

Dismissal of appeal against order upholding validity of notice under Section 13(2) of SARFAESI Act: DRAT KOLKATA

Haripada Debnath

...Appellant

State Bank of India & Anr

...Respondent

Case No: Appeal Dy. No. 456 of 2023

Date of Judgement: 31st July, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Saptarshi Guha, Advocate.

For Respondent: None.

Facts:

Appellant had taken loans from Respondent bank which were classified as non-performing assets. Bank issued notice under Section 13(2) of SARFAESI Act demanding repayment of Rs 13,60,374.88 within 60 days. Appellant filed IA before DRT challenging notice and also order of District Magistrate allowing possession. DRT dismissed IA upholding validity of notice and DM order. Appellant filed appeal against DRT's order.

Court's Opinion and Reasoning:

On challenge to DM's order:

Neither in grounds of IA nor in appeal, any ground made to challenge DM's order (Para 5)

Binding precedents hold such orders can't be routinely interfered with (Para 6)

Hence challenge to DM's order fails as no grounds to assail it (Para 7)

On challenge to notice under Section 13(2):

Notice mentioned outstanding of Rs 8.07 lakhs in cash credit account and Rs 5.52 lakhs in term loan – total due Rs 13.60 lakhs (Para 8)

Objection mainly on ground that statement of account not annexed with notice (Paras 8,9)

But Section 13(2) does not require statement of account to be annexed with notice (Para 9)

Details of dues as required under Section 13(2) were mentioned, so notice is valid (Para 10)

Ground of civil suit pending alleging discrepancies in accounts also untenable in view of bar under Section 34 against civil courts deciding SARFAESI matters (Para 9)

Thus no infirmity in DRT's order upholding notice (Para 11)

Appeal liable to be dismissed (Paras 6, 11 and operative part)

Arguments by Parties:

Appellant:

Notice bad in law as statement of account not annexed

Some payments made were not mentioned in notice

Discrepancies in account shown in civil suit

Respondents:

None appeared

Statutory Provisions and Case Laws Relied Upon/Referred:

Section 13(2) of SARFAESI Act defining contents of demand notice

Section 34 barring civil courts from deciding SARFAESI matters

R.D. Jain and Co v Capital First Ltd – On non-interference with DM orders

Balkrishna Rama Tarle v Phoenix ARC Pvt Ltd – On above aspect

Conclusion/Operative Part of Judgment:

Appeal dismissed at admission stage. No order as to costs.

Case Laws Referred:

No case laws were referred in the order.

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Full Text of Judgment:

1. Heard the Learned Counsel for the Appellant and perused the record at admission. At the very outset, Learned Counsel for the Appellant submits that he has filed the appeal within the period of limitation. He should be given an opportunity of hearing at the time of final hearing. Merits of the appeal could not be looked into at this stage.

2. I am not impressed with the arguments. Rather if the Appeal lacks merits or there are no grounds to admit the Appeal, Appeal itself, as of right, could not be admitted which is filed against an interim order.

3. As far as admission is concerned, Appeal is preferred against an order dated 22.06.2023 wherein Ld. DRT held that the Demand Notice is valid and thereafter Possession Notice was issued. Orders of the Ld. District Magistrate dated 20.10.2022 was also found to be valid. Accordingly, I.A. No. 2267 of 2022 was dismissed.

4. Feeling aggrieved, Appellant has preferred the Appeal. As far as I.A. is concerned, I.A. No. 2267 of 2022 was filed by the Appellant with the following reliefs:

a) An order setting aside the demand notice dated 17.10.2019 possession notice dated 08.06.2020 & DM order dated 20.10.2022.

b) An order prohibiting the respondents from giving any effect and/or acting in terms of or in furtherance to the demand notice dated 17.10.2019 possession notice dated 08.06.2020 & DM order dated 20.10.2022.

c) An order directing the respondents not to give any effect or further effect or to act in terms of demand notice dated 17.10.2019

possession notice dated 08.06.2020 and DNM order dated 20.10.2022.

d) An order not to give any effect or further effect to or to act in terms of or in furtherance to the demand notice dated 17.10.2019 possession notice dated 08.06.2020 and DM order dated 20.10.2022.

e) Interim injunction restraining the respondents from giving any effect and/or further effect and/ or acting in terms of or in furtherance to or any other similar notice or effecting of the assets and properties more fully disclosed Schedule below from creating any third party interest therein.

f) Ad-interim orders in terms of prayers above;

g) Such further and/ or other order or orders be passed, direction or directions be given as your Lordships may deem fit and proper;

5. A perusal of the I.A. shows that it was moved on the ground that notice u/s 13(2) of the SARFAESI Act is bad in law. Further a ground is taken that some payments have been made by the SARFAESI Applicant which were not mentioned in the notice under Section 13(2) of the SARFAESI Act. No ground to challenge the order of the District Magistrate dated 20th October, 2022 is taken in the grounds of the Application. Although in the relief clause the relief is sought for restraining the Respondents from executing the District Magistrate's order.

6. As far as the impugned order of the Ld. District Magistrate is concerned, neither any ground to challenge the same is taken in the interim application nor any ground is made out. Reliance may be placed on R.D. Jain and Company Versus Capital First Limited and others Civil Appeal No. 175 of 2022 (2023)1 SCC 675 and Balkrishna Rama Tarle and Anr. Versus Phoenix ARC Private Limited and ors (2023)1 SCC 662.

7. Hence, as far as the relief regarding issuance of the order of the District Magistrate is concerned, no case is made out by the Appellant. Accordingly, it is liable to be dismissed.

8. As far as the other part of the impugned order regarding 13(2) notice is concerned, a bare perusal of the impugned order shows that the Demand Notice contained the outstanding of Rs.8,07,873.73 in Cash Credit Account and Rs.5,52,501.15 in Term Loan Account. Total

outstanding Rs.13,60,374.88. At this stage despite repeated request to the Learned Counsel not to intervene during the course of dictation of the order, Ld. Advocate Mr. Saptarshi Guha continued to intervene which is not expected from the Learned member of the Bar. Despite repeated directions, he continued to interfere in the dictation of the order. He is again directed not to interfere during the course of dictation. If he again interferes, then this Tribunal would be compelled to issue certain strict orders.

9. A ground is taken that no Statement of Account is annexed with the Demand Notice. Ld. DRT has arrived at a conclusion that there was no requirement of annexing the Statement of Account along with the Demand Notice under Section 13(2) of the SARFAESI Act. All the details as required under Section 13(2) of the SARFAESI Act are mentioned in the notice. The notice is challenged only on the ground that Statement of Account is not annexed which does not find support from the provision itself which reads as under:

“13 (2) – Where any borrower, who is under a liability to a secured creditor under a security agreement makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non- performing asset then, the secured creditor may require the borrower by notice in writing to discharge in full the liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under subsection (4).”

Learned Counsel for the Appellant submits that the Appellant has been denied an opportunity by not providing the Statement of Account along with the notice. In the memo of Appeal, it is stated that a Civil Suit is also filed before the Civil court wherein a discrepancy is shown. Section 34 of the SARFAESI Act specifically bars the jurisdiction of Civil Court in respect of any matter which the DRT is empowered to decide under this Act. Hence, this ground could not be of any help to the Appellant.

10. On the basis of discussion made above, as far as statement of Account is concerned, in the notice under Section 13(2) of the

SARFAESI Act, details of the amount are shown which is in accordance with the provisions of law.

11. I do not find any illegality in the impugned order. Accordingly, Appeal is liable to be dismissed at admission stage.

Appeal is dismissed at admission stage. 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 signed and pronounced by me in the open Court on this the 31st day of July, 2023.