

Aarav Industries & Ors. vs Bank of Baroda & Anr.

M/s Aarav Industries & Ors.

...Appellant

Bank of Baroda & Anr.

...Respondent

Case No: Appeal on Diary No. 146/2023

Date of Judgement: 09/02/2023

Judge:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Prashant Pandit with Mr Jay Pandit, Advocates.

For Respondent: Ms Sandhaya Sondhi, Mr Rohit Gupta with Mr S. Solanki, Advocates.

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Facts:

The case arises from an appeal filed by M/s Aarav Industries & Ors. (Appellants) against the order dated 19/01/2023 passed by the Debts Recovery Tribunal-II, Ahmedabad (DRT) in I.A. No. 4064/2022 in Securitisation Application (S.A.) No. 509 of 2022.

The Appellants are a partnership firm represented by Appellants Nos. 2 and 3, who are partners of the firm.

The Appellants had filed an interlocutory application before the DRT seeking to restrain the Bank of Baroda (Respondent No. 1) from taking physical possession of a shop room leased out by the Appellants, which was the secured asset against which measures were being taken under the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (SARFAESI Act).

The DRT, vide order dated 15/12/2022, granted a stay preventing the Respondent bank from taking possession of the secured assets on the condition that the Appellants paid a sum of ₹91 lakhs to the Respondent bank, as undertaken. The Appellants deposited the amount in a no-lien account with the Respondent bank.

The Respondent bank filed I.A. No. 4064/2022 seeking a modification of the order dated 15/12/2022, contending that the secured assets were already sold in an auction held on 17/08/2022 for an amount of ₹1,97,05,600/-, and the auction purchaser (Respondent No. 2) had deposited the entire amount with the Respondent bank. The sale certificate was also issued on 17/10/2022 and registered on 28/11/2022.

The DRT, vide the impugned order dated 19/01/2023, allowed I.A. No. 4064/2022 in part and withdrew the protection granted to the Appellants regarding the taking over of possession of the secured assets by the Respondent bank.

The present I.A. No. 79/2023 is filed by the Appellants seeking a stay of the impugned order dated 19/01/2023.

Sections and Laws Referred:

Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act): Section 18(1) deals with the deposit of the amount of debt due on filing an appeal before the Debts Recovery Appellate Tribunal (DRAT).

Section 14 of the SARFAESI Act: Section 14 deals with the enforcement of security interest by a secured creditor.

Arguments by the Appellants (M/s Aarav Industries & Ors.):

The Appellants' counsel, Mr. Prashant Pandit, fervently argued that the Appellants had deposited a major portion of the debt due from them (₹91 lakhs out of ₹95,70,886/-), and therefore, the Respondent bank should be restrained from taking physical possession of the property,

which is the secured asset.

Mr. Pandit pointed out that the Appellants were willing to cooperate with the Respondent bank by offering to sell the secured assets for a sum of ₹4,65,00,000/- to a purchaser who was ready and willing to purchase the property. A letter was issued to the Respondent bank on 23/12/2021 with the aforesaid proposal, and reminders were sent on 25/03/2022 and 20/06/2022.

It was argued that the property was sold for a pittance of ₹1,97,05,600/- to the Respondent No. 2, and the reserve price fixed for the property was highly inadequate. The Respondent bank had fraudulently sold the property to the Respondent No. 2 for a song in violation of the Act and Rules.

Arguments by the Respondents (Bank of Baroda and Auction Purchaser):

The Respondents' counsel submitted that in the auction sale held on 17/08/2022, there were no other bidders apart from the Respondent No. 2.

The person who was allegedly willing to purchase the property for ₹4,65,00,000/- did not even participate in the auction, according to the counsel for Respondent No. 2, Mr. Rohit Gupta.

Mr. Gupta argued that the offer made by the Appellants to sell the property to a willing purchaser was fictitious. If there was such a purchaser, they would have participated in the auction sale and bid for the amount stated by the Appellants in their letter to the Respondent bank. The intention of the Appellants in making such an offer was only to protract the auction sale.

It was further pointed out that the Appellants had never raised any objection regarding the insufficiency of the reserve price fixed for the property.

The counsel for the Respondent bank submitted that symbolic possession of the secured assets was taken as early as 15/09/2021, and notices

were duly served on the Appellants. An application for physical possession of the property was made before the District Magistrate, Daman, under Section 14 of the SARFAESI Act.

The property was valued through a board-approved valuer, and a sale notice was issued on 12/07/2022, fixing the auction on 17/08/2022. Publication of the proposed auction was also made in newspapers in accordance with the Rules.

It was argued that the letters sent by the Appellants offering to sell the property for a fabulous amount were only a ruse to protract the matter by deploying dilatory methods.

Court's Elaborate Opinions:

The DRAT considered the submissions made by the learned counsel appearing for the parties and found that the Appellants did not have a sufficient case to stall the proceedings before the DRT.

The DRAT acknowledged that the Appellants had deposited a major portion of the debt due from them (₹91 lakhs). However, it was noted that the property was already sold, the Respondent No. 2 had deposited the entire sale consideration, and the sale was confirmed with the sale certificate issued and registered in favor of Respondent No. 2. Therefore, the right of redemption was not available to the Appellants at this stage.

The DRAT opined that no prejudice would be caused to the Appellants in case the physical possession of the property was handed over to the Respondent No. 2 in consequence of the confirmation of the sale.

It was observed that the Appellants were not without remedy. If they were able to establish that the sale price for which the secured assets were sold was inadequate or that the proceedings were not in accordance with the Rules, the sale could always be set aside by the DRT in the pending S.A.

The DRAT noted that despite having written three letters, the Appellants did not produce any auction purchaser willing to bid for

the property in the public auction that had taken place. They also did not raise any objection regarding the insufficiency of the reserve price despite having received the notice on time.

Based on these observations, the DRAT was of the opinion that the Appellants were not entitled to any stay of the impugned order or the SARFAESI measures initiated, and the handing over of possession to the auction purchaser.

Consequently, the DRAT dismissed the application for stay filed by the Appellants (I.A. No. 79/2023).

Case Laws Referred:

No case laws were referred in the order.