

Baljit Singh Amrik Singh Sethi & Ors. v. Axis Bank Ltd.

Baljit Singh Amrik Singh Sethi & Ors.

...Appellant

Axis Bank Ltd.

...Respondent

Case No: Appeal on Diary No. 1590/2023

Date of Judgement: 27/09/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Radhe Agrawal, Advocate.

For Respondent: Mr Alok D. Mishra, Advocate.

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Facts:

The case pertains to an appeal filed by Baljit Singh Amrik Singh Sethi & Ors. (hereafter referred to as "Appellants") against the order dated 24.08.2023 passed by the Debts Recovery Tribunal, Nagpur, in Interlocutory Application (I.A.) No. 1567 of 2023 in Securitisation Application (S.A.) No. 121 of 2023. The Debts Recovery Tribunal had declined to grant any protection order to the Appellants against the SARFAESI (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) measures initiated by Axis Bank Ltd. (hereafter referred to as "Respondent Bank") against their residential property. The Appellants, comprising a husband, wife, and son, had admittedly borrowed a sum of money as borrowers/mortgagors for their business purposes from the Respondent Bank. The Appellants

defaulted in repaying the borrowed amount, and their account was classified as a non-performing asset (NPA). The Respondent Bank issued a notice under Section 13(2) of the SARFAESI Act on 28.10.2021, demanding a sum of ₹5,92,78,323/- from the Appellants. As the Appellants did not pay the demanded amount, the Respondent Bank initiated steps under Section 13(4) of the SARFAESI Act and obtained an order under Section 14 from the Chief Judicial Magistrate's Court for taking physical possession of the property. The Appellants filed the present Securitisation Application (S.A.) challenging the SARFAESI measures on various grounds, including the improper service of the notice under Section 13(2) and the incorrect description of the third Appellant as a co-borrower instead of a co-mortgagor.

Arguments by the Parties:

Appellants' Arguments:

The Appellants contended that the notice under Section 13(2) was not properly served on them. They argued that the third Appellant was incorrectly described as a co-borrower, whereas documents indicated that she was only a co-mortgagor. The Appellants claimed that the SARFAESI measures initiated by the Respondent Bank were defective and challenged them on these grounds. The Appellants stated that they were making an earnest attempt to clear the debt and requested an opportunity to save their residential premises by clearing the outstanding dues.

Respondent Bank's Arguments:

The Respondent Bank submitted that the Appellants were chronic defaulters, and as of 11.08.2023, the outstanding dues amounted to ₹7,22,85,059.50. The Respondent Bank argued that the Appellants had responded to the demand notice under Section 13(2), indicating that the allegation of non-receipt of the notice did not appear to be true. Regarding the incorrect description of the third Appellant as a co-borrower, the Respondent Bank stated that it was merely a typographical error and not of grave consequence. The Respondent Bank contended that no concession should be given to the Appellants in

reducing the mandatory pre-deposit amount from 50% to 25% of the debt due.

Court's Elaborate Opinions:

After hearing the rival contentions and perusing the records, the Tribunal did not find a strong prima facie case in favor of the Appellants. The Tribunal observed that although the Appellants had produced their Income Tax Returns indicating no substantial income, they had not produced Income Tax Returns for previous years to demonstrate their constant financial strain. The Tribunal noted that documents were produced showing that the Appellants had other credits to be cleared and were due to receive certain amounts from various debtors. Considering the facts regarding the Appellants' financial strain, the Tribunal concluded that they were not entitled to the concession of getting the amount of pre-deposit reduced to 25%. Taking the amount mentioned in the demand notice as the threshold amount for calculating the pre-deposit, the Tribunal directed the Appellants to deposit a sum of ₹2 crores as a pre-deposit for entertaining the appeal. The Tribunal accepted the undertaking of the Appellants' counsel to deposit a sum of ₹50 lakhs upfront as the first installment and granted time to deposit the balance amount of ₹1.50 crores in three equal installments, with the first installment payable within two weeks, and the subsequent installments payable at intervals of two weeks each. The Tribunal ordered that in case of default in the payment of any of the installments, the appeal shall stand dismissed without any further reference to the Tribunal. Upon the payment of the first installment on time, the Tribunal granted the Appellants interim relief by deferring the taking over of possession of the secured asset until the next date of hearing. The Tribunal directed that the deposited amounts shall be invested in term deposits in the name of the Registrar, DRAT, Mumbai, with any nationalized bank, initially for 13 months, and thereafter to be renewed periodically.

Sections and Laws Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

- Section 13(2) (Demand Notice)
- Section 13(4) (Taking possession of secured assets)
- Section 14 (Application to District Magistrate/Chief Metropolitan Magistrate)

In conclusion, the Debts Recovery Appellate Tribunal, while considering the arguments of both parties and the financial strain claimed by the Appellants, did not find a strong prima facie case in favor of the Appellants. However, the Tribunal granted the Appellants an opportunity to deposit a pre-deposit amount of ₹2 crores in installments for entertaining the appeal. The Tribunal also provided guidelines for the investment of the deposited amounts and warned of dismissal of the appeal in case of default in payment of any installment. Additionally, the Tribunal granted interim relief to the Appellants by deferring the taking over of possession of the secured asset until the next date of hearing, subject to the payment of the first installment on time.