

Challenge to auction sale under SARFAESI Act: DRAT KOLKATA

M/s Sri Sai Bhargavi Cotton Trading Company

...Appellant

State Bank of India

...Respondent

Case No: Appeal No. 38 of 2020

Date of Judgement: 18th April, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Nemani Srinivas, Advocates.

For Respondent: Mr. S. Pal Chowdhury,
Learned Counsel with Ms. Saswati Sikder, Advocates.

Facts:

Appellants took a loan from Respondent Bank which was classified as NPA on 31.05.2017. Bank initiated SARFAESI action – issued notices under Section 13(2) and 13(4). Property mortgaged was put to auction on 22.06.2018 and sold to Respondent No. 2, Mr. Sadiq Ahmed Jilani Syed for Rs. 94 lakhs. Respondent No. 3, Smt. Dakumalla also participated in auction. Appellants filed SARFAESI Application under Section 17 on 25.06.2018 challenging auction, stating non-compliance of Rules 8(6), 9(1), 8(7), 8(1) and 8(2) of Security Interest (Enforcement) Rules, 2002. Bank claimed in reply that notice under Rule 8(6) was issued and served. E-auction notice dated 21.05.2018 was published on 22.05.2018. Auction was conducted on 26.02.2018 per law. Respondent No. 2 was highest bidder. DRT dismissed SARFAESI Application stating auction was as per law. Appeal filed against DRT's

order. Additional ground of violation of Rule 9(4) urged in appeal.

Elaborate Opinions by Tribunal:

DRT passed a sketchy, unreasoned order without looking into pleadings and making categorical findings on issues involved. Specific pleas were taken regarding non-compliance of Rules which were met by only a vague/general reply by bank. DRT failed to examine facts like date of notice under Rule 8(6), date of service etc. despite specific plea. Thus, impugned order unsustainable. Sale certificate was issued to auction purchaser on 01.10.2018. As per new plea in appeal, there was an interim order of DRT on 04.07.2018 for not confirming sale. So Rule 9(4) violated. Appeal court observed Appellant can seek amendment before DRT to include this plea. Appeal allowed, impugned order set aside. Matter remanded to DRT for fresh disposal per observations made. Appellant to be allowed to implead auction purchaser as party. Expeditious disposal directed.

Arguments by Parties:

Appellants:

Specific rules like 8(6), 9(1), 8(7), 8(1) and 8(2) of Security Interest (Enforcement) Rules not complied. Sale certificate issued despite DRT's interim order against sale confirmation dated 04.07.2018. So Rule 9(4) also violated.

Respondents/Bank:

Notice under Rule 8(6) issued and served. Auction conducted as per norms by issuing notice dated 21.05.2018 published on 22.05.2018. Respondent No. 2 was highest bidder.

Sections:

Section 13(2) and 13(4) of SARFAESI Act: Issue of demand/possession notices.

Section 17 of SARFAESI Act: SARFAESI Application challenging bank's actions.

Rule 8, Rule 9 and Rule 6 of Security Interest (Enforcement) Rules, 2002.

Cases cited:

None

Laws referred:

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

Security Interest (Enforcement) Rules, 2002

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Full Text of Judgment:

1. Instant Appeal has arisen against an order dated 31st August of 2018 passed by Ld. DRT Visakhapatnam in I.A. No. 1119 of 2018 arising out of S.A. No. 254 of 2018 whereby the Ld. DRT held that the auction of the scheduled property was made in accordance with law and accordingly dismissed the SARFAESI Application.

2. Feeling aggrieved, SARFAESI Applicant preferred the Appeal.

3. Heard the Learned Counsel for the parties and perused the record.

4. As far as facts of the matter are concerned, a loan was taken by the Appellant from the Respondent Bank which was classified as NPA on 31.05.2017. Consequent thereto, SARFAESI action was initiated by the Bank. Notice under Section 13(2), 13(4) of the SARFAESI Act were issued. Property was put to auction on 22nd June, 2018 and it was sold to Respondent No. 2. Mr. Sadiq Ahmed Jilani Syed. Respondent No. 3 Smt. Dakumalla also participated in the auction. But as per the sale certificate dated 1st October, 2018, sale certificate was not issued in her favour. Appellant herein filed a SARFAESI Application u/s 17 of the SARFAESI Act on 25.06.2018 challenging the actions taken by the Bank. Particularly non compliance of Rule 8(6) and 9(1) of the Security Interest (Enforcement) Rules 2002 along with violation of Rule 8(7). Violation of Rule 8(1) and 8 (2) were also pleaded by the Appellant.

5. Respondent Bank filed the opposition before the Ld. DRT wherein it

is stated that notice under Rule 8(6) of the Security Interest (Enforcement) Rules 2002 was issued by the Bank and it was served. Thereafter, e-auction sale notice dated 21.05.2018 was issued which were published on 22.05.2018 in two newspapers and sale was conducted on 26.02.2018 in accordance with law. It is further pleaded that the Respondent No. 2, Mr. Sadiq Ahmed Jilani Syed was the highest bidder for an amount of Rs.94 lacs who paid 25% of the amount on the date of auction and sale was confirmed in his favour. Accordingly, Ld. DRT passed the impugned order.

6. Prima facie, it would appear that Ld. DRT has passed a very sketchy, unreasoned order which could not be sustained. It is settled legal proposition that an order should be a reasoned order. An order bereft of reasons is nothing but an arbitrary exercise of jurisdiction vested in the DRT. I am constrained to observe that the Ld. Presiding Officer has not looked into the pleadings of the parties and not recorded any categorical findings on the issue involved.

7. A specific plea is taken regarding non compliance of Rule 8(6), 9(1), 8(1) and 8(2) of the Security Interest (Enforcement) Rules 2002. Ld. DRT in generalized manner recorded in the findings that all the proposition of laws and Rules are followed by the Bank. When specific plea is taken which was not specifically denied, rather a general statement is made by the Bank that a notice under Rule 8 (6) was issued which was served upon the borrower. There is no description as to when the notice was issued, when it was served. All these facts should have been looked into by the Ld. DRT which is not done.

8. A further plea is taken by the Learned Counsel for the Appellant in the Appeal regarding non compliance of Rule 9(4) of the Security Interest (Enforcement) Rules 2002 stating that an interim order for not confirming the sale was passed by the Ld. DRT on 4th July, 2018. Ultimately SARFAESI Application was decided and dismissed on 31.08.2018. As per the Respondent, copy of the judgement was received on 4th September, 2018 and the Learned Counsel for the Bank informed the Bank on 15th September, 2018. Thereafter, a fresh notice was issued to the purchaser i.e. Respondent No. 2 on 17.09.2018 asking to deposit the amount within 15 days. The sale certificate was issued on

01.10.2018 in favour of Respondent No. 2. This plea is taken in the Appeal which can also be looked into by the Ld. DRT. However, the SARFAESI Applicant would be at liberty to add the plea by moving an amendment application before the Ld. DRT.

9. In view of the discussion made above, I am of the view that the judgment and order passed by the Ld. DRT could not sustain and is liable to be set aside. The matter to be remanded back to the Ld. DRT to dispose of afresh in accordance with law after giving an opportunity of hearing to the parties keeping in view the observations made in the body of the judgement.

Appeal is allowed. Impugned order and judgment dated 31.08.2018 passed by Ld. DRT Visakhapatnam is set aside. The matter is remanded back to the Ld. DRT Visakhapatnam to decide afresh after affording an opportunity of hearing to the parties in accordance with law keeping in view the observations made in the body of the judgment. Ld. DRT shall give an opportunity to the SARFAESI Applicant to implead the auction purchaser as a party in the SARFAESI Application. It is expected that the Ld. DRT shall decide the matter afresh expeditiously.

File be consigned to Record Room.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 18th day of April, 2023.