



2025:KER:91045

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 18TH DAY OF NOVEMBER 2025 / 27TH KARTHIKA, 1947WP(C) NO. 33994 OF 2025PETITIONER:

ABHIJITH B.,AGED 23 YEARS
S/O LATE BABU S, BHARANIKAVIL KIZHAKKAHIL, BHARANIKKAVU, PORUVAZHY P.O.,
SASTHAMCOTTA, KOLLAM, PIN - 690520

BY SRI.GIGIMON ISSAC

RESPONDENTS:

- 1 BANK OF MAHARASHTRA, KOTTARAKKARA BRANCH, REP. BY MR.ROHAN BOLAR, CHIEF
MANAGER AND AUTHORISED OFFICER, BANK OF MAHARASHTRA, ZONAL OFFICE,
ERNAKULAM, 2ND FLOOR, GK ARCADE, VANNALA P.O., ERNAKULAM, PIN - 682028
- 2 M/S VAIDHYADHARMA HERBALS, BHARANIKAVIL KIZHAKKAHIL, BHARANIKKAVU,
PORUVAZHY P.O., SASTHAMCOTTA, KOLLAM REPRESENTED BY MANAGING PARTNER, PIN
- 690520
- 3 MR.AJITH, BHARANIKAVIL KIZHAKKAHIL, BHARANIKKAVU, PORUVAZHY P.O.,
SASTHAMCOTTA, KOLLAM, PIN - 690520
- 4 MRS. ATHIRA, BHARANIKAVIL KIZHAKKAHIL, BHARANIKKAVU, PORUVAZHY P.O.,
SASTHAMCOTTA, KOLLAM, PIN - 690520
- 5 MR.BABU S., BHARANIKAVIL KIZHAKKAHIL, BHARANIKKAVU, PORUVAZHY P.O.,
SASTHAMCOTTA, KOLLAM, PIN - 690520
- 6 MRS. SEEMANDHINI, BHARANIKAVIL KIZHAKKAHIL, BHARANIKKAVU, PORUVAZHY P.O.,
SASTHAMCOTTA, KOLLAM, PIN - 690520

BY SRI.T.A.PRAKASH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.11.2025, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

(Dated this the 18th day of November 2025)

The petitioner is a legal heir of the late Mr. Babu (the fifth respondent), who served as a guarantor for a loan obtained by the second respondent firm from the first respondent bank. Following a default in repayment, the bank initiated recovery proceedings under the SARFAESI Act against respondent Nos.2 to 6. The property currently secured under these proceedings was inherited by the petitioner following the demise of Mr. Babu on August 6, 2025.

2. The petitioner submits that the first respondent bank continued proceedings under Section 14 of the SARFAESI Act (M.C. No. 689/2025) despite having knowledge of the fifth respondent's demise. Pursuant to these proceedings, the Advocate Commissioner appointed by the CJM, Kollam, issued a possession



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notice (Ext.P1) dated 30.08.2025, scheduling the takeover of the property on 13.09.2025. Although, the Advocate Commissioner was formally requested via Ext.P2 on 10.09.2025 to report the death of the fifth respondent to the Court, no action was taken. Subsequently, the 3rd respondent moved the CJM, Kollam, through CMP No. 7692/2025 (Ext.P3), seeking to stay the proceedings and restrain the Commissioner from taking physical possession. However, the CJM adjourned the petition without formal consideration, providing only an oral direction to defer possession until 16.09.2025, while advising the parties to obtain orders from the Hon'ble Apex Court. In the absence of any other efficacious remedy, the petitioner has approached this Court.

3. Heard the learned counsels appearing for the petitioner as well as the standing counsel for the 1st respondent.

4. The learned counsel for the petitioner contends that even



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after knowing the death of the 5th respondent, coercive recovery proceedings were advanced against the petitioner without issuing fresh notice under section 13(2) of the Act for discharging the liability of the deceased, which violates the principles of natural justice, denying him the opportunity of being heard. The counsel also argued that the order of the CJM, Kollam, was passed against the law contemplated and the respondent Bank is expected to initiate proceedings under Section 14 against this petitioner afresh. Hence, attempts made to dispossess the petitioner without initiating fresh Section 14 proceedings against him, that too on the strength of an order passed against a dead person, is void and impermissible in law.

5. On the other hand, the standing counsel for the first respondent maintains that the SARFAESI Act does not mandate the issuance of fresh notices to the legal heirs of a deceased borrower



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or guarantor. The respondent contends that there is no statutory requirement to initiate second round of notices to successors-in-interest provided that the due process under the Act was properly followed during the borrower's lifetime. Consequently, the bank asserts that the proceedings remain valid and prays for the dismissal of the writ petition.

6. Upon perusal of the facts, it is evident that the Advocate Commissioner was appointed by the CJM Court, Kollam, via an order dated 25.04.2025 in M.C. No. 689/2025. This order directed the Commissioner to take physical possession of the secured assets, including the immovable property owned by the fifth respondent. Significantly, as the fifth respondent passed away on 06.08.2025—well after the Commissioner's appointment—the statutory notices under Sections 13(2) and 13(4) of the Act, as well as the Section 14 order, were all issued and served during the lifetime of the original



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mortgagor. Consequently, there is no dispute that the initial due process under the Act was validly completed against the fifth respondent prior to his demise.

7. Reliance has been placed by the learned counsel for the respondents on a judgment of the High Court of Jammu and Kashmir and Ladakh in **Mst. Sundri and Ors. v. The Jammu and Kashmir Bank Ltd. and Another**, dated 09.07.2025 in W.P(C) No.780/2024 to contend that once a valid notice under section 13(2) of the Act is served on the borrower during his lifetime, the statutory requirement is fulfilled and the subsequent death of the borrower does not necessitate issuance of a fresh notice to his legal heirs before initiating proceedings under section 14 of the Act. In paragraph Nos.8 and 9 of the said decision, it is reported as follows:

“8. From reading of Section 14 of the Act of 2002, it is crystal clear that Section 14 is invoked by the secured creditor only where the possession of the secured asset(s) is required to be taken. The application which is required to be moved by the secured creditor must



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be accompanied by an affidavit duly affirmed by the Authorized Officer of the secured creditor declaring, inter alia, that a notice under Section 13 (2) of the Act, 2002 demanding payment stood served on the borrower. From further reading of Section 14 of the Act of 2002, it also becomes crystal clear that Section 14 is to be invoked after the borrower has failed to discharge in full his liability to the secured creditor within a period of sixty (60) days despite having been served with a notice under Section 13 (2) of the Act of 2002. In the instant case, the notice under Section 13 (2) stood served to the borrowers and, on their failure to discharge the liability in full to the secured creditor within the stipulated period of sixty (60) days, the Respondent-Bank invoked Section 14 of the Act of 2002 and made an application seeking order from the Chief Judicial Magistrate to take over the physical possession of the secured asset(s).

09. Having regard to the clear position emerging from Section 13 and 14 of the Act of 2002, we are not persuaded to agree with the contention of the learned Counsel for the Petitioners that before invoking Section 14 of the Act of 2002, the secured creditor should have issued fresh notice to the legal heirs of the borrower so as to provide them an opportunity to pay the dues in full. Otherwise also, such an argument cannot be accepted for the reason that despite lapse of about two years, the Petitioners have not discharged in full the liability towards the Respondent-Bank. Assuming for the sake of arguments that the Petitioners were also required to be given a fresh notice under Section 13 (2) of the Act of 2002, then the necessary consequence of



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fresh notice would have been to call upon the legal heirs to deposit the amount in full within sixty (60) days. Is it the case of the Petitioners that they had the money and were ready and willing to discharge their liability within sixty (60) days, but because they were not given any notice they were deprived of depositing the amount before the Respondent-Bank.”

8. This court in **Authorised Officer v. Devi Prasad** [2019 KHC 7606], held as follows:

“12. The object and scheme and the provisions contained under S.13 assume importance in the context. Chapter III of the SARFAESI Act deals with "enforcement of security interest". S.13 (1) provides that, notwithstanding anything contained in 69 or 69 A of the Transfer of Property Act, any security interest created in favour of a secured creditor may be enforced without intervention of any court or tribunal, in accordance with the provisions of the SARFAESI Act. Sub-section (2) of S.13 provides that, where any borrower makes default in repayment of the secured debt and if such debt is classified as a 'non performing asset', then the secured creditor shall require the borrower by notice in writing to discharge the liabilities within 60 days from the date of the notice, failing which the secured creditor will be entitled to exercise the rights provided under sub-section (4) of S.13. Sub-S.3A enables the borrower to make any representation or objections, on



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receipt of any notice under sub-section (2), and the secured creditor is at an obligation to consider such representation / objections. The secured creditor is also at an obligation to communicate the reasons for rejection of such representation / objections, if the creditor comes to the conclusion of such representation / objections are not acceptable or tenable. The proviso to sub-S.3A specifically stipulates that, the communication of the reasons for rejection by itself shall not confer any right upon the borrower to prefer an application under S.17 or under S.17A. Sub-section (4) of S.13 provides that, in case the borrower fails to discharge the liability within the period specified in sub-section (2) the secured creditor may take recourse to one or more of the measures provided under sub-clause (a) to (d) of sub-section (4). One of the measures provided therein is to take over possession of the secured asset of the borrower, including the right to transfer by way of lease, assignment or sale for the purpose of realizing the secured asset. In this regard, the provisions contained under S.17 also assume importance. Sub-section (1) of S.17 provides that, any person aggrieved by any of the measures referred to in sub-section (4) of S.13, taken by the secured creditor, will be entitled to make an application to the DRT having jurisdiction in the matter, challenging such proceedings.

13. A combined reading of the provisions contained in sub-section (2), (3A) and (4) in consonance with S.17 would give a clear indication that, the scheme provided for enforcement of the security interest, is a comprehensive code by itself. It provides various stages, commencing from raising a demand under sub-section (2) till taking over possession



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of the secured assets of the borrower. Further, the party against whom such proceedings are initiated has got an opportunity to challenge the measures taken under sub-section (4), before the DRT, under S.17 of the Act.

14. In the case at hand, the proceedings initiated against the original borrowers for enforcement of the security interest stand concluded by virtue of the intimation served on them with respect to taking over possession, communicated to the said borrower through the notice issued under S.13(4) on 31-10-2013. Question is whether the death of the original borrower occurred at that stage of the proceedings will abate the entire steps taken. Or in other words, whether the secured creditor is at an obligation to initiate fresh steps, right from issuing notice under sub-section (2) of S.13. Considering the object, nature and scheme of the above said provisions of the SARFAESI Act, we can only answer the above question in the negative. Of course, if the bank or the Authorised Officer proceeds further by approaching the Magistrate's Court under S.14, seeking assistance for taking over physical possession of the property, a legal heir who is stepping into the shoes of the mortgagor / borrower, who has derived an interest in the secured asset, will be entitled to resist such action on any of the grounds available to him. In that respect, Ext.P2 judgment in the present case has taken care of the interest of the respondent / writ petitioner. It is evident from the records that, consequent to Ext.P2 judgment, the appellants have impleaded the respondent / writ petitioner in the proceedings before the Chief Judicial Magistrate's court and that due



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notice was already issued to him. Therefore, the finding in the Impugned judgment that the share of the respondent / writ petitioner can be proceeded against only after issuing a fresh notice under S.13(2), cannot be sustained.”

9. Section 14 of the Act provides a statutory remedy for the bank to recover dues from a borrower. Once the demand notice under Section 13(2) is duly served during the borrower’s lifetime and the mandatory 60-day period expires without the liability being discharged, the bank’s right to invoke Section 14 proceedings becomes absolute. The facts further reveal that nearly two years have elapsed since the loan account was classified as a Non-Performing Asset (NPA), yet neither the deceased guarantor nor his legal heirs have taken steps to settle the debt. This persistent inaction reinforces the bank's entitlement to proceed under the Act to enforce its security interest and recover the outstanding dues.

10. In the present case, as the initial demand notice was



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duly served during the borrower's lifetime and the statutory 60-day period expired without repayment, the creditor is legally entitled to proceed with the possession of secured assets without issuing additional notices to the legal heirs. Based on the facts and circumstances, supported by relevant judicial precedents, this Court finds no necessity for issuing a second round of notices under the Act, given that the procedures under Sections 13(2), 13(4), and 14 were validly initiated and served during the lifetime of the deceased fifth respondent. Consequently, while the petitioner remains at liberty to raise any other contentions regarding procedural illegalities before the appropriate statutory forum, the specific challenge regarding the necessity of fresh notice is hereby rejected. Accordingly, the Writ Petition stands disposed of with the aforementioned observations.

Sd/-

BASANT BALAJI, JUDGE



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APPENDIX OF WP(C) 33994/2025

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER IN M.C NO.689/2025 OF CJM COURT, KOLLAM DATED 30.08.2025
- Exhibit P2 TRUE COPY OF THE REQUEST LETTER SUBMITTED BEFORE THE ADVOCATE COMMISSIONER ON 10.09.2025
- Exhibit P3 TRUE COPY OF THE PETITION FILED BY THE 3RD RESPONDENT BEFORE THE CJM COURT AS CMP NO.7692/2025