



BANKING AND FINANCE

SARFAESI

Procedural Non-Compliance and Limitation Defeat Bank's SARFAESI Action: An Analysis of the Gopu Bala Reddy v. Union Bank of India Ruling

The enforcement of security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") has long been recognised as a potent statutory remedy available to secured creditors for the recovery of non-performing assets. However, the legislative intent behind this special legislation is [...]

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The enforcement of security interest under the SARFAESI Act, 2002 has long been recognised as a potent statutory remedy for the recovery of non-performing assets. However, the legislative intent behind this special legislation is not to confer an unbridled power upon banks and financial institutions, but rather to create a structured framework wherein the rights of the borrower and the guarantor are adequately safeguarded through **mandatory procedural compliances**.

Background of the SARFAESI Act and the Gopu Bala Reddy Case

The recent judgment of the Debt Recovery Tribunal, Hyderabad, in *Gopu Bala Reddy and Another v. Union Bank of India and Another*, decided on 6th May 2026 by the Presiding Officer Shri Rameshwar Kothe, serves as a compelling reminder that any deviation from the statutory procedure, however minor it may appear, can render the entire enforcement mechanism *void ab initio*.

The case arose from **Securitisation Application No. 411 of 2025**, wherein the applicants, who stood as guarantors and mortgagors for the credit facilities availed by M/s BRG Energy Limited, assailed the measures taken by Union Bank of India under Section 13(4) of the SARFAESI Act. The impugned measures included:

- A demand notice dated 26th March 2024
- A possession notice dated 17th March 2025
- A sale notice dated 22nd August 2025
- An e-auction held on 26th September 2025
- The issuance of a sale certificate in favour of the third respondent, an auction purchaser

Factual Matrix: History of the Underlying Debt

The factual matrix of the case reveals a long and convoluted history of the underlying debt. The loan account of M/s BRG Energy Limited, the principal borrower and second respondent in the present proceedings, was classified as a **Non-Performing Asset on 31st December 2011**.

The first respondent bank had issued a demand notice under Section 13(2) of the SARFAESI Act in the year 2012, but thereafter did not proceed further in accordance with law. The borrower company was subsequently ordered to be wound up by the Hon'ble High Court in 2018, and the Official Liquidator was appointed to take charge of the company's assets.

The Official Liquidator, in its report, stated that none of the company's assets had actually come into its possession, as:

- The factory land had already been taken over by the bank under a decree in Original Application No. 302 of 2017.
- The branch office situated in Mahaboob Nagar District had been purchased by a third party through a registered sale deed dated 9th February 2016.

A Company Application bearing No. 46 of 2019 remained pending before the Hon'ble High Court. The petitioner had also approached the Hon'ble High Court by filing Company Application No. 70 of 2025, seeking a direction to the bank not to proceed with the sale of the company's assets without leave of the Court.

The High Court allowed the said application with the observation that if the second respondent intended to proceed with the liquidation process, it was at liberty to do so by **involving the Official Liquidator** in the valuation and sale proceedings.

Fresh Notices and Filing of the Securitisation Application

Against this backdrop, the first respondent bank issued a fresh demand notice dated 26th March 2024, followed by a possession notice dated 17th March 2025 and a sale notice dated 22nd August 2025.

The applicants, being guarantors and mortgagors of the schedule property, filed the present **Securitisation Application under Section 17 of the SARFAESI Act**, seeking to declare that the limitation to enforce the mortgage had expired on 31st December 2023 and consequently directing the bank to hand over the title deeds to them.

Grounds Raised by the Applicants

The applicants raised several substantial grounds in support of their case, challenging both the procedural compliance and the legality of the enforcement measures.

Mandatory Demand Notice Under Section 13(2)

At the very outset, the applicants contended that a **demand notice under Section 13(2)** of the SARFAESI Act is mandatory as a matter of principle. Unless such a notice is issued to the borrower and there is a default on the part of the borrower, the liability of the guarantor does not arise at all.

Since the borrower company was represented through the Official Liquidator by virtue of the orders of the Hon'ble High Court, the bank was obligated under law to serve the demand notice upon the Official Liquidator, which it had conspicuously failed to do. Reliance was placed upon the celebrated judgment of the Supreme Court in *Mardia Chemicals Limited v. Union of India* and the decision in *Transcore v. Union of India* to buttress this contention.

Non-Compliance With Possession Notice Requirements

The applicants assailed the procedural compliance of the bank in respect of the possession notice dated 17th March 2025, raising the following defects:

- The bank had failed to publish the possession notice in **two leading newspapers, one in a vernacular language**, as mandated by Rule 8(1) and Rule 8(2) of the Security Interest (Enforcement) Rules, 2002.
- The English publication was made in a newspaper called "The Indian Mail," which had no circulation in Hyderabad, the place where the property was situated. The applicants filed a list of the top ten newspapers in Hyderabad to demonstrate that "The Indian Mail" did not figure among them.
- The bank had not filed any photographs of affixture of the possession notice at a conspicuous place on the property.
- No *panchanama* had been conducted to substantiate the affixture.

Defects in the Auction Notice and Allegations of Collusion

The applicants further contended that the **auction notice dated 22nd August 2025** suffered from similar procedural infirmities:

- The bank had failed to publish the auction notice in two leading newspapers, one in a vernacular language.
- The auction notice had not been affixed at a conspicuous place on the schedule property.
- No *panchanama* had been conducted in this regard.

The applicants also alleged **collusion between the first respondent bank and the third respondent auction purchaser**, pointing out that the property had been sold at a price less than its market value and that the third respondent was the sole bidder, which they characterised as clinching evidence of collusion.

Moreover, the bank had not conducted any valuation of the schedule property through its approved valuer. Since the value of the property was more than one crore rupees, the bank was required to obtain two valuations from an approved valuer, but no proof to this effect had been filed.

The applicants also filed Interlocutory Application No. 3514 of 2025 seeking re-delivery of the properties and had lodged a First Information Report against the first and third respondents.

Limitation Defence Under Article 62 of the Limitation Act

On the question of limitation, the applicants contended that since the account was classified as NPA on 31st December 2011, the **twelve-year period prescribed under Article 62 of the Limitation Act, 1963** for taking steps against the mortgaged property had expired on 31st December 2023.

The demand notice dated 26th March 2024 was therefore issued beyond the prescribed period and was in violation of Section 36 of the SARFAESI Act.

In support of this contention, strong reliance was placed upon the judgment of the Hon'ble Calcutta High Court in *Sri Din Dayal Kayan v. Canara Bank and Another* in WPO No. 580 of 2024, decided on 9th July 2024. While referring to an earlier judgment of the same Court in *Dr. Dipankar Chakraborty v. Allahabad Bank and Others* reported in AIR 2017 Calcutta 289, it was categorically held:

When a demand notice is issued after twelve years beyond the prescribed period under Article 62 of the Limitation Act, the same is in violation of Section 36 of the SARFAESI Act, and the bank is at liberty to proceed under the pending Recovery of Debts and Bankruptcy Act proceedings but not under the SARFAESI Act.

Contentions of the First Respondent Bank

The first respondent bank, in its reply statement, contended that the applicants being guarantors were **jointly and severally liable** for repayment of the dues, and that the bank had followed due procedure as contemplated under the SARFAESI Act and the Rules framed thereunder.

It was the specific case of the bank that the limitation stood extended, rendering the present proceedings within time. The bank also contended that necessary notices were issued and published and that there was no illegality in the measures taken.

Per contra, the learned counsel for the bank submitted that the applicants had clearly admitted service of the demand notice, possession notice and auction notice, and therefore the bank need not submit any proof of notice against them.

As regards the notice to the borrower company, it was contended that since the properties pertained to the guarantors, no notice was required against the borrower company. Reliance was placed upon **Section 128 of the Indian Contract Act, 1872**, to argue that the liability of guarantors is co-extensive with that of the principal borrower and that proceedings against guarantors are independent in nature.

The bank further contended that there were no pleadings on behalf of the applicants regarding the procedural aspects, and therefore they were not entitled to raise those grounds.

Submissions of the Official Liquidator and the Auction Purchaser

The second respondent, the **Official Liquidator**, filed its written arguments reiterating the report filed by it and stating that the first respondent bank had failed to serve any notices under Sections 13(2) and 13(4) of the SARFAESI Act upon the borrower regarding the subject properties.

The third respondent, the **auction purchaser**, asserted its position as a bona fide auction purchaser who had paid the entire sale consideration, obtained the sale certificate, and been put into actual possession of the schedule property.

It was contended that after the sale proceedings had been completed, the auction confirmed and the sale certificate issued, the purchaser obtains absolute rights and the borrower's right of redemption does not subsist any longer. Reliance was placed upon the judgments in *Celir LLP v. Sumati Prasad Bafna and Others* (2024), *Valji Khimji and Company v. Official Liquidator and Others* (2008), and *V.S. Palanivel v. P. Sriram*.

Findings of the Debt Recovery Tribunal

The Tribunal framed **seven points for consideration**, encompassing:

- The legality of proceeding without notice to the borrower
- Compliance with Rules 8(1), 8(2) and 8(7) of the Security Interest Rules
- The entitlement of the applicants to question procedural flaws despite admitting receipt of notices
- The entitlement to re-delivery of property
- The question of limitation
- The final relief to be granted

Demand Notice to the Borrower Is Mandatory

On the first point, the Tribunal held that a **demand notice under Section 13(2) of the SARFAESI Act is mandatory** to proceed under the Act. Admittedly, no notices were served on the borrower company represented by the Official Liquidator.

The bank had failed to submit any proof of service of the demand notice dated 26th March 2024 upon the borrower. While the bank had a right to proceed independently against the guarantors, it could not do so without first issuing the demand notice on the borrower. Consequently, all measures initiated by the bank against the schedule properties were held to be *void ab initio*.

Non-Compliance With Rule 8(1) and Rule 8(2)

On the second point, the Tribunal found that the bank had failed to follow the due procedure of **Rule 8(1) and Rule 8(2)** while issuing the possession notice dated 17th March 2025.

Although the possession notice was served on the applicants, which was duly admitted, the publication in "The Indian Mail" was not in compliance with the mandate of publication in two leading newspapers, one in a vernacular language. The said newspaper did not figure among the top newspapers in Hyderabad, the city where the property was situated.

Furthermore, the bank had not produced proof of affixture of the possession notice in compliance with Rule 8(1).

Failure to File Valuation Reports and Auction Notice Compliance

On the third point, the Tribunal noted that the bank had not filed **valuation reports** pertaining to the schedule properties to substantiate that valuation had been undertaken before issuing the auction notice dated 22nd August 2025 and fixing the reserve price.

The bank had also failed to file proof of affixture pertaining to the auction notice in compliance with Rule 8(7) of the SARFAESI Act. The Tribunal observed that the said provision contained the word “**shall**” for affixture of the notice, which was meant to encourage the general public to know and participate in the auction to secure a better price for the property.

Since the bank had not filed any publication of the auction notice, the same was held to be liable to be set aside along with the consequential auction proceedings in favour of the third respondent.

Applicants Entitled to Question Procedure Despite Admitting Receipt of Notices

On the fourth point, the Tribunal rejected the bank’s contention that the applicants, having admitted receipt of all notices, were not entitled to question the procedure followed by the bank.

The Tribunal observed that the applicants had categorically pleaded in their application that there was **clear collusion between the first and third respondents** and that the bank had not followed the procedure in conducting the auction.

In the Tribunal’s considered view, collusion could not be ruled out, especially in view of:

- The bank’s action in not issuing any notice to the borrower when it was represented through the Official Liquidator
- Not following the Rules of the SARFAESI Act
- Taking out publication in less-circulated newspapers

The Tribunal further held that it is settled law that **legal contentions can be raised at the time of arguments**.

Re-Delivery of Property

On the fifth point, the Tribunal noted that since the demand notice, possession notice and sale notices were observed to be illegal, the applicants were entitled to **re-delivery of the property**.

The Tribunal also observed that the bank had failed to file details as to how the physical possession had been taken and the procedure adopted under Section 14 of the SARFAESI Act.

SARFAESI Action Held Time-Barred

On the sixth point, the Tribunal held that the **SARFAESI action initiated by the first respondent was time-barred**. The NPA was classified on 31st December 2011, and the demand notice was issued on 26th March 2024.

As provided under Article 62 of the Limitation Act, 1963, the time prescribed to take steps against mortgaged property is twelve years, and therefore the time had expired by 31st December 2023.

The bank’s contention regarding the exclusion of the COVID-19 period and admissions by virtue of one-time settlement was rejected. It was categorically held that when the demand notice was issued after twelve years beyond the prescribed period under Article 62 of the Limitation Act, the same is in violation of Section 36 of the SARFAESI Act.

Following the Calcutta High Court judgment in *Sri Din Dayal Kayan*, the Tribunal held that the bank was not entitled to initiate SARFAESI proceedings and was accordingly **restrained from doing so** in view of Section 36 of the SARFAESI Act.

Final Order of the Tribunal

In the result, the Securitisation Application was allowed. The Tribunal passed the following directions:

1. **Quashing of all measures** initiated by the first respondent bank, including the demand notice dated 26th March 2024, the possession notice dated 17th March 2025, and the auction sale held pursuant to the sale notice dated 22nd August 2025, along with the consequential sale confirmation, sale certificate issued in favour of the third respondent, and the physical possession taken.
2. The first respondent was directed to **refund the bid amounts** deposited by the third respondent with interest at the rate of six per cent per annum simple from the respective dates of deposit till realization.

3. Interlocutory Application No. 3514 of 2025 seeking **re-delivery of the property** was allowed, and the first respondent was directed to re-deliver physical possession of the schedule property immediately to the applicants.
4. No orders were passed as to costs.
5. The Tribunal directed that a copy of the order be communicated to the parties concerned and uploaded on the official website.

Significance of the Judgment

The judgment in *Gopu Bala Reddy and Another v. Union Bank of India and Another* is a significant pronouncement that underscores the paramount importance of **strict procedural compliance in SARFAESI proceedings**.

The Tribunal's insistence on the mandatory nature of the demand notice under Section 13(2), even when the secured creditor seeks to proceed against guarantors independently, reinforces the legislative intent that the borrower must be given the first opportunity to discharge the debt before any enforcement action is initiated against the security.

The ruling also serves as a stern reminder that the use of the word **"shall" in Rule 8** of the Security Interest Rules is not merely directory but mandatory, and that any laxity in publication, affixture, or valuation requirements can prove fatal to the entire enforcement mechanism.

Furthermore, the Tribunal's acceptance of the **limitation defence based on Article 62** of the Limitation Act, 1963, read with Section 36 of the SARFAESI Act, and its refusal to allow the bank to take shelter behind general COVID-19 exclusions or one-time settlement admissions, establishes a clear principle that the special limitation regime under the SARFAESI Act must be adhered to in letter and spirit.

The judgment is likely to have far-reaching implications for secured creditors, who must ensure that every procedural step, from the initial demand notice to the final auction, is **meticulously documented and strictly compliant** with the statutory framework, lest their enforcement action be rendered *void ab initio* by a diligent tribunal.

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