

Dismissal of appeal against order dismissing SARFAESI application as time-barred: DRAT KOLKATA

Tadoori Sathaiah

...Appellant

Andhra Pradesh Grameena Vikas Bank

...Respondent

Case No: Appeal No. 102 of 2022

Date of Judgement: 18th July, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Nemani Srinivas, Advocate.

For Respondent: Mr. Swarup Banerjee, Mr. H.C. Yadav, Advocates.

Facts:

Appellant filed a civil suit in 2013 challenging a sale notice issued by the respondent bank under SARFAESI Act. The suit was withdrawn in 2018 with liberty to file fresh application before appropriate forum. Appellant filed SARFAESI application under Section 17 in August 2018 along with application for condonation of delay of 1810 days. Delay of 49 days was argued from date of withdrawal order to filing of Section 17 application. Delay was not explained satisfactorily. DRT dismissed the SARFAESI application as time-barred. Appellant filed writ petition which was disposed with direction to approach DRAT. Hence, the present appeal.

Arguments by Appellant:

Civil suit was filed due to lack of knowledge. It was withdrawn on advice of senior counsel. Hence delay should be condoned. Period spent in prosecuting civil suit should be excluded u/s 14 of Limitation Act to determine limitation for SARFAESI application. There was delay only in obtaining certified copy. Such bonafide delay needs to be condoned.

Arguments by Respondent Bank:

Application is clearly time-barred with unexplained delay. Earlier civil suit was not proper remedy. Hence no exclusion u/s 14 Limitation Act. Appeal should be dismissed and DRT order upheld.

Court's Reasoning and Conclusions:

Section 34 SARFAESI Act excludes jurisdiction of civil courts. Hence civil suit challenging action under SARFAESI Act was not maintainable. As per Section 14 Limitation Act, time spent in prosecuting proceedings in wrong forum can be excluded only if it was done with due diligence and in good faith. In this case, appellant did not show due diligence. Mere lack of knowledge cannot justify resorting to wrong forum when law clearly barred civil court's jurisdiction. Grounds taken in SARFAESI application are different from civil suit. Thus, suit was not prosecuted properly or diligently. Appellant also did not explain satisfactorily the delay between withdrawal of suit and filing SARFAESI application. Thus, the DRT rightly held the SARFAESI application as time-barred. No interference warranted.

Section 34 SARFAESI Act:

Quoted. It excludes jurisdiction of civil courts with respect to matters under SARFAESI/RDDB Act.

Section 35 SARFAESI Act:

Quoted. SARFAESI Act provisions have overriding effect over other laws.

Section 14 Limitation Act:

Quoted. It deals with exclusion of time spent in prosecuting proceeding in wrong forum with due diligence.

Case Laws Referred:

State of Goa v. Western Builders, (2006) 6 SCC 239:

Earlier proceedings should have been prosecuted bonafidely in wrong forum to claim benefit of Section 14 of Limitation Act.

Thus, in conclusion, the DRT order dismissing the SARFAESI application as time-barred does not require interference. The appeal was rightly dismissed.

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Full Text of Judgment:

1. Feeling aggrieved by the impugned order dated 13.08.2019 passed by the Ld. DRT-1 Hyderabad in SA No. 170 of 2018 Sri Tadoori Sathaiah Vs Andhra Pradesh Gramena Vikas Bank dismissing the SARFAESI Application as time barred, Appellant preferred the appeal.

2. As per the pleadings of the parties, Appellant herein filed a Civil Suit O.S. No. 251 of 2013 re-numbered as O.S. No. 304 of 2014 before Ld. Senior Civil Judge Senior Division, Shadnagar challenging the sale dated 29th July, 2013 by putting a sale notice dated 28.06.2013. Respondent Bank has put his appearance in the Suit wherein evidence was led and suit was fixed for arguments. Thereafter, Appellant moved an application before the Ld. Civil Judge for withdrawing the suit which was allowed vide order dated 25.06.2018 with liberty to file fresh application before the appropriate forum. Certified copy was received on 21.07.2018. Appellant filed an application under Section 17(1) of the SARFAESI Act hereinafter referred as the Act on 13.08.2018.

3. I.A. No. 3058 of 2018 was filed on 24.09.2018 seeking condonation of delay of 1810 days without excluding the period when the Civil Suit was pending before the Ld. Civil Judge. An objection was filed against the application. Appellant alleges that there is a delay of 49 days in presenting the Application under Section 17 of the Recovery of Debts and Bankruptcy Act, 1993 from the date of order dated 25.06.2018.

4. After hearing the Learned Counsel for the parties, Ld. DRT recorded a finding that the delay of 48 days in filing the application under

Section 17 of the Act was not duly explained. There was no sufficient cause shown by the Appellant for delay in filing the Application. Accordingly, it was dismissed as time barred.

5. Feeling aggrieved by the impugned order, Appellant preferred a Writ Petition No. 27314 of 2019 before the Hon'ble High Court for the State of Telangana at Hyderabad which was disposed of by the Division Bench of the Hon'ble High Court vide order dated 16.08.2022 with the finding that Appellant may approach the DRAT under Section 18 of the SARFAESI Act to challenge the impugned order passed by the DRT.

6. Thereafter Appeal is preferred before this Tribunal.

7. I have heard the Learned Counsel for the parties and perused the record.

8. Learned Counsel for the Appellant submits that the challenge to the sale dated 29.07.2013 was made in a Suit filed before the Ld. Senior Civil Judge Shadnagar in O.S. No. 304 of 2014, (old O.S. No. 251 of 2013) wherein vide order 25.06.2018 leave was granted to the petitioner to withdraw the suit with liberty to file fresh application before the proper forum. Thereafter, SARFAESI Application u/s 17 of the Act. was filed with an application for condonation of delay of 1810 days in preferring the appeal. It is submitted that the condonation of delay was sought on the ground that due to lack of knowledge Civil Suit O.S. No. 304 of 2014 old O.S. No. 251 of 2013 was filed before the Ld. Senior Civil Judge Shadnagar challenging the auction by the Respondent No. 1 and seeking cancellation of sale conducted on 29.07.2013 as null and void as contemplated under the provisions of SARFAESI Act. Thereafter, leave was sought to withdraw the Suit which was granted by the Ld. Civil Judge on 25.06.2018. Thereafter, after obtaining the certified copy an application under Section 17(1) of the SARFAESI Act, 2002 was filed with a delay of 1810 days.

9. Learned Counsel for the Respondent Bank submits that the Application under Section 17 (1) of the SARFAESI Act is time barred.

The earlier proceedings were not prosecuted in a proper forum. It was a frivolous litigation. No benefit of Section 14 of the Limitation Act, 1963 can be claimed by the Appellant. Accordingly, the impugned order does not require any interference.

10. Ld. DRT recorded a finding that the Application is moved with the delay of 48 days. No sufficient cause is shown. Accordingly, I.A. as well as the SARFAESI Application is liable to be dismissed.

11. Section 34 of the SARFAESI Act reads as under: Civil Court not to have jurisdiction No. Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993). It is a special provision which excludes the jurisdiction of Civil Court in the matter which are covered under the SARFAESI Act or Recovery of Debts and Bankruptcy Act, 1993. Section 35 of SARFAESI Act provides that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law.

12. It means that the provisions of SARFAESI Act have overriding effect over all the other Acts in the matter which are covered under the SARFAESI Act or the Recovery of Debts and Bankruptcy Act, 1993.

13. No doubt case of the Appellant is covered under the SARFAESI Act wherein he has challenged the auction sale conducted by the secured Creditor under the provisions of the SARFAESI Act.

14. Now it is to be seen as to whether Appellant can take any advantage of provisions of Section 14 of the Limitation Act. Section 14 (1) of the Limitation Act 1963 reads as under:

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another

civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

15. No doubt the period spent in prosecuting any proceedings before a forum having no jurisdiction has to be excluded in computing the period of limitation but, there is a rider to it. Earlier proceedings should have been prosecuted in a wrong forum with due diligence. Word 'due diligence' attains importance. 'Due diligence' means that the litigant was well advised to prosecute the proceedings in a forum which was having no jurisdiction despite the fact that some other forum has jurisdiction in the matter. Due diligence is to be proved by the Appellant.

16. No doubt leave was granted by the Ld. Senior Civil Judge to file the Application in the appropriate forum on 25.06.2018 but that leave itself does not contain any right upon the Appellant so far as benefit of Section 14 of the Limitation Act have been sought by him. At this juncture it would also be appropriate to note that in the Application I.A. No. 3058 of 2018 it is stated that the Suit was filed with different footsteps without raising any ground of violation under SARFAESI Act. Now under Section 17 of SARFAESI Act Application is filed with all the different grounds which were not pleaded in plaint in Suit No. 304 of 2014. It is simply submitted that due to lack of knowledge Civil Suit was filed. On the advice of the Ld. Senior Counsel, Suit was withdrawn. As far as applicability of Section 14 of the Limitation Act is concerned, the earlier proceedings should be bonafidely prosecuted before the Court which has no jurisdiction as has been held by the Hon'ble Apex Court in (2006) 6 SCC 239 State of Goa Versus Western Builders. In the present case, there was a specific Bar of Civil Court in respect of the cases wherein SARFAESI Act is applicable even then Appellant prosecuted its remedy before the Civil Court although Senior Civil Judge has granted leave to approach the appropriate forum but that does not entitle the Appellant to take advantage of Section 14 of the Limitation Act.

17. There is another limb of the matter. Notice dated 28.06.2013 was challenged by the Appellant before the Senior Civil Judge on 18.08.2013. It was withdrawn on 15.06.2018. SARFAESI Application under Section 17 of the SARFAESI Act was filed on 13.08.2018. Learned Counsel for the Appellant submits that the period spent in obtaining the certified copy has to be excluded. This submission could not be accepted. There is a delay in filing the application which was not satisfactorily explained by the appellant.

18. As per the affidavit filed by the Appellant before the Ld. DRT it is stated that there was a delay of 1810 days without giving any reason for the delay. Ld. DRT has rightly held that no reason has been assigned by the Appellant for explaining the delay in preferring the Application under Section 17 of the SARFAESI Act. The conduct of the Appellant would show that he filed a suit in the year 2013 and continued the same till 2018 and thereafter filed the application under Section 17 of the SARFAESI Act thereby showing that the whole intention of the Appellant was to stall the proceedings before the competent forum. Such an action of litigant to try to thwart the process of law is not acceptable under the Law. Accordingly, I am of the view that the Ld. DRT has arrived at a conclusion in accordance with law. Appeal lacks merit and is liable to be dismissed.

Appeal is dismissed. Judgment and order passed by Ld. DRT on 13.08.2019 is confirmed.

No Order as to costs.

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.

Appeal. No. 102 of 2022-DRAT-Kolkata

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 July, 2023.