

# **Bharati Surendra Khandhar v. Pegasus Assets Reconstruction Pvt. Ltd. & Ors.**

Bharati Surendra Khandhar

**...Appellant**

Pegasus Assets Reconstruction Pvt. Ltd. & Ors.

**...Respondent**

**Case No: Appeal on Diary No. 1083/2023**

**Date of Judgement: 13/09/2023**

**Judges:**

Mr Justice Ashok Menon, Chairperson

**For Appellant: Mr Bhavak Manek along with Mr V.N. Ajikumar, Advocate.**

**For Respondent: Mr Rishabh Shah along with Mr Nishant Rana, i/b M/s. Zastriya Legal, Advocate.**

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**Facts:**

The Appellant, Bharati Surendra Khandhar, filed I.A. No. 614/2023 (WoD) under Section 18(1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act), seeking to waive/dispense with the payment of the mandatory pre-deposit for entertaining the appeal. The appeal challenges the order dated 02/05/2023 in I.A. No. 903/2023 in Securitisation Application (S.A.) No. 178 of 2023 on the files of the Debts Recovery Tribunal-II, Mumbai (D.R.T.), which declined to grant relief to the Applicants, including the Appellant, against the Sarfaesi measures initiated by the Respondent, Pegasus Assets Reconstruction Pvt. Ltd. (ARC). The 1st Applicant in the S.A. is M/s

Libra Fabrics Designs Pvt. Ltd., the principal borrower and mortgagor. Applicants Nos. 2 to 7, including the Appellant, are the guarantors and mortgagors. Various financial facilities were availed by the Applicants in the S.A., which were defaulted, leading to the initiation of Sarfaesi measures against them. The Appellant disputed the execution of the guarantee and stated that there was a dispute under Section 91 of the Maharashtra Co-operative Societies Act (MCS Act) between the original lender, Dombivali Nagrik Sahakari Bank Ltd. (DNS Bank), and herself regarding the guarantee before the Co-operative Court, Thane. The Appellant contended that the demand notice under Section 13(2) of the SARFAESI Act was not properly served, the publication of the notice was in an abridged form and invalid, the notice did not provide a breakup of the principal amount and interest, and the CERSAI registration was not provided, rendering the mortgage defective. The Respondent, Pegasus Assets Reconstruction Pvt. Ltd., is the assignee of the debt from the original creditor, DNS Bank. The loan was sanctioned as per a letter dated 27.07.2014, and Flat No. 402 on the 4th floor of D wing, Kohinoor Apartment, Dadar, Mumbai, admeasuring 886 sq ft., was one of the properties provided as mortgage and collateral security.

### **Court's Elaborate Opinions:**

The Court observed that the Appellant was not only a guarantor but also a mortgagor, and even if the guarantee goes, the mortgage continues. The Court noted that the definition of a 'borrower' would also include a mortgagor, and prima facie, the Appellant cannot exonerate herself from the liability of being a borrower. The Court held that if the Appellant is considered a borrower, she is liable to comply with the mandatory provision under Section 18(1) of the SARFAESI Act. The Court found no grounds to invoke the discretionary powers of the third proviso to Section 18(1) and directed the Appellant to deposit a sum of ₹8 crores as a pre-deposit in four instalments of ₹2 crores each. The Court ordered that if the Appellant defaults on the payment of the pre-deposit, the appeal shall be dismissed without any further reference to the Tribunal. Upon the payment of the first instalment, the Court granted a stay regarding

the taking over of possession of the Appellant's Flat No. 402 until the next date of hearing.

**Arguments by All Parties:**

**Appellant's Arguments:**

The Appellant contended that the demand notice under Section 13(2) of the SARFAESI Act was not properly served, the publication of the notice was in an abridged form and invalid, and the notice did not provide a breakup of the principal amount and interest. The Appellant argued that the CERSAI registration was not provided, rendering the mortgage defective. The Appellant stated that she is a senior citizen and housewife and provided the guarantee since the original borrower, Mehul J Sedani, was the father-in-law of her son. The Appellant claimed that the guarantee was only for 12 months from the date of sanction of the loan, and she had addressed the bank withdrawing her guarantee to the facilities. The Appellant argued that the facilities provided to the principal borrower company were renewed by the DNS Bank on 22/12/2015 and increased from ₹13 crores to ₹15 crores without her consent. The Appellant claimed that she had not executed the deed of guarantee dated 17/05/2018, as mentioned in the demand notice under Section 13(2), and relied on a petition filed before the Co-operative Court, Thane, to show that the DNS Bank had admitted that she had not executed the said deed of guarantee. The Appellant contended that the Court's finding that the property had been let on license to third parties and that the Applicants were no longer in possession was erroneous, as Flat No. 402 was a residential property and had not been let on license.

**Respondent's Arguments:**

The Respondent contended that the demand notice under Section 13(2) demanded a sum of ₹16,66,92,015.58, and the Appellant had not pleaded any ground of financial strain or established a prima facie case in her favor to earn a favorable order for reducing the mandatory pre-deposit. The Respondent argued that the Appellant should be directed to deposit 50% of the demanded amount as a pre-deposit.

**Cases Cited:**

None

**Sections and Laws Referred:**

Section 18(1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Section 13(2) of the SARFAESI Act

Section 14 of the SARFAESI Act

Section 91 of the Maharashtra Co-operative Societies Act (MCS Act)

Section 133 of the Indian Contract Act

Definition of 'borrower' under the SARFAESI Act