

IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Regular Appeal No. 61/2022

State Bank of India, Stressed Assets Recovery Branch, 3rd Floor, 2 Tilak Marg, Opp. National P.G. College, Lucknow through Authorized Officer.

.....Appellant

Versus

1. Om Prakash, S/o Raj Bahadur, R/o Village Dhunauli, Tehsil-Ram Sneh Ghat, Distt. Barabanki-225001.
2. Jai Prakash, S/o Raj Bahadur, R/o Village Dhunauli, Tehsil-Ram Sneh Ghat, Distt. Barabanki-225001.
3. M/s IFFCO E.Bazar through proprietress Anjali Verma, W/o Devendra Kumar Verma, R/o Village Dhunauli, Tehsil-Ram Sneh Ghat, Distt. Barabanki-225001.
4. Sudhakar Awasthi, S/o Late Dinesh Chandra Awasthi, R/o Q828, Foto Wali Gali, Kanoor Goyan, Nawabganj, Barabanki-225001.
5. Vipin Kumar Gupta, S/o Hari Prasad Gupta, R/o Faizabad Road, Paisar, Dehata, Dean Dayal Nagar, Barabanki-225001.

.....Respondents

Advocates, who appeared in this case:

For the appellant-Bank
For the respondents

Shri Sandeep Arora, Advocate
Ex-parte

JUDGMENT

Date of Pronouncement: 27.03.2026

JUSTICE R. D. KHARE, CHAIRPERSON

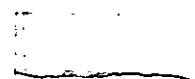
1. The present appeal has been filed under section 18 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") against the order dated 12.04.2022, whereby the Securitization Application No. 544/2021 filed by the respondents-borrowers has been allowed.
2. Brief facts of the matter are that respondent no. 3 was granted financial assistance by the appellant-Bank through its proprietor Anjali Verma, W/o Devendra Kumar Verma. In order to secure the same, Devendra Kumar Verma and mother of the respondents no. 1 & 2 Late

Rajrani stood as guarantors and Late Rajrani created an equitable mortgage over her property by depositing original title deed with the appellant-Bank. Since the respondent no. 3 did not adhere to the terms of the loan agreement, therefore, the account was classified as NPA on 08.07.2020 and a demand notice dated 20.08.2020 was issued u/s 13(2) of the SARFAESI Act for a sum of Rs.1,02,81,330/- along with interest and costs. Since the borrowers did not pay any heed to the said demand, therefore, the possession notice u/s 13(4) of the said Act was issued on 06.11.2020 and symbolic possession of the property in question was taken by the Bank. Thereafter, the appellant-Bank issued sale notices on 08.12.2020 and 19.02.2021 for auction of the property in question, but the same could not materialize.

3. It appears that the appellant-Bank had also filed an application u/s 14 before the District Magistrate, Barabanki, which was allowed vide order dated 06.10.2021 and pursuant to it, the physical possession of the property in question was taken by the Bank on 02.12.2021.
4. It further appears that in the meantime, the appellant-Bank issued sale notice on 04.08.2021 to the borrowers including the guarantors/mortgagers through speed post on 04.08.2021 and the same was also published in the newspapers on 12.08.2021 and the property was sold on 01.09.2021 and sale certificate was also issued on 22.10.2021, copy of which has been placed at page no. 145 of the paper book. The respondent no. 3-firm has challenged the sale notice dated 04.08.2021 before the Hon'ble High Court, Bench at Lucknow by filing Writ Petition No.20910/2021, which was dismissed vide order dated 17.09.2021. Thereafter, the respondents -

borrowers have challenged the said sale notice before the Tribunal below by filing S.A. No. 544/2021, which has been allowed vide order impugned. Being aggrieved by the said order, the present appeal has been filed by the appellant-Bank.

5. Learned counsel for the appellant-Bank submitted that the only ground, on which impugned order was passed, is that the legal heirs of the borrowers were not served with the notices issued by the appellant-Bank and a clear 30 days' notice was also not served upon them, which is against the documents on record. In support of his contention, the learned counsel has referred to para 14 of the order impugned, which is at page no. 23 of the paper book. It was further contended that during lifetime of the borrowers, the legal heirs had never approached the proceedings of Section 17 Application. It was, therefore, prayed that the order impugned may be set aside and the appeal may be allowed.
6. It appears that on behalf of the respondents no. 1 to 3, Shri Ashish Pratap Singh, Advocate had appeared up to 06.08.2025, but thereafter, he did not appear. So far as the respondents no. 4 & 5 are concerned, the notice were served upon them, but despite service, no one has ever appeared on behalf of the said respondents. Therefore, all the respondents were directed to be proceeded ex-parte vide order dated 10.10.2025. However, the reply has been filed by the respondents no. 1 to 3, which is on record.
7. I have considered the rival contentions of the learned counsel for the appellant and perused the material available on record.



8. It has been stated by the respondents-borrowers in its reply that the proceedings undertaken by the appellant-Bank for recovery of its amount is against a dead person, therefore, the Tribunal below has rightly set aside the auction dated 01.09.2021 and also the order dated 06.10.2021 passed by the District Magistrate, Barabanki u/s 14 of the SARFAESI Act. Per contra, learned counsel for the appellant has contended that the respondents have never intimated about the death of the mortgagor Rajrani to the appellant-Bank and for the first time, the respondents had brought on record the death certificate of deceased Rajrani, when they have filed the present S.A.
9. Admittedly, the mortgagor-Late Rajrani, who expired on 20.05.2021, was alive up to the proceedings initiated by the Bank under Rule 8(6) of the Rules, 2002, as the sale notices dated 08.12.2020 and 19.02.2021, but she had never challenged any proceedings of the Bank before any court of law, meaning thereby, she was not aggrieved by any action of the Bank.
10. The finding of the Tribunal below that no clear 30 days' sale notice was served by the Bank upon the respondents-borrowers is contrary to the record, as the sale notice dated 04.08.2021, through which the property in question has been sold, is a third sale notice, therefore, no clear 30 days' notice was required to be given by the Bank to the borrowers. In this regard, it is stated that prior to the issuance of the said notice, two sale notices were already issued i.e. on 08.12.2020 and 19.12.2021 respectively, copies of which are placed at page no. 36 & 42 of the paper book and proof of its dispatch through 'speed post' are at page no. 37 & 43 of the paper book. Thus in the present case, only 15 days'

sale notice was required to be given to the borrowers in view of the proviso to Rule 9(1) of the Rules, 2002, which has been done by the Bank by conducting the sale on 01.09.2021 pursuant to the sale notice dated 04.08.2021. Thus, there is no violation of Rule 8(6) of the Rules, 2002.

11. No doubt, third sale notice was issued on 04.08.2021, which was published in newspapers on 12.08.2021 and auction sale was conducted on 01.09.2021, whereas Rajrani had expired on 20.05.2021, thus it is clear that the said sale proceedings were admittedly conducted after her death, but in the present case, it cannot be said so, because the respondents-borrowers have not filed any documents, which may prove that the respondents no. 1 & 2, who are legal heirs of the mortgagor-Late Rajrani, have ever intimated the appellant-Bank about the death of her mother. If it is duty of the Bank to serve the notice upon the borrowers or his legal heirs, then it is duty of the legal heirs of the borrowers to intimate the Bank about the death of the borrowers, if taken place, but in the present case, the respondents no. 1 & 2 did not do so, therefore, there was no occasion for the Bank to send the said sale notice to the respondents no. 1 & 2. The sale notice dated 04.08.2021 was sent to the borrowers through speed post on the same day and affixed on the conspicuous place of the property in question and also published in two newspapers on 12.08.2021. However, there is nothing on record, which may show that the sale notice sent to the borrowers was ever returned back as unserved, meaning thereby, on behalf of the mortgagor Late Rajrani, the said notice might have been received by her legal heirs i.e. respondents no. 1 & 2. Thus it cannot be said that respondents were not aware about the auction

proceedings. The sale notice dated 04.08.2021 is at page no. 166 and 167, which was sent to the borrowers through speed post, which is evident from the postal receipts, which are placed at page no. 168 of the paper book and its affixation is at page no. 171 & 172 of the paper book. However, at best it can be said that there may be an irregularity, but not illegality. Hence, it can be said that the proceedings were not conducted by the Bank against a dead person, because the respondents have deliberately evaded the service of sale notice by not intimating the Bank about the death of Rajrani. As such, the Tribunal below has erred in holding that the sale was conducted against a dead person vide order impugned.

12. So far as the order dated 06.10.2021 passed by the District Magistrate is concerned, undisputedly, an application u/s 14 of the SARFAESI Act was filed before the Court of District Magistrate, Barabanki, wherein the date of NPA was shown as 20.06.2020 and the date of demand notice was shown to be 22.06.2020, when all the proceedings including auction was conducted by the Bank pursuant to the demand notice dated 20.08.2020, copy of which is placed at page no. 229 of the paper book. In the last para of the said notice, it is mentioned "*All previous 13(2) notice under provisions of SARFAESI Act, 2002 stand cancelled and revoked due to present notice.*" Thus it is clear that the order dated 06.10.2021 was obtained by the Bank from the District Magistrate u/s 14 of the SARFAESI Act on the basis of the cancelled/revoked demand notice dated 20.06.2020, hence the Tribunal below has rightly held that the said order is not sustainable in the eye of law. Since the property has already been sold, sale certificate has also been issued and the possession has also been handed over to the auction purchasers, therefore, I feel it appropriate that

the possession of the property in question, which is with the Auction Purchasers, is not required to be restored with the respondents-borrowers on the ground of illegal order of the District Magistrate, because there remains nothing in favour of the respondents-borrowers, when the sale of the property in question has become absolute and possession of the same has also been handed over to a third party.

13. In view of the aforesaid, the order impugned is set aside and the appeal filed by the appellant is allowed.
14. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.


CHAIRPERSON

VN GIRI,PS