

Madras High Court

Madras High Court | Bench: D.Murugesan, Vinod K.Sharma | **S . Suhaina Banu v. Indian Bank** | W.P.No.27230 of 2009 | 1 December, 2010 | 2010 PLRonline 0102 (Mad.)

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 S. 13(2) - Whether the notice under sub-section (2) of Section 13 should be issued to the legal heirs of the deceased borrower/guarantor afresh in the event such borrower/guarantor dies after the service of notice under sub-section (2) of Section 13 of the SARFAESI Act - Proceedings initiated against a person while he was alive would automatically stand abated immediately after his/her demise - The only course open to the respondent-Bank is to initiate proceedings by issuance of fresh notice to the legal heirs of the borrower/guarantor, as the legal heirs of the borrower/guarantor will have an opportunity to discharge the liabilities in sixty days - Only in the event of failure to discharge the liabilities in full by the legal heirs, the respondent-Bank could proceed further by issuance of notice under sub-section (4) of Section 13 and duly served or affixed in terms of that provision read with Rule 8 of the Security Interest (Enforcement) Rules. [Para 6]

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 S. 13(4) - Whether the notice under sub-section (4) of Section 13 affixed in the property by the respondent-Bank showing only the name of the deceased guarantor as the owner of the property could be considered to be a sufficient compliance of the provisions of Section 13(4) read with Rule 8 of the Security Interest (Enforcement) Rules ? - Sub-rule (1) of Rule 8 speaks of delivering a possession notice to the borrower or guarantor, as the case may be, and as well affixing the said notice on the outer door or at such conspicuous place of the property - Here again, after the demise of the borrower/guarantor, the possession notice should be delivered to the legal heirs of the borrower/guarantor and also by affixing the said notice on the outer door or at such conspicuous place of the property of the borrower/guarantor - The affixure is in addition to delivery of the possession notice to the borrower/guarantor. In the given case, the first respondent-Bank had admittedly affixed the possession notice only in the property and there is no material to show that the notice was delivered to the legal heirs of the borrower/guarantor and it is not the stand of the respondent-Bank as well - In the event the possession notice is not delivered on the borrower/guarantor or the legal heirs of the borrower/guarantor, as the case may be, the provisions of Rule 8 of the Security Interest (Enforcement) Rules are not complied with. [Para 7]

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 13(4) - Affixure of notice alone - Showing the name of the deceased/guarantor as the owner of the property - Cannot be sustained - Said notice was neither delivered on the legal heirs nor was affixed showing the names of the legal heirs on the outer door or at such conspicuous

place of the property - Bank has not complied with the provisions of Section 13(4) and cannot proceed further under the SARFAESI Act against the petitioners. [Para 7]

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