

Dismissal of appeal against rejection of review application in SARFAESI proceedings: DRAT KOLKATA

Daitari Moharana

...Appellant

The UCO Bank Ltd.

...Respondent

Case No: Appeal No. 75 of 2023

Date of Judgement: 22.06.2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Akhay Kr. Sahoo, Advocate.

For Respondent: None.

Facts:

The appellant had filed a SARFAESI application (SA 76/2019) before the DRT Cuttack challenging the SARFAESI action initiated by UCO Bank against him. This application was disposed of by DRT on 28/02/2020 with a direction to the appellant to deposit Rs. 3,72,625/- with the Bank within 2 months. Thereafter, the appellant filed a review application (MA 95/2020) seeking review of the DRT's order dated 28/02/2020. This review application was dismissed by the DRT vide impugned order dated 07/10/2020. Aggrieved by the dismissal of his review application, the appellant has filed the present appeal before the DRAT Kolkata.

Arguments by Appellant:

The review application was filed within the limitation period in view of the Supreme Court's order excluding the period from 15/03/2020 to 28/02/2022 for computing limitation. The memo filed by Respondent No.4 as recorded in the DRT's order dated 28/02/2020 was never served upon the appellant. The appellant was prepared to comply with the DRT's directions to deposit Rs. 3,72,625/- but his contentions were not considered while dismissing the review application.

Observations and Decision by DRAT:

As per Rule 5A of the Debts Recovery Tribunal (Procedure) Rules, 1993, a review can be sought only if there is a mistake or error apparent on the face of the record. Further, the review application has to be filed within 60 days. In view of the Supreme Court's order on excluding limitation period, the review application was filed within the prescribed time limit. However, the review application does not point out any mistake or error apparent on face of record. It merely repeats the submissions made in the earlier SARFAESI application. The ground that memo filed by Respondent No.4 was not served has no merits because the appellant could have agitated this in an appeal against the SARFAESI order instead of seeking a review. No sustainable grounds having been made out for review, the DRT has rightly dismissed the review application. Consequently, the appeal also lacks merits and is liable to be dismissed.

Order:

The appeal is dismissed.

Case Laws Referred:

No case laws were referred in the order.

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Full Text of Judgment:

1. Feeling aggrieved by the impugned order dated 07.10.2020 passed by learned DRT Cuttack in M.A. No. 95 of 2020 arising out of S.A. No. 76 of 2019, the appeal is preferred by the appellant.

2. As far as facts are concerned S.A. 76 of 2019 was filed by the appellant herein before the learned DRT Cuttack challenging the SARFAESI action initiated by the bank. S.A. 76 of 2019 [Daitari Maharana Vs. UCO Bank Ltd.] was disposed of on 28.02.2020 wherein following order was passed :

“However, the respondent no.4 filed one memo on 08.11.2019 showing the expenses incurred and amount paid to the bank totally is Rs.3,72,625/- and further stated to direct the applicant to pay Rs.3.73,625/- to the respondent no.4 before execution of sale deed. Copies served to other side and action taken by the respondent bank under SARFAESI Act is valid and since the respondent no.4 filed memo showing the expenditure made by him as Rs.3,72,625/- and agreed to pay the amount by the applicant he has no objection to take the property by applicant and requesting the money. Hence, the applicant is at liberty to keep his property, he is directed to deposit the said amount of Rs.3,72,625/- as mentioned by the respondent no.4 in the memo within two months from the date of this order and pay the same to the respondent No.2 bank and pay EMIs regularly and clear the loan account.”

Thereafter, M.A. No. 95 of 2020 was filed by the appellant before DRT Cuttack for review of the order dated 28.02.2020 by the learned DRT. M.A. 95 of 2020 was disposed of on 07.10.2020. Feeling aggrieved appellant preferred the appeal.

3. Heard the learned counsel for the appellant and perused records. Notices were served upon the respondents, but they are not represented.

4. Learned counsel for the appellant submits that the review application was filed on 11.05.2020. Learned counsel also submits that limitation point is covered by the judgement of Hon'ble Apex Court in M.A. No. 21 of 2022 passed on 10.01.2022 wherein it has been observed in continuation of all the orders passed on extension of limitation for the purpose for Covid19 outbreak the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special law in respect of all judicial or quasijudicial proceedings. It is further submitted that Memo as mentioned in the judgement of the learned DRT was not served

upon the appellant. However, appellant was prepared to comply with the direction of the DRT by making payment, but all these pleas were not considered and the review application was dismissed.

5. As far as powers of review by the DRT are concerned Rule 5A of the Debts Recovery Tribunal (Procedure) Rules, 1993 is relevant which reads as under :

(1) Any party considering itself aggrieved by an order made by the Tribunal on account of some mistake of error apparent on the face of the record desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order.

(2) No application for review shall be made after the expiry of a period of sixty days from the date of the order and no such application shall be entertained unless it is accompanied by an affidavit verifying the application.

(3) Where it appears to the Tribunal that there is no sufficient ground for a review, it shall reject the application but where the Tribunal is of opinion that the application for review shall be granted, it shall grant the same:

(2) Provided that no such application shall be granted without previous notice to the opposite party to enable him to appear and to be heard in support of the order, a review of which is applied for." Bare perusal of the Rule will show that review application can only be entertained if mistake or error apparent on the face of the record. Secondly, review application has to be filed within 30 days from the date of the impugned order. As far as period of limitation is concerned in view of the judgement of the Hon'ble

6. As far as grounds of review are concerned, a plain reading of the ground portion of the review application will show that SARFAESI applicant has raised the same pleas which were taken by him in the SARFAESI application. Further no error or mistake pointed out which is apparent on the face of the record, rather it is moved as an appeal against the impugned order. The only ground taken in Paragraph 10 of the review application that appellant could not apprehend the order of

the learned DRT in open court. After obtaining free copy on 05.03.2020, he came to know that no such memo was filed by the respondent no.4. As far as this ground is concerned if no memo is filed and that was not mentioned in the finding of the learned DRT, appellant could have preferred appeal against the judgement passed in the SARFAESI application, but filing of review application on the ground of re-considering the matter again on merit could not be held to be maintainable. No other ground is made out in the review application. Accordingly, I am of the view that learned DRT had rightly dismissed the review application. The appeal lacks merit and is liable to be dismissed.

7. Let a copy of the judgement be sent to the Zonal Manager, UCO Bank, Kolkata (who is looking after the work of the UCO Bank, Orient Colliery Branch, Jharsugda) intimating him that no officer or lawyer of UCO Bank appeared in Appeal despite service of notice. Necessary action in this regard be taken under intimation to this Tribunal.

8. Appeal is dismissed. No order as to costs. File be consigned to record room.

Copy of the order be supplied to the appellant and the respondent and a copy be also forwarded to the concerned DRT.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 22nd of June, 2023.