

Dismissal of appeal against order upholding auction sale proceedings under SARFAESI Act: DRAT KOLKATA

R. Sitaramamma

...Appellant

Sundaram BNP Paribhas Home Finance Limited

...Respondent

Case No: Appeal No. 119 of 2022

Date of Judgement: 14th July, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Nemani Srinivas, Advocate.

For Respondent: Mr. Avishek Guha, Advocate.

Facts:

Appellant R. Sitaramamma had taken a housing loan of Rs. 75 lakhs from Respondent 1 financial institution by mortgaging her property. Her loan account became an NPA due to non-payment of EMIs. Respondent 1 issued notice u/s 13(2) of SARFAESI Act on 03.05.2010, which was duly served. Another notice u/s 13(4) was issued on 26.12.2011 for taking possession. Possession notice was published in newspapers on 30.12.2011. The property was put up for sale vide notice dated 14.07.2014 after obtaining valuation report. Sale notice published in newspapers on 15.07.2014. Notice also sent to Appellant on 15.07.2014. Appellant challenged the sale proceedings in a writ petition before High Court. High Court granted conditional stay vide order dated 14.08.2014, giving time to pay outstanding loan amount. Appellant

failed to comply with High Court's order. Consequently, auction was held on 18/19.08.2014. Appellant filed an application u/s 17 of SARFAESI Act before DRT on 22.10.2014 for setting aside the auction sale. DRT dismissed the application as being barred by limitation.

Arguments:

Appellant:

Application u/s 17 was within limitation period as it challenged sale certificate dated 15.10.2014. There was violation of Rule 9(4) of Security Interest (Enforcement) Rules, 2002.

Respondent:

Application was barred by limitation since auction was held on 19.08.2014 and application was filed beyond 45 days. No ground of violation of Rule 9(4) was taken in the application.

DRT Findings:

Notices were duly served upon Appellant as per Rule 8(6). No plea of violation of Rule 9(4) in the application. New plea cannot be raised. Writ petition filed before HC was disposed of giving conditional stay. As Appellant did not comply, auction was validly held. Application u/s 17 challenged auction sale of 19.08.2014. Was filed beyond limitation period of 45 days.

Sections & Rules Referenced:

Section 13(2), 13(4), 17 of SARFAESI Act

Rule 8(6), Rule 9(4) of Security Interest (Enforcement) Rules

Limitation period of 45 days u/s 17

Cases Referred:

Bachhaj Nahar v. Nilima Mandal (2008) 17 SCC 491

Tribunal's Decision:

Notices were duly served upon Appellant; compliance made with Rules. Appellant cannot raise new plea not taken in application pleading. Auction sale was validly held after HC's conditional stay order was not complied. Application u/s 17 filed beyond 45 days limitation period to challenge auction sale dated 19.08.2014. DRT order justified; no interference warranted. Appeal dismissed.

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Full Text of Judgment:

Feeling aggrieved by the judgment and order dated 21st May, 2019 passed by the Learned DRT-II, Hyderabad dismissing the SARFAESI Application No. 539 of 2017 (Old No. 31 of 2015, DRT-I, Hyderabad) (R. Sitaramamma -vs- Sundaram BNP Paribhas Home Finance Limited Another), Appellant preferred the appeal.

1. As per the pleadings of the parties the facts in brief are that Appellant, who is also the SARFAESI Applicant along with her son, Rayapudi Ashok Mouli, was sanctioned a Housing Loan of Rs.75.00 lac by the Respondent Financial Institution and the payment was started from 16th May, 2009. Equitable mortgage was created by deposit of title deeds. Loan amount was not regularly paid, accordingly, the loan Account was classified as N.P.A. and notice under Section 13 (2) of the SARFAESI Act, 2002 was issued on 3rd May, 2010 which was accepted by the son of the Appellant on 18th May 2010. Notice under Section 13 (4) of the Act dated 26th December, 2011 was issued and the same was also affixed in a conspicuous location of the property. Possession Notice dated 26th December, 2011 was received by the Appellant on 3rd January, 2012 which was also published in two newspapers; Indian Express and Andhra Bhumi on 30th December, 2011. Valuation Report was obtained. Metropolitan Magistrate, Hyderabad was approached by the Respondent under Section 14 of the SARFAESI Act, 2002. The property was put on sale by issuing sale notice on 14th July, 2014 and also published the same in two newspapers by giving clear thirty days. Sale notice was also sent to the Appellant on 15th July, 2014 which was returned with an endorsement 'unclaimed' which amounts to good service. Thus, thirty days clear notice was given to the Appellant. Auction was held. Respondent moved the Hon'ble High Court in Writ Petition No. 23442 of 2014 wherein a conditional order was passed which was not complied by the Appellant. Thereafter, Appellant filed a SARFAESI Application challenging the SARFAESI proceedings with a prayer to quash the auction held on 18th August, 2014/19th August, 2014 and also the Sale Certificate.

2. After hearing the Learned Counsel for the parties, Learned DRT framed the following two issues :

(i) Whether the Appellant made out any valid ground for quashing the auction sale held on 19th August, 2014?

(ii) To what relief?

3. It was held in point No. 1 that the Demand Notice under Section 13 (2) of the Act was legally served upon the Appellant. There was a compliance of Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002. Further it was held that SARFAESI Application under Section 17 of the SARFAESI Act, 2002 is beyond time as auction was held on 19th August, 2014 whereas SARFAESI Application under Section 17 of the SARFAESI Act, 2002 was filed on 22nd October, 2014 which is beyond forty five days. Accordingly, SARFAESI Act, 2002 was dismissed.

4. Learned Counsel for Appellant submits that the SARFAESI Application under Section 17 of the Act was filed within time as Sale Certificate dated 15th October, 2014 was under challenge and the limitation started from 15th October, 2014. Other findings of the Learned DRT have not been assailed before me.

5. Learned Counsel for Respondent submits that SARFAESI Application under Section 17 of the Act was beyond time as the auction was held on 19th August, 2014 and period of forty five days limitation will start running from that date. Admittedly, SARFAESI Application was moved after expiry of the forty five days from 19th August, 2014. Accordingly, the same was time barred.

6. As far as findings of the Learned DRT are concerned, it is borne out from the record that notice under Section 13 (2) of the Act was duly sent to the Appellant which was duly served upon her. This finding is based on record. Further there was a compliance of Rule 8 (6) of the Rules which is also supported by the evidence on record.

7. As far as violation of Rule 9 (4) of the Rules is concerned, Learned DRT has rightly recorded a finding that no challenge was made in the SARFAESI Application regarding violation of 9 (4) of the Rules. Perusal of the SARFAESI Application would show that the grounds taken

by the Appellant in paragraph 7 there is no challenge to violation of Rule 9 (4) of the Rules. Accordingly, it is settled legal proposition that plea which is not taken in the pleadings could not be considered, as has been held by the The Hon'ble Apex Court in Bachhaj Nahar -vs- Nilima Mandal & Another [(2008) 17 SCC 491] in paragraphs 12 and 13 that:

"12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with ll issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties and to prevent any deviation from the course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief , it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief."

Accordingly plea which is not taken in the pleadings could not be taken into consideration.

Now, the main plea relates to the limitation in filing the application under Section 17 of the SARFAESI Act, 2002.

8. Learned Counsel for Appellant submits that a challenge to the Sale Certificate issued on 15th October, 2014 was made in the SARFAESI Application. SARFAESI Application was filed on 22nd October, 2014, hence the SARFAESI Application was filed within a period of forty five days.

9. Per contra, Learned Counsel for Respondent submits that the SARFAESI Application is filed after expiry of forty five days. It is submitted that in the SARFAESI Application auction sale held on 19th August, 2014 was challenged hence it is filed after the expiry of forty five days.

10. In the SARFAESI Application following relief was sought:

“(a) declare that the proceedings initiated by the respondent bank under SARFAESI Act in regard to the schedule property including further proceedings of auction dated 14.7.14 conducted on 18.8.14/19.8.14 is illegal and without any right and further it is not in accordance with Sec. 13 of SARFAESI Act and Rule 8 and 9 of Security (Enforcement Rules, 2002) and consequently, the sale certificate issued in favor of the respondent No.2 be cancelled, the action of the respondent bank is illegal, void and arbitrary and set aside the same.”

11. It would be clear from reading of the prayer that there is no challenge to the certificate issued on 15th October, 2014 rather challenge was made to the auction held on 18/19th August, 2014. Admittedly, SARFAESI Application, under Section 17 of the Act, was filed on 22nd October, 2014. Challenge to the Sale Notice dated 14th July, 2014, published in newspapers on 15th July, 2014, was made by the Appellant before the Hon’ble High Court by filing a Writ Petition No. 23442 of 2014 which was disposed of on 14th August, 2014. Following order was passed by the Hon’ble High Court :

“2. Petitioners have taken a home loan in the month of August, 2008 by

depositing title deeds. As the petitioners have not paid the amount i.e., the equated monthly installments, the debt was declared as 'Non-Performing Asset. Thereafter, the respondent-Finance Company initiated proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). When the notice was issued under Section 13 (2) of the SARFAESI Act, petitioners have not paid the amount. Thereafter, notice under Section 13 (4) of the SARFAESI Act, was issued for conducting auction of the building, which was mortgaged with the respondent-Finance Company.

3. Learned counsel for the petitioners contended that if reasonable time is granted to the petitioners, they are ready to pay the entire amount due to the respondent-Finance Company.

4. Considering the bona fide statement of the learned counsel for the petitioners with regard to payment of outstanding amount due, we grant reasonable time to the petitioners. In the first instance, petitioners are directed to pay 50% of the due amount within six (6) weeks from today and remaining amount within six (6) weeks thereafter. If the petitioners fail to pay the amount within the time as directed above, respondent Finance Company can proceed further for conducting auction in pursuance of sale notice, dated 14.07.2014, but sale shall not be confirmed for a period of ten (10) weeks from today. Thereafter, if the petitioners fail to pay the amount, sale shall be confirmed and the respondent-Finance Company can execute sale certificate in favour of auction purchaser i.e., the highest bidder. Registry is directed not to entertain any application seeking 'extension of time' or 'for being mention' in this regard."

12. Thereafter auction was held on 18th/19th August, 2014. Compliance of the order was not made by the Appellant. Appellant cannot take advantage of the order of the Hon'ble High Court by filing the SARFAESI Application. Accordingly, I am of the view that the SARFAESI Application was filed beyond forty five days, as provided under Section 17 of the Act. On the basis of the discussion made above, I am of the view that Learned DRT has recorded its finding in accordance with law which does not deserved any interference. Accordingly, the

appeal lacks merit and is liable to be dismissed.

Accordingly, the appeal is dismissed. Judgment and order dated 21st May, 2019, passed by the Learned DRT-II, Hyderabad, is hereby affirmed.

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.

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

Order dictated, signed and pronounced by me in the open Court on this the 14th day of July, 2023.