



BANKING AND FINANCE

SARFAESI

Omission of Section 13(8) Redemption Clause in Possession Notice Proves Fatal to Bank's Recovery Action

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The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, commonly known as the SARFAESI Act, was enacted to provide banks and financial institutions with an effective mechanism for recovery of non-performing assets without the intervention of civil courts. However, the statutory framework is heavily procedure-driven, and judicial tribunals have consistently emphasized that any deviation from the prescribed mandatory requirements can render the entire recovery action unsustainable. The recent judgment of the Debt Recovery Appellate Tribunal, Allahabad, in *Indian Bank v. Gurudeo Kripa and Anr.* (Appeal Dy. No. 39/2025, decided on 27 May 2026), presided over by Mr. Justice R.D. Khare, Chairperson, reiterates this principle with considerable clarity. The Tribunal dismissed the appeal filed by Indian Bank and upheld the order of the Debt Recovery Tribunal below, which had set aside the bank's possession notice and all subsequent auction proceedings on the ground that the notice issued under Section 13(4) of the SARFAESI Act omitted the mandatory redemption clause contemplated under Section 13(8) and Appendix IV of the Security Interest (Enforcement) Rules, 2002.

The factual matrix of the case traces back to a cash credit facility of ₹25 lakhs granted by the appellant, Indian Bank, to the respondent firm, M/s. Gurudeo Kripa, on 14 January 2015. The facility was secured by a mortgage over land situated at Bramhpura, Muzaffarpur, and was extended for the firm's operations as a contractor and supplier. Owing to a failure in maintaining financial discipline, the borrower's account was classified as a Non-Performing Asset on 31 March 2021. In consequence, the Bank issued a demand notice under Section 13(2) of the SARFAESI Act for an outstanding amount of ₹28,07,601.26. When the borrower failed to respond to the demand, the Bank proceeded to take symbolic possession of the mortgaged property under Section 13(4) of the Act and issued a possession notice dated 7 January 2022. The notice was not only served upon the borrower and guarantor but was also affixed at a conspicuous place on the property and simultaneously published in two widely circulated daily newspapers, namely Prabhat Khabar and The Times of India. Thereafter, a sale notice dated 22 August 2022 was issued for auctioning the secured asset, and this too was duly published.

The borrower initially challenged the SARFAESI proceedings before the Hon'ble Patna High Court by filing CWJC No. 15054 of 2022. During the pendency of the writ petition, the borrower gave an undertaking to deposit twenty percent of the outstanding dues within one week and the remaining entire amount within three months, as reflected in the High Court's order dated 7 November 2022. However, the borrower only deposited a sum of ₹7 lakhs on 11 November 2022 and failed to comply with the remainder of the undertaking. The writ petition was subsequently dismissed as withdrawn by the High Court on 24 November 2022. Following the withdrawal, the borrower filed Securitization Application No. 339 of 2022 before the Debt Recovery Tribunal, challenging the possession notice and the sale notice. In parallel, the Bank obtained an order dated 21 February 2023 from the District Magistrate, Muzaffarpur, under Section 14 of the SARFAESI Act for taking physical possession of the property. The borrower challenged this by filing Interim Application No. 166 of 2023, which was allowed, and the SA was amended accordingly. Ultimately, the DRT, vide its order dated 11 December 2024, allowed the borrower's application, set aside the possession notice and all subsequent auction proceedings, and directed the Bank to return the auction amount along with ten percent simple interest. Aggrieved by this order, the Bank preferred the present appeal under Section 18 of the SARFAESI Act before the DRAT, Allahabad.

Before the Appellate Tribunal, the Bank raised several substantive contentions. It was argued that the demand notice under Section 13(2) contained a specific averment regarding the redemption clause under Section 13(8) of the SARFAESI Act, and that the borrower neither sought redemption nor filed any objection to the demand notice. The Bank further contended that the possession notice dated 7 January 2022 was issued in strict compliance with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, and was duly served, affixed, and published. Counsel for the Bank also emphasized that the borrower had been granted ample opportunity to redeem the property through the Patna High Court's order dated 7 November 2022, and that the borrower's failure to deposit the full outstanding amount should not be construed as a defect in the Bank's proceedings. It was further submitted that without specifically setting aside the District Magistrate's order under Section 14, the DRT could not have mechanically directed the Bank to hand over physical possession within thirty days, as such a direction is contrary to the scheme of the SARFAESI Act.

On the other hand, the respondent-borrower contended that the demand notice under Section 13(2) and the possession notice under Section 13(4) were not actually delivered, and that the Bank had failed to file any postal tracking report either before the DRT or in the present appeal. Relying upon the judgment of the Hon'ble Patna High Court in LPA No. 1475 of 2014, the borrower argued that the presumption of service of a notice under Section 13(2), which carries penal consequences and is capable of dispossessing a person from his mortgaged property, cannot be lightly inferred. It was also submitted that the presumption under Order V Rule 19-A of the Code of Civil Procedure regarding non-return of registered post does not ipso facto apply to SARFAESI

proceedings in the absence of an express provision to that effect in the Act or the Rules. The respondent-auction purchaser, meanwhile, adopted the arguments of the Bank and contended that he was a bona fide purchaser who had deposited the entire sale consideration in accordance with the statutory framework.

The DRAT, after considering the rival submissions and perusing the material on record, addressed the issues systematically. The Tribunal first noted that the DRT below had already returned a finding that the demand notice, possession notice, and sale notice were served upon the borrower. Since the borrower had not filed a separate appeal challenging this specific finding, it could not be permitted to agitate the issue of non-service in the appeal filed by the Bank. The Tribunal then proceeded to examine the substantive defect in the possession notice. It was observed that while the possession notice dated 7 January 2022 was served, affixed, and published in accordance with Rule 8(1) and Rule 8(2) of the Rules, it was not issued in conformity with Appendix IV, which mandatorily requires the inclusion of an averment regarding the borrower's right to redeem the secured asset under Section 13(8) of the SARFAESI Act. The Bank, in paragraph 6 of its written submission, candidly admitted that due to inadvertence and typographical mistakes, the redemption clause under Section 13(8) could not be mentioned in the possession notice.

The Tribunal rejected the Bank's plea that the omission was a minor defect cured by the borrower's conduct and the opportunity granted by the Patna High Court. The Court held that the statute gives the borrower an opportunity to redeem the property at every stage of the proceedings under the SARFAESI Act, and this statutory right cannot be curtailed by the Bank. It was emphatically observed that each and every provision of the Act and the Rules made thereunder must be strictly complied with by the Bank while proceeding for recovery. The Tribunal further held that the non-compliance of the High Court's order by the borrower does not entitle the Bank to violate or deviate from the provisions of the Act and the Rules. Accordingly, the DRAT concluded that the DRT had rightly set aside the possession notice and all subsequent actions, including the auction proceedings. The Tribunal also rejected the Bank's argument regarding the Section 14 order, holding that if the possession notice is found to be defective, the order passed by the District Magistrate under Section 14 would automatically fall, because the proceeding under Section 14 is a subsequent action flowing from Section 13(4).

In conclusion, the judgment in *Indian Bank v. Gurudeo Kripa and Anr.* serves as a significant reminder that the SARFAESI Act, despite being a powerful recovery tool in the hands of secured creditors, operates within a tightly regulated procedural framework. The DRAT Allahabad has reaffirmed that the omission of a mandatory statutory requirement, such as the redemption clause under Section 13(8) in the possession notice, is not a curable irregularity but a fundamental defect that vitiates the entire chain of enforcement actions. The Tribunal's refusal to condone the Bank's admitted inadvertence underscores the principle that statutory rights of borrowers cannot be diluted by reference to their subsequent conduct or unrelated court proceedings. The appeal was dismissed with no order as to costs, and the judgment was directed to be forwarded to the parties, the DRT concerned, and uploaded on the e-DRT portal. For banking institutions and legal practitioners, this decision reinforces the imperative of meticulous adherence to the prescribed forms and procedures under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002, lest the entire recovery mechanism collapse on procedural grounds.

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