

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**WP (C) No. 3252/2023
CM No. 3294/2025
CM No. 7810/2023**

Dated: 9th of July, 2025.

Showkat Hussain Rather, Age: 60 Years
S/O Ghulam Rasool Rather
R/O Ichgam, Budgam.

... Petitioner(s)

Through: -
Mr Shakir Haqani, Advocate with
Mr Asif Ahmad Wani, Advocate.

V/s

1. **Jammu & Kashmir State Cooperative Bank Ltd.,**
Through its Authorized Officer, Rajbagh, Srinagar.
2. The Chairman, J&K State Cooperative Bank Ltd., Srinagar.
3. Branch Head, J&K State Cooperative Bank Ltd., Branch Unit
Budgam.

... Respondent(s)

Through: -
Ms Mahira Bhat, Advocate.

CORAM:

**Hon'ble Mr Justice Sanjeev Kumar, Judge.
Hon'ble Mr Justice Sanjay Parihar, Judge.**

(JUDGMENT)

Sanjeev Kumar-J:

01. Impugned in this Petition filed by the Petitioner under Article 226 of the Constitution of India is a possession notice dated 10th of November, 2023 issued by the Respondent-Bank purportedly under Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002 ("the Rules of 2002"), whereby the Bank has issued possession notice with regard to the

secured asset(s) and has informed the Petitioner as well as the public at large that the Bank has taken over possession of the secured asset(s).

02. The impugned possession notice is assailed by the Petitioner on the ground that the same cannot be issued by the secured creditor unless provisions of Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the Act of 2002”) are complied with and a notice is given to the borrower to discharge his/ her liability in full within the stipulated period of time.

03. Ms Mahira Bhat, the learned Counsel appearing for the Respondent-Bank, fairly concedes this legal position and submits that a defect in issuing the possession notice cannot absolve the Petitioner of his liability towards the Bank.

04. Having heard learned Counsel for the parties and perused the material on record, it is necessary to set out Section 13 (2) and 13 (4) of the Act of 2002 as also Rule 8 of the Rules of 2002 hereinbelow, *ad-seriatim*:

“13 (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

[Provided that— (i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.]

13 (4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2),

the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt: Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

8. Sale of immovable secured assets.- (1) Where the secured asset is an immovable property, the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) [The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspaper] one in vernacular language having sufficient circulation in that locality, by the authorized officer.

[(2A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.]

(3) In the event of possession of immovable property is actually taken by the authorized officer, such property shall be kept in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the property in his custody as an owner of

ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorized officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed off.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

[(c) by holding public auction including through e-auction mode; or]

(d) by private treaty.

[Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State.]

(6) the authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

[Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.]

[(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the Authorized Officer shall upload the detailed terms and conditions of the sale, on the website of the secured creditor, which shall include;

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price of the immovable secured assets below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) deposit of earnest money as may be stipulated by the secured creditor;

(f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.]

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled [between the secured creditors and the proposed purchaser in writing].”

05. From plain reading of Rule 8 of the Rules of 2002, it is evident that Rule 8 has been framed in aid of Section 13 (4) of the Act of 2002 and Section 13 (4) of the Act of 2002 cannot be invoked by the secured creditor unless it has issued a notice under Section 13 (2) of the Act of 2002 to the borrower. In the instant case, the provisions of the Act of 2002 have not been complied with in letter and spirit which renders the impugned possession notice issued under Rule 8 (1) of the Rules of 2002 non-sustainable in law.

06. For the aforesaid reasons, this Petition is **allowed** and the impugned possession notice dated 10th of November, 2023 issued under Rule 8 (1) of the Rules of 2002 is quashed, leaving it open to the Respondent-Bank to proceed against the Petitioner and the secured asset by strictly adhering to the provisions of the Act of 2002.

07. Writ Petition shall stand **disposed** of on the above terms, along with the connected CM(s).

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR
July 9th, 2025
“TAHIR”

i. Whether the Judgment is approved for reporting?

Yes.