

Dakshata Singh & Anr. v. Kotak Mahindra Bank Ltd.

Dakshata Singh & Anr.

...Appellant

Kotak Mahindra Bank Ltd.

...Respondent

Case No: Appeal on Diary No. 1731/2023

Date of Judgement: 07/11/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Charles D'Souza along with Mr Shivam Laturiya, Mr Utkarsh Sanad & Ms Prachi Rungta, i/b M/s APS Law Associates, Advocate.

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

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Facts:

Dakshata Singh and Anr. (Appellants) are challenging the order dated 13.09.2023 passed by the Debts Recovery Tribunal-III, Mumbai (DRT) in Securitisation Application (S.A.) No. 389 of 2023. The DRT declined to grant any interlocutory relief to the Appellants and disposed of I.A. No. 3068 of 2023 because the Appellants failed to pay the remaining ₹5 lakhs out of the ₹15 lakhs they had undertaken to deposit for stalling the taking over possession of the property. The Respondent, Kotak Mahindra Bank Ltd., issued a demand notice under Section 13(2) of the SARFAESI Act demanding a sum of ₹50,79,564/- as of 03.08.2020. The Appellants responded to the demand notice by sending an objection, but the Respondent did not provide a response as contemplated under

Section 13(3A) of the SARFAESI Act. The Respondent filed an application under Section 14 of the SARFAESI Act before the District Magistrate and obtained an order.

The Appellants have challenged the SARFAESI measures on various grounds, including:

- The 9-pointer affidavit filed by the Respondent is not proper as it does not mention the Appellants' response to the demand notice under Section 13(2).
- The Section 13(2) notice was issued by an authorized officer whose name and designation were not mentioned.
- The DRT observed some discrepancy regarding the calculation of the outstanding amount by the Respondent, which had swelled to ₹96 lakhs within three years.

The DRT directed the Appellants to pay ₹15 lakhs in two instalments. The Appellants complied by paying ₹10 lakhs as the first instalment but failed to pay the remaining ₹5 lakhs within the stipulated period of 10 days. The DRT, on the ground of non-payment of the remaining ₹5 lakhs, refused to grant any interlocutory relief to the Appellants and directed the Respondent to proceed with the SARFAESI measures.

Arguments by Parties:

Appellants' Arguments:

The Appellants have challenged the SARFAESI measures on various grounds, as mentioned in the facts above.

The Appellants have pleaded financial strain and have produced Income Tax Returns indicating that their total income is only around ₹6 lakhs per annum.

Respondent Bank's Arguments:

The Respondent Bank has vehemently opposed the application for waiver of deposit, arguing that the Appellants do not require any indulgence by getting the amount reduced.

The Respondent Bank has pointed out various sources of income derived by the Appellants, indicating that the Appellants have leased out properties and, therefore, contending that the Appellants have sufficient means to raise the amount.

The outstanding amount as of the date is over ₹88 lakhs.

Court's Elaborate Opinions:

The Appellants will have to deposit an amount under Section 18(1) of the SARFAESI Act based on the demand made in the demand notice under Section 13(2), since the steps taken until the measures under Section 14 of the SARFAESI Act stand challenged. Considering the entire facts and circumstances, the Appellants were directed to pay a sum of ₹15 lakhs towards the pre-deposit. The Appellants were directed to pay the balance amount of ₹12.50 lakhs (after adjusting the ₹2.50 lakhs paid during the hearing) on or before 04.12.2023. Default in payment of the said balance amount would entail dismissal of the appeal without any further reference to the Tribunal. The SARFAESI measures, including taking over possession of the secured asset, shall stand deferred until the next date of hearing in case possession has not already been taken as of the date of the order. The Respondent Bank was given liberty to file a detailed reply to the application to controvert the findings of the DRT and the contentions raised in the application. The amount deposited 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.

Cases Cited:

None

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(3A): Response to the objection raised by the

borrower

- Section 14: Taking possession of secured assets
- Section 18(1): Appeal to DRAT (second proviso on pre-deposit)