

Balkrishna Rama Tarale Lrs & Ors. v. Phoenix ARC Pvt. Ltd. & Ors

Balkrishna Rama Tarale Lrs & Ors.

...Appellant

Phoenix ARC Pvt. Ltd. & Ors

...Respondent

Case No: Appeal on Diary No. 347/2023

Date of Judgement: 27/04/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Gaurang Kinkhabwala i/b Mr Durgesh D. Rege, Advocate.

For Respondent: Mr Rajesh Nagory along with Mr Nikhil Rajani, i/b M/s. V. Deshpande & Co., Advocate.

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Facts:

This is an order passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai, in an application filed by Balkrishna Rama Tarale (since deceased) through his legal representatives (LRs) and others (Appellants) for condonation of delay in filing an appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Appellants have filed an appeal challenging the order of the Debts Recovery Tribunal-III, Mumbai (DRT) in Securitisation Application (S.A.) No. 219 of 2022, dated 28/11/2022. The Appellants claim to be tenants in possession of the secured asset bearing Gat No. 465 and

463, admeasuring 8500 sq. mtrs. in Mauje Madesanghvi, Tal Dist. Nasik, allegedly entrusted to the deceased first Appellant Balakrishna Rama Tarale and his sons (Appellants 2 to 4) on a monthly lease of ₹15,000/- in the year 2009 by the 8th Respondent, who is the owner of the property. The fact regarding the tenancy was informed to Religare Finfest Pvt. Ltd. on 16/09/2014 by the landlady (8th Respondent). The subject property was allegedly mortgaged on 10/12/2014, and the loan was availed by Respondents 2 to 10. The loan was defaulted and classified as a non-performing asset (NPA), and consequently, a demand notice was issued by Religare Finfest Pvt. Ltd. under Section 13(2) of the SARFAESI Act on 13/04/2018, demanding the outstanding amount together with further interest from Respondents 2 to 10. Religare Finfest Pvt. Ltd. assigned the debt to the first Respondent, Phoenix ARC Pvt. Ltd., on 29/09/2018, and a fresh notice under Section 13(2) was issued by the first Respondent on 21/05/2019. No notice was served on the Appellants, although the first Respondent was aware of the Appellants being in possession of the property as tenants. The Appellants contended that the first Respondent published a public notice on 31/10/2019 for the auction sale of the subject property, and the Appellants came to know about it upon seeing such notification. The deceased first Appellant objected to the public notice and issued a legal notice to the first Respondent, informing them about the tenancy rights over the subject property. The first Respondent denied the claim put forth by the deceased first Appellant. It is also contended that due to the old age of the first Appellant, it was the 5th Appellant who was running the business on the subject premises. Consequent to the demise of the first Appellant, the 5th Appellant continued the business as a tenant on the premises, and the Respondent continued to accept rent from the 5th Appellant. The first Respondent thereafter applied to the District Magistrate under Section 14 of the SARFAESI Act for physical possession of the property. The deceased first Appellant had filed an objection before the District Magistrate, and vide order dated 27/08/2021, the application was disposed of with a direction that the assistance for delivery of possession will be considered after the termination of the tenancy right. The first Respondent filed a Writ Petition before the Hon'ble High Court of Bombay as Writ Petition No. 9749/2021, and vide judgment dated

03/08/2022, the Hon'ble High Court found that the District Magistrate had transgressed the jurisdiction vested in him under Section 14 of the SARFAESI Act. Accordingly, the order was set aside, and the matter was remanded with the direction that the application be heard and disposed of within a time limit. Subsequently, on remand, the District Magistrate vide order dated 05/09/2022 allowed the first Respondent to take possession of the subject property. Aggrieved by the adverse orders of the District Magistrate and the SARFAESI measures initiated by the first Respondent, the Appellants approached the DRT with an application under Section 17 of the SARFAESI Act. The first Respondent opposed the application, stating that the tenancy right set up by Late Balakrishna Rama Tarale was fictitious and unsustainable. The allegation that the tenancy right passed on to the first Applicant/Appellant on the demise of the original tenant is also disputed by the first Respondent. It is pointed out that Late Balakrishna Rama Tarale had filed a civil suit before the Civil Judge Jr division to protect his tenancy right over the premises and obtained favorable orders protecting their possession. It is contended that the civil suit was collusive to protect the borrowers and that the first Respondent was not a party to it. After hearing both sides, the DRT declined to accept the Appellants' contention against the SARFAESI measures and concluded that the Appellants did not establish their right of tenancy, and hence, dismissed the S.A. vide the impugned order dated 28/11/2022. The Appellants are aggrieved by the impugned order and have filed an appeal before the DRAT. The present application is for condonation of delay of 71 days in filing the appeal.

Arguments by the Parties:

Appellants' Arguments:

The Appellants had produced a rent receipt for ₹15,000 dated 07/12/2009 to prove that the deceased first Appellant was a tenant on the premises. The Appellants contend that the first Respondent's assignor, Religare Finfest Pvt. Ltd., was informed by the 8th Respondent (landlady) on 16/09/2014 about the existence of the tenancy, but the DRT did not accept this contention as the dispatching

receipt of such communication was not proved. The Appellants submit that the delay of 71 days in filing the appeal is well-explained.

Respondent's Arguments:

The Respondent (Phoenix ARC Pvt. Ltd.) has vehemently opposed the application for condonation of delay, stating that the reasons stated for getting the delay condoned are unacceptable. The Respondent alleges that the Appellants' only intention is to protract the proceedings, and they have no prima facie case to establish the tenancy. The Respondent submits that there is collusion between the Appellants and the borrowers, and the Appellants' claim of tenancy has been put forth only to thwart the SARFAESI measures initiated by the Respondent.

Court's Elaborate Opinions:

The DRAT acknowledges that, in an application for condonation of delay, the merits of the case need not be delved into in depth. The only question that needs to be considered is whether the Appellants have an arguable case. The DRAT finds the Appellants' allegation of delay in getting the certified copy of the impugned order unacceptable, as the Appellants had not applied for a certified copy despite the order being pronounced. The DRAT also finds the Appellants' contention that the order was not pronounced on the date it was posted unacceptable. While the reasons stated for condonation of delay are not entirely acceptable, the DRAT is inclined to condone the delay, allowing the Appellants to contest the appeal on merits. The DRAT allows the application for condonation of delay, putting the Appellants to terms of payment of costs of ₹10,000/- to the DRT Bar Association, Mumbai, for the purchase of books and periodicals, within one week, failing which the application shall stand dismissed.

Cases Cited:

No specific cases were cited in this order.

Sections and Laws Referred:

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

Section 13(2) (Demand notice by the secured creditor)

Section 14 (Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking over possession)

Section 17 (Right to appeal)

Section 18 (Deposit of amount of debt due for filing appeal)

In conclusion, the order summarizes the facts, arguments by both parties, and the DRAT's opinions on the application for condonation of delay. The DRAT ultimately allows the application for condonation of delay, subject to the Appellants paying costs of ₹10,000/- to the DRT Bar Association, Mumbai, within one week, failing which the application shall stand dismissed.