

Daljit Singh Tirath Singh Gurudatta & Anr. v. Kalpana Udaykant Surana & Ors.

Daljit Singh Tirath Singh Gurudatta & Anr.

...Appellant

Kalpana Udaykant Surana & Ors.

...Respondent

Case No: Appeal No. 45/2023

Date of Judgement: 26/06/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Mr. Vishal S. Tambe, i/b Mr. Vijay Chandavale, Advocate.

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

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Facts:

The matter relates to an appeal filed by Daljit Singh Tirath Singh Gurudatta & Anr. (Appellants) challenging the order dated 21.04.2023 passed by the Debts Recovery Tribunal, Pune (DRT) in Securitization Application (S.A.) No. 23/2021. The Appellants claimed to be neither the borrowers nor the mortgagers or the guarantors with respect to the secured assets proceeded against by the 4th Respondent (Kotak Mahindra Bank Ltd.), a financial bank. The Appellants had filed S.A. No. 23/2021 before the DRT, seeking reliefs against the security measures under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

(SARFAESI Act). The DRT dismissed the S.A., holding that the Appellants are not entitled to any relief to protect their possession of the property based on an agreement to sale. The Appellants are aggrieved by the DRT's order and have filed the present appeal challenging it before the Debts Recovery Appellate Tribunal (DRAT). The Appellants have also filed I.A. No. 420/2023 for a stay of the application of the impugned order and to prevent further SARFAESI measures against the secured assets. One of the main contentions of the Appellants is that the original loan was granted to the debtors (Respondent Nos. 1 to 3) by the 5th Respondent when the 5th Respondent was not a notified financial institution that could proceed to take SARFAESI measures against the debtors. Subsequently, the debt was transferred to the 4th Respondent (Kotak Mahindra Bank Ltd.), which was a notified institution that proceeded to recover the debt under the provisions of the SARFAESI Act. The Appellants claim to be bona fide purchasers of the property from Respondent Nos. 1 to 3 under an agreement to sale. However, the sale deed has not been registered, and the sale has not been accomplished. The Appellants have admittedly moved the civil court with a civil suit for specific performance of the contract to get the sale deed registered. The property in question was mortgaged by Respondent Nos. 1 to 3 in favor of Respondent No. 5. The Appellants contend that the sale of the debt by an institution not covered under the SARFAESI Act does not entitle the assignee of the debt to invoke the provisions of the SARFAESI Act. The notification regarding the 4th Respondent (Kotak Mahindra Bank Ltd.) also came later, subsequent to the creation of the debt.

Arguments by All Parties:

Appellants' Arguments:

The Appellants rely on a decision of the Hon'ble High Court of Bombay in Kotak Mahindra Bank Ltd v/s Trupti Sanjay Mehta & Ors (AIR 2016 BOM 123), wherein it was held that a subsequent assignee of the debt cannot invoke the provisions of the SARFAESI Act where the assignor, at the time of lending, was not an institution coming within the purview of the SARFAESI Act. The Kotak Mahindra Bank Ltd. preferred an appeal before the Hon'ble Supreme Court of India and obtained a stay

on the operation of the said decision of the Hon'ble High Court. However, the Hon'ble Supreme Court has yet to dispose of the said appeal finally. The counsel for the Appellants submits that the decision in Kotak Mahindra Bank Ltd v/s Trupti Sanjay Mehta & Ors does not apply to all cases with similar facts, and moreover, the Hon'ble Supreme Court of India is yet to dispose of the said appeal finally.

Respondents' Arguments:

The counsel for the Respondents submits that the question raised by the Appellants has been dealt with by the Hon'ble Supreme Court of India in a subsequent decision reported in MD Frozen Foods Export Pvt. Ltd. & Ors v/s Hero Fincorp Ltd. (2017) 16 SCC 741, wherein it was held that a subsequent assignee would also get the benefit of the SARFAESI Act regarding a prior debt entered into by an institution that did not come within the purview of the SARFAESI Act. The Hon'ble High Court of Bombay had subsequently, in Writ Petition No. 11371/2014, considered this very aspect and relied upon the decisions in MD Frozen Foods and Indiabulls Housing Finance Ltd. (Supra), holding that the assignee would be entitled to proceed under the provisions of the SARFAESI Act irrespective of whether the assignor was a financial institution at the material time of creating the debt. It has also been observed that the decision in Kotak Mahindra Bank Ltd. has been impliedly overruled by the Hon'ble Supreme Court of India. The Presiding Officer has also observed in the impugned order that the decision relied upon by the Appellants has been impliedly overruled.

Court's Elaborate Opinions:

The court finds no merits in the Appellants' case, at least prima facie, based on the arguments and decisions cited. The other contentions raised by the Appellants would only be considered while hearing the appeal. For the interregnum, the court is not persuaded by the submissions made by the counsel for the Appellants to grant an interlocutory order of stay of the impugned judgment. Consequently, I.A. No. 420/2022 stands dismissed. The court has directed the Respondents to file a reply to the main appeal expeditiously.

Cases Cited:

Kotak Mahindra Bank Ltd v/s Trupti Sanjay Mehta & Ors (AIR 2016 BOM 123)

- Held that a subsequent assignee of the debt cannot invoke the provisions of the SARFAESI Act where the assignor, at the time of lending, was not an institution coming within the purview of the SARFAESI Act.

MD Frozen Foods Export Pvt. Ltd. & Ors v/s Hero Fincorp Ltd. (2017) 16 SCC 741

- Held that a subsequent assignee would also get the benefit of the SARFAESI Act regarding a prior debt entered into by an institution that did not come within the purview of the SARFAESI Act.

Writ Petition No. 11371/2014 (Bombay High Court)

- Relied upon the decisions in MD Frozen Foods and Indiabulls Housing Finance Ltd., holding that the assignee would be entitled to proceed under the provisions of the SARFAESI Act irrespective of whether the assignor was a financial institution at the material time of creating the debt.
- Observed that the decision in Kotak Mahindra Bank Ltd. has been impliedly overruled by the Hon'ble Supreme Court of India.

Sections and Laws Referred:

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

- Section 17(1) (Appellants' entitlement to reliefs against security measures)