Authorised Officer, Shriram City Union Finance Ltd. v. Kamla Industries & Ors.

Authorised Officer, Shriram City Union Finance Ltd.

…Appellant

Kamla Industries & Ors.

…Respondent

Case No: Appeal No.48/2023

Date of Judgement: 19/12/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Ms Uma Fadia, Advocate.

For Respondent: Mr Anil B Chimnani, Advocate.

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Facts:

Shriram City Union Finance Ltd., a financial institution (F.I.), had lent money to Respondents Nos. 1 and 2, who were the sole proprietorships of Respondents Nos. 3 and 4, respectively. Respondents Nos. 3 and 4 stood as guarantors for the debt incurred. Respondent No. 4 had also mortgaged her property as collateral security. The borrowers defaulted on payment, and the Appellant initiated measures available under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) against the Respondents. The Respondents challenged these measures under Section 17(1) of the SARFAESI Act by filing Securitisation Application (S.A.) No. 101 of 2021 before the Debts Recovery Tribunal-I, Ahmedabad (D.R.T.). On 13.08.2021, during a virtual hearing by the

D.R.T., a settlement was arrived at between the parties. The applicants in the S.A. offered to pay the total outstanding sum of ₹52 lakhs, as proposed by the secured creditor, in installments. The applicants agreed that in case of default in payment, they would hand over possession of the secured asset to the creditor without any demur, and if they failed to do so, the secured creditor would be at liberty to take the assistance of the police machinery to take over possession of the property. The Ld. Counsel for the applicants was directed to file an undertaking concerning the schedule of payment by 16.08.2021. The Ld. Counsel for the Appellant F.I. undertook to defer taking over physical possession of the secured asset until a default in payment was committed by the applicants. The D.R.T. made it clear that the statements made by the counsels for the parties would operate as the order of the Tribunal. An undertaking was filed by the applicants to the D.R.T. through email, as agreed. The F.I. resiled from the undertaking to settle, and vide order dated 05.04.2023, the S.A. was disposed of, imposing a compensation of ₹1 lakh on the F.I. to be paid to the applicants and a further sum of ₹1 lakh to be paid as costs to the National Defence Fund. The Appellant is aggrieved and has filed an appeal.

Argument by the Appellant:

The Ld. Counsel for the Appellant, Ms. Uma Fadia, argued vehemently that the Appellant had never accepted the terms of settlement. It was a unilateral act of submitting an undertaking to pay ₹52 lakhs toward the settlement of the entire debt made by the applicants in the S.A., which the Appellant had never consented to. The amounts paid by the Respondents were received by the Appellant as they were due and payable, but the Appellant could not have refused them. The Appellant had made an endorsement on the undertaking that the proposal was not acceptable and had also sent an email on 13.08.2021 to the Respondents conveying that the amount of installments offered was not acceptable as they were too low, and the institution intended to proceed to take physical possession of the secured asset by following due process of law.

Argument by the Respondents:

The arguments made by the Respondents were not explicitly mentioned in the document.

Court's Elaborate Opinions:

The order of the D.R.T. dated 13.08.2021 made it clear that the applicants (Respondents) had, through their counsel, offered to settle the debt by making a payment of ₹52 lakhs, as proposed by the secured creditor (Appellant), in installments starting from 31.08.2021 and ending on 31.12.2021. The Ld. Counsel for the applicants had undertaken to surrender possession of the secured asset in case of default in payment. The Ld. Counsel for the Appellant had apparently accepted the offer by agreeing to defer taking physical possession of the asset until a default in payment was committed. The D.R.T. had made it clear that the statements made by the counsels for the parties would be accepted and operate as the order of the Tribunal. Admittedly, there was no default in payment, and the entire amount mentioned in the undertaking was paid. The endorsement made by the Appellant on the undertaking, stating that the copy was received but not acceptable, was made only at 5:07 PM on 13.08.2021. The email sent by the Authorized Officer of the Appellant to the Respondents stated that the installments were low and not acceptable, but did not mention the inadequacy of the total amount of ₹52 lakhs offered for settlement. The Ld. Counsel representing the Appellant before the D.R.T. did not submit that the offer for settlement was not acceptable and had agreed to defer taking over possession of the property until a default was committed by the applicants. Even subsequently, when the S.A. was taken up for consideration by the D.R.T., the Appellant's Counsel did not withdraw from the settlement arrived at between the parties. Section 20(2) of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) states that no appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties. The Appellate Tribunal cited the Supreme Court decision in State of Maharashtra vs. Ramdas Srinivas Nayak & Ano. (1982) 2 SCC 463, which held that statements of fact recorded in a judgment regarding what transpired at the hearing are conclusive, and a party cannot contradict such statements by affidavit or other evidence. The

Ld. Presiding Officer observed in the impugned order that the demand notice under Section 13(2) dated 08.09.2020 did not provide a breakup of the principal and interest claimed, and therefore, the entire SARFAESI measures should fail as the notice was in breach of Sub-Section (3) of Section 13.

Sections and Laws Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) – The Appellant initiated measures available under this Act against the Respondents. Section 17(1) of the SARFAESI Act – The Respondents challenged the measures initiated by the Appellant under this section by filing a Securitisation Application (S.A.) before the D.R.T. Section 13(2) of the SARFAESI Act – The Ld. Presiding Officer observed that the demand notice issued under this section did not provide a breakup of the principal and interest claimed, in breach of Sub-Section (3). Section 13(3) of the SARFAESI Act – This sub-section requires the demand notice under Section 13(2) to provide a breakup of the principal and interest. Section 20(2) of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) – This section states that no appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

Cases Cited:

State of Maharashtra vs. Ramdas Srinivas Nayak & Ano. (1982) 2 SCC 463 – The Appellate Tribunal cited this Supreme Court decision, which held that statements of fact recorded in a judgment regarding what transpired at the hearing are conclusive, and a party cannot contradict such statements by affidavit or other evidence.