application was allowed. Therefore, these appeals are filed by the bank and the auction purchaser.

3. Learned Counsel for the appellant submitted that notices had been sent to first respondent's address furnished to the bank including Australia and local address. Letter dated 30.5.2012, intimating about the sale of the property through private treaty was sent to the first respondent. Notice sent to Australia address was returned with endorsement 'unclaimed'. However, notice sent to local address was received by the first respondent's mother. First respondent's mother alone signed the facility agreement, as an Agent of first respondent. She was the Power of Attorney holder of the first respondent. Possession Notice was served and possession was taken in terms of the order passed under Section 14 of the SARFAESI Act. After two failed sale attempts, property was sold in the 3rd sale attempt through private treaty. However, learned Presiding Officer, without considering the fact that sale was held properly after proper service, allowed the Securitization Application. Thus, he prayed for setting aside the order of the learned Presiding Officer, DRT-III, Chennai by allowing the Appeal No.RA(SA) 42/2013.
4. Learned Counsel for the auction purchaser, who filed RA(SA) 137/2013, while adopting the submissions of learned counsel for the bank submitted that

auction purchaser invested huge amount for a valuable consideration. Auction Purchaser's right has to be protected.

5. In reply to this submission, learned counsel for the first respondent submitted that prior to amendment, sale through private treaty should be held only on the basis of the terms settled between the parties i.e., secured creditor, borrower/guarantor and the proposed purchaser. Only after the amendment, sale by private treaty can be held as per terms settled between the secured creditor and the proposed purchaser. Here, in this case, there is no written consent obtained from the first respondent for sale of the property through private treaty. Merely because first respondent had not sent any reply to the demand notice, that will not empower sale of the property without following the mandatory requirement under law. In support of his submission, learned counsel pressed into service the decision of Hon'ble Madras High Court reported in 2012/3/LW 661 in re, *A. Varalakshmi Vs. Chief Manager, Punjab National Bank*. He further submitted that reserve price was arrived without obtaining valuation report and no valuation report was produced before this Tribunal. Thirty days notice is required to be given for sale including sale of property by private treaty, which was not given in this case. By sale notice dated 30.5.2012, sale by private treaty was held on 20.6.2012. There was no mention about the date of sale in the sale notice. Publication of sale notice was given only on 3.6.2012. There is no proof of affixture of demand notice

and possession notice. Thus, he submitted that learned Presiding Officer, DRT-III, Chennai rightly allowed the Securitization Application for non compliance of mandatory procedure required to be followed under the SARFAESI Act.

6. In reply to this submission, learned counsel for appellant submitted that securitization application was filed beyond 45 days of the period of limitation. There was no challenge to the sale notice. When the mother of the first respondent i.e., the Power of Attorney holder was served with the sale notice, it is enough proof for service of sale notice on the first respondent. When the demand notice was served on the power of attorney holder, there is no need to effect service by way of affixture and publication. Property was properly valued and valuation report is filed.
7. I have considered the rival submissions and perused the records.
8. From a consideration of the materials produced before this Tribunal and from the submissions made by learned counsel appearing for parties, there is no dispute with regard to the fact that first respondent availed loan facility from the appellant bank. On failure to pay the loan amount and on classification of the loan account as NPA, appellant bank initiated SARFAESI measures. Bald statement that account was not classified as NPA in terms of RBI guidelines is

not enough to conclude that the account was wrongly classified as NPA. No other sustainable ground was taken by the first respondent to challenge the classification of the account as NPA.

9. From a copy of the loan facility agreement entered into between the appellant bank and the first respondent, it can be seen that the facility agreement was entered into between the appellant bank and the first respondent and the first respondent was represented by his mother viz., G. Chandra, as his power agent. Therefore, appellant cannot dispute the service of notices on the first respondent's mother, if such service is proved. It amounts to service of notice on the first respondent. 13(2) Demand Notice dated 3.11.2010 shows that it was taken to the first respondent to his address at Singapore, and Sivagangai district and to Gopalakrishnan Priya to two different addresses in Chennai. Copy of postal receipt No.ET060192016IN addressed to Ponnaiah Sudhakaran, booked on 9.11.2010 was delivered to him on 11.11.2010. Similarly, tract consignment receipt No.ET060191996IN addressed to first respondent to Chennai address was also served. Notice taken to Gopalakrishnan Priya in track consignment receipt No.ET060191877IN and ET060191758IN had been served on the Gopalakrishnan Priya. Apart from this postal service, paper publication of Section 13(2) notice effected in Tamil and English language newspapers dated 29.11.2010 are also produced. As per Rule 3 of SIE Rules, 2002, only when

there is avoidance on the part of the borrower/guarantor/mortgagor in receiving the notice, there is requirement to serve through paper publication and affixture. When there is evidence available to show that notice taken to first respondent and Gopalakrishnan Priya had been served, it is not required to serve the demand notice through publication and affixture. Even otherwise, bank has produced copies of paper publication showing publication of demand notice. Thus, this Tribunal finds that there is no infirmity in the service of demand notice.

10. Possession notice dated 19.7.2011 shows that on the borrower failing to pay the amount, notice was given intimating about taking symbolic possession. Copies of paper publication and affixture of possession notice is produced. Of course, there is no acknowledgment card produced to show service of possession notice through post. Thereafter, appellant obtained orders under Section 14 of the SARFAESI Act on the file of Learned CJM, Thiruvallur in CMP 330/2011 on 23.8.2011. That was followed by possession notice issued on 24.9.2011. Copies of photographs showing taking of actual possession is produced. Paper publication informing about taking of possession and personal intimation to the borrowers have also been produced. As already stated, till this point of time, it appears that there is no serious flaw in the SARFAESI measures taken.

11. After two failed sale attempts, appellant sent a notice dated 30.5.2012 to the first respondent to his address at Chennai and Australia informing that sale conducted on 24.1.2012 and 12.3.2012 did not succeed due to want of bidders, therefore, appellant decided to sell the property by way of private treaty and identified the buyer. First respondent was directed to pay outstanding due of Rs.60,88,425/- within a period of 7 day from the date of the letter dated 30.5.2012. He was also asked to name the buyer if he has anyone to buy the property. Postal receipts and acknowledgement of first respondent's mother for receiving this notice are produced. Notice sent to first respondent's address in Australia was returned with endorsement 'returned to the sender'. Paper publication informing about the sale of the property through private treaty was published both in English and Tamil Newspapers. It is seen from these publications that appellant proposed to sell the property through private treaty on 20.6.2012. This publication was effected on 3.6.2012. As per the minutes of private treaty, the sale was held through private treaty on 20.6.2012 and one Ms. R. Rajalakshmi was the successful bidder. On her payment of sale consideration, sale was confirmed in her favour and possession was also delivered to her.

12. Issue now, here, is whether the sale held through private treaty is valid or not?

13. It is pertinent to refer to the decision of the Hon'ble High Court of Madras in *re A. Varalakshmi Vs. Chief Manager, Punjab National Bank* reported in 2012-3-LW 661, wherein it was held that sale by private treaty can be held only on such terms as settled between all the parties in writing. Therefore, presence of the debtor and his willingness in writing is essential for a valid sale by private treaty. With regard to the absence of consent, as averred by learned counsel for the first respondent, this Tribunal finds from the records produced and discussed above, the information with regard to sale of the property through private treaty was sent to the first respondent to his Chennai address and the address in Australia. Intimation sent to Chennai address was received by his mother as Power of Attorney holder. It appears that first respondent or his mother had not sent any objection to the intimation for the sale of the property through private treaty. If any objection was raised and not considered and sale was held, then, first respondent can set up the plea that property was sold without written agreement between all parties. When first respondent had neglected to respond to the notice of sale of property through private treaty, this Tribunal is of the view that first respondent cannot claim that sale held without reducing the terms of sale through private treaty in writing, is not valid and the same cannot be countenanced and accepted.

14. However, this Tribunal finds from the Notice dated 30.5.2012 sent to the appellant intimating about the sale by private treaty, there is no specific date of sale was given. Only seven days time was given to the first respondent to pay the amount. From the paper publication dated 3.6.2012 for the sale of the property through private treaty on 20.6.2012, it can be gathered that there was no clear 30 days notice was given. As per the un-amended Rule 8(5), 8(6) and 9(1) of SIE Rules, 2002, sale has to be by any of the following modes, as detailed below;

8(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised 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 ; or
- (d) by private treaty.

15. Authorised Officer is required to serve the borrower a notice of 30 days of sale of immovable secured asset. Proviso to Rule 8(6) requires that sale notice shall be published to give public notice of sale in two leading newspapers, one in vernacular language having sufficient circulation in the locality. Rule 8 (7) mandates that notice of sale shall be affixed on the conspicuous part of the immovable property and if Authorised Officer deems it fit, put it on the

website of the secured creditor on the internet. Rule 9(1) says that sale of immovable property shall not take place before expiry of 30 days from the date on which sale notice is published in the newspapers as referred to in the proviso to sub-rule 6 or notice of sale has been served to the borrower.

16. As things stand out, it is plain and clear that no clear 30 days notice was given for sale of the property in the publication of sale in the newspapers. No date of sale was given in the intimation for the sale by private treaty given on 30.5.2012. This is a serious flaw in the sale of the property through private treaty. When banks and financial institution are empowered to sell the secured asset without the intervention of courts and Tribunals, they are expected to follow the mandatory provisions of the SARFAESI Act in its letter and spirit. Sadly, in this case, sale by private treaty was held without giving clear 30 days notice of sale to the borrower and to the public in general. Apart from this, there is no proof of affixture of sale by private treaty is produced. When the sale by private treaty with no date specified and no proof of affixture is produced and when there is no clear 30 days of notice in paper publication, appellant cannot say that SA was filed beyond limitation. Thus, this Tribunal is of the view that sale held in favour of deceased respondent No.2, though deceased respondent no.2 is a bona fide purchaser, cannot be sustained.

17. In this view of the matter, the order of the learned Presiding Officer, DRT-III, Chennai dated 18.2.2013, allowing SA No.274/2012 is confirmed, of course, for different reasons, as stated above.

18. This Tribunal finds that there is no order passed by the learned Presiding Officer with regard to refund of sale consideration to the auction purchaser. When the sale is set aside, it is required that sale consideration should be refunded to the auction purchaser. Therefore, appellant bank is directed to refund the sale consideration with interest applicable to Fixed Deposit from the date of deposit till the date of payment. Appellant bank is at liberty to proceed further in the manner as known to law.

19. **In the result**, both the appeals viz., RA (SA) 42/2013 and RA (SA) 137/2013 are dismissed, with the above directions. Parties are directed to bear their own costs.

20. Pending IAs, if any, stand closed.

[Dictated to PS (SN) transcribed by him, corrected, signed and pronounced by me in open court, this 27th, January, 2026]

Sd/-
(JUSTICE G. CHANDRASEKHARAN)
CHAIRPERSON