

Dismissal of bank's appeal against DRT order setting aside sale notice for non-compliance of affixation of e-auction notice: DRAT KOLKATA

Rare Asset Reconstruction Ltd.

...Appellant

Mrs. Sita Mahalakshmi

...Respondent

Case No: Appl. No. 118 of 2018

Date of Judgement: 13.06.2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Debasish Chakraborty, Ms. Sharmistha Pal, Advocates.

For Respondent: None.

Facts:

Respondent no. 1 is a guarantor for a loan given to M/s Neerajaksha Iron & Steel Pvt. Ltd. Due to irregular repayments, the loan was classified as NPA. The bank initiated SARFAESI proceedings. Respondent 1 filed an appeal before the DRT challenging the proceedings on grounds that possession notice and e-auction notices were bad in law. The DRT held that the challenge to possession notice was time-barred. However, it accepted the contention that the e-auction notice was not affixed on the secured asset's conspicuous part.

Arguments by Bank:

There is no mandatory provision to affix Rule 8(6) notice. The e-auction sale notice was published and affixed.

Arguments by Respondent:

Specific ground was taken that e-auction notice was not affixed on the secured asset's conspicuous part. The bank did not deny this in its reply before DRT or Appellate Tribunal. This amounts to admission.

Reasoning and Conclusion by Appellate Tribunal:

Provisions of SARFAESI Act and Rules:

Rule 8(7) of Security Interest (Enforcement) Rules, 2002 mandates e-auction sale notice shall be affixed on the secured asset's conspicuous part.

SARFAESI Act's provisions are procedural law. Each procedure under Rules has to be followed strictly.

Finding on Facts:

The bank failed to prove that e-auction notice was affixed as alleged. Based on respondent's uncontroverted specific assertion on this aspect, the DRT order deserves to be upheld.

Conclusion:

Appeal dismissed confirming DRT's order.

Sections Referenced:

Rule 8(6) and 8(7) of the Security Interest (Enforcement) Rules, 2002

Cases Referred:

No case laws have been cited or referred to.

Laws Referenced:

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

Security Interest (Enforcement) Rules, 2002

Download

Court

Copy <https://dreamlaw.in/wp-content/uploads/2024/02/DRAT-KOLKATA20.pdf>

Full Text of Judgment:

1. This appeal has arisen against the judgement and order dated 17.04.2018 passed in S.A. No. 258 of 2017 by the learned DRT-I Hyderabad whereby the S.A. was allowed setting aside the sale notice and quashing all subsequent proceeding on the ground that there was no proof of affixation of Rule 8(6) notice and e-auction sale notice on the conspicuous part of the secured asset. Being aggrieved thereby present appeal is filed by the appellant bank.

2. Respondent no.1 is a guarantor of the loan disbursed in favour of M/s. Neerajaksha Iron & Steel Pvt. Ltd. Due to irregular repayment by the borrower the loan was classified NPA and SARFAESI proceeding was initiated by the appellant bank. Respondent no.1 had filed the S.A. before learned DRT challenging the SARFAESI proceedings on different grounds alleging that possession notice and e-auction sale notice are bad in law. Learned DRT has held that S.A. applicant has no right to challenge the possession notice as it is time barred. However, learned DRT has accepted the contention of the S.A. applicant that e-auction sale notice was not affixed on the conspicuous part of the secured asset.

3. Learned counsel for the appellant bank submits that there is no mandatory provision of affixing Rule 8(6) notice. However, learned counsel submits that e-auction sale notice was published and affixed.

4. Heard learned counsel for the appellant. Learned counsel for the respondent is not present in spite of effective service.

5. SARFAESI application was allowed basically on the ground that there is no proof of affixation of e-auction sale notice on the conspicuous part of the secured asset. Before going to resolve the issue, Rule 8(6) and 8(7) of the Security Interest (Enforcement) Rules, 2002 are need to be referred :

“8(6). – The authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

Provided that if the sale of such secured asset is being effected by

either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the form given in Appendix IV-A to be published in two leading newspapers one in vernacular language having sufficient circulation in the locality

8(7) – Every notice of sale shall be affixed on a conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale on the website of the secured creditor which shall include –

(a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price of the immovable secured asset, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorized officer considers it material for a purchaser to know in order to judge the nature and value of the property.”

6. A conjoint reading of both the sub-rules (6) and (7) of Rule 8 of the Security Interest (Enforcement) Rules, 2002 will show that mandate of Rule 8(7) is that e-auction sale notice shall be affixed on the conspicuous part of the secured asset. Provisions of SARFAESI Act, 2002 and Rules made thereunder are procedural law. Hence, each and every procedure provided in the Rules has to be followed scrupulously by the secured creditor during the course of SARFAESI proceeding.

7. Specific ground was taken by the respondent no.1 in SARFAESI Application for non-affixation of notice, but no denial was made by the Bank in its reply. Hence, it would amount as admission of the Bank. Appellant bank has failed to prove on evidence either before DRT or before this Appellate Tribunal that e-auction sale notice was affixed on the conspicuous part of the secured asset. Accordingly, I do not find any reason to interfere into the impugned judgement and order dated 17.04.2018 passed by learned DRT-I Hyderabad. Instant

appeal is liable to be dismissed.

8. Appeal is dismissed. Impugned order dated 17.04.2018 passed by learned DRT is confirmed. No order as to costs.

File be consigned to record room.

Copy of the order be supplied to the appellant and the respondents 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 on this the 13th day of June, 2023.