

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

**WP (C) No. 780/2024
CM No. 2034/2024
CM No. 2394/2024**

Dated: 9th of July, 2025.

1. Mst. Sundri, Age: 70 Years
W/O Late Abdul Aziz Sofi

- 2. Mohd. Yousuf Sofi, Age: 50 Years
- 3. Mst. Maryam, Age: 46 Years
- 4. Mohd. Latief Sofi, Age: 43 Years
- 5. Mst. Yasmeena, Age: 40 Years
- 6. Mudassir Ahmad Sofi, Age: 36 Years
- 7. Mst. Afroza, Age: 34 Years

Petitioner Nos. 2, 4 & 6 Sons of Late Abdul Aziz Sofi
Petitioner Nos. 3, 5 & 7 Daughters of Late Abdul Aziz Sofi

All Residents of Firdous Abad, Batamaloo, Srinagar.

... Petitioner(s)

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

V/s

- 1. **The Jammu & Kashmir Bank Ltd.,**
Through its Authorized Officer Hakeem Ashiq Hussain Qureshi at
M. A. Road, Srinagar.
- 2. Nazir Ahmad Sofi
S/o Late Abdul Aziz Sofi
R/o Firdous Abad, Batamaloo, Srinagar.

... Respondent(s)

Through: -
Mr Adil Asmi, Advocate for R-1.

CORAM:**Hon'ble Mr Justice Sanjeev Kumar, Judge.****Hon'ble Mr Justice Sanjay Parihar, Judge.****(JUDGMENT)****Sanjeev Kumar-J:**

01. In this Petition, filed under Article 226 of the Constitution of India, the Petitioners seek to challenge an Order dated 22nd of February, 2024 passed by the learned Chief Judicial Magistrate, Srinagar in an application moved by the Respondent-Bank under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the Act of 2002").

02. The impugned Order has been assailed by the Petitioners, primarily, on the ground that the application which was filed by the Respondent-Bank purportedly under Section 14 of the Act of 2002 was against a dead person and, therefore, not maintainable.

03. Learned Counsel for the Petitioners submits that one of the original borrowers, namely, Abdul Aziz Sofi passed away on 24th of July, 2023, whereas, the application under Section 14 of the Act of 2002 was filed on 18th of December, 2023.

04. It is the sole ground on which the impugned Order passed by the learned Chief Judicial Magistrate has been assailed.

05. *Per contra*, learned Counsel appearing for the Respondent-Bank would submit that there is no requirement under Section 14 of the Act of 2002 to issue notice to the borrower or the guarantor as the proceedings under Section 14 of the Act of 2002 are, in fact, directed against the secured asset(s). He submits that notice under Section 13 (2) of the Act of 2002 was issued to the deceased borrower on 7th of March, 2023 during his lifetime and he had almost more than three months to respond to the said notice.

06. Having heard learned Counsel for the parties and perused the material on record, we are of the considered opinion that the only notice to which a borrower is entitled to is a notice under Section 13 (2) of the Act of 2002, whereby the borrower is called upon by a notice in writing to discharge in full the liability to the secured creditor within a period of sixty (60) days. In the instant case, admittedly, the deceased borrower-Late Abdul Aziz Sofi or, for that matter, the other co-borrower-Nazir Ahmad Sofi did not discharge their liability towards the Respondent-Bank despite having been served with a notice under Section 13 (2) of the Act of 2002. In such a situation, the Respondent-Bank was left with no option but to proceed either under sub-section (4) of Section 13 or Section 14 of the Act of 2002. The Respondent-Bank, in its wisdom, choose to proceed under Section 14 of the Act of 2002 and, accordingly, made an application before the Chief Judicial Magistrate.

07. Before we proceed further, we deem it proper to set out Section 14 of the Act of 2002 hereinbelow;

“14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—

—(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor, declaring that—

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days' notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorized Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorized Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets [within a period of thirty days from the date of application]:

[Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.]

[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorize any officer subordinate to him—

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.]

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorized by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.”

08. 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 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 Sections 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 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.

10. Viewed from any angle, the arguments raised by the learned Counsel for the Petitioners are misconceived and, consequently, the Writ Petition filed by the Petitioners is held to be without any merit. The same is, accordingly, **dismissed**, along with the connected CM(s). Interim direction(s), if any subsisting as on date, shall stand vacated. We, however, observe that in case any One Time Settlement (OTS) Scheme is in vogue, as on date, and the Petitioners approach the Respondent-Bank with a fresh application along with the pre-requisite deposits, then the same shall be considered by the Bank strictly as per the terms of such Scheme.

SRINAGAR
July 9th, 2025
"TAHIR"

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

i. Whether the Judgment is approved for reporting? Yes.