



CIVIL

# No Fresh Notice to Heirs Needed after Section 13(2), SARFAESI Served: Srinagar Bench Clarifies”

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Late Abdul Aziz Sofi of Firdous Abad, Batamaloo, Srinagar, had together with his son Nazir Ahmad Sofi raised a credit facility from the Jammu & Kashmir Bank Ltd. On 7 March 2023, while Abdul Aziz was still alive, the bank issued the mandatory sixty-day demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The borrower neither paid nor offered any settlement within the stipulated period. On 24 July 2023 Abdul Aziz passed away, leaving behind his wife Mst. Sundri (70), sons Mohd. Yousuf Sofi (50), Mohd. Latief Sofi (43) and Mudassir Ahmad Sofi (36), and daughters Mst. Maryam (46), Mst. Yasmeena (40) and Mst. Afroza (34) as his legal heirs.

Undeterred by the borrower's death, the bank on 18 December 2023 moved the Chief Judicial Magistrate, Srinagar, under Section 14 of the Act for assistance in taking symbolic and physical possession of the mortgaged property. After hearing the authorised officer of the bank and perusing the affidavit filed in terms of the provisos to Section 14, the learned Magistrate passed an order on 22 February 2024 directing delivery of possession to the secured creditor.

The heirs felt aggrieved. They invoked the constitutional writ jurisdiction of the High Court of Jammu & Kashmir and Ladakh at Srinagar under Article 226 of the Constitution. Writ Petition (C) No. 780 of 2024, along with connected CM Nos. 2034 and 2394 of 2024, was listed before a Division Bench comprising Hon'ble Mr Justice Sanjeev Kumar and Hon'ble Mr Justice Sanjay Parihar. The bank resisted the petition.

The petitioners' sole plank of attack was that an application under Section 14 SARFAESI Act filed after the borrower's death was per se not maintainable and that the secured creditor ought to have issued a fresh Section 13(2) notice to the surviving family members. They argued that the proceedings offended the principles of natural justice because the heirs were never given an opportunity to clear the dues.

The bank, on the other hand, emphasised that Section 14 is a summary remedy directed against the secured asset and not an action in personam against the borrower. Once the statutory notice under Section 13(2) had been duly served during the borrower's lifetime and the sixty-day period had expired without payment, the bank was statutorily entitled to invoke Section 14. The bank also pointed out that in the nearly two years since the account became non-performing, neither the deceased borrower nor his successors had come forward with any concrete proposal to liquidate the liability.

After carefully examining the language of Sections 13 and 14 and the array of affidavits filed along with the Magistrate's order, the Bench found no merit in the plea that death of the borrower extinguished the bank's right to proceed against the mortgaged property. The Court observed that the liability travelled to the estate and that the heirs could not seek an indefinite extension by merely asserting want of a fresh notice. The provisos to Section 14 only require the authorised officer to affirm compliance with Section 13(2) as it stood when the borrower was alive; they do not contemplate a second round of notices to successors-in-interest.

Consequently, the writ petition was dismissed and any subsisting interim directions were vacated. The judges, however, added a humane rider: if the petitioners approached the bank under any One-Time Settlement scheme that may be in force and deposited the pre-requisite amount, the bank would consider their application strictly in accordance with the terms of such scheme.

The judgment, reported as *Mst. Sundri & Ors. v. Jammu & Kashmir Bank Ltd. & Anr.*, Writ Petition (C) No. 780/2024, decided on 9 July 2025, serves as a clear reminder that in secured-credit recovery, the focus remains on the asset charged rather than on the continued existence of the original borrower.

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