

Dismissal of SARFAESI Application by DRT without assigning reasons: DRAT KOLKATA

M. Sarojana. W/o Balaiah

...Appellant

State Bank of India

...Respondent

Case No: Appeal No. 230 of 2018

Date of Judgement: 12th July, 2023

Judges:

Anil Kumar Srivastava, J- Chairperson

For Appellant: Mr. Nemani Srinivas, Advocate.

For Respondent: Mr. Pijush Kanti Ray, Mr. S. Bandopadhyay, Advocates.

Facts:

The appellant had availed a loan of Rs. 2 lakhs from the respondent bank and mortgaged property as security. Due to default in repayment, the account was classified as NPA. The bank initiated SARFAESI proceedings and issued notices under Sections 13(2) and 13(4). The appellant challenged the SARFAESI action by filing an application before the DRT. The DRT framed the issue – whether the appellant has made valid grounds for quashing the SARFAESI proceedings initiated by the bank. Vide the impugned order dated 07.05.2018, the DRT dismissed the appellant's SARFAESI application without assigning any reasons. Aggrieved by this, the appellant has filed the present appeal.

Arguments by Appellant:

The impugned order is arbitrary as no reasons have been assigned by the DRT while dismissing the application. As per settled law, reasons are an indispensable component of any decision making process. Reasons reassure that relevant factors have been considered (Brijmani Devi v. Pappu Kumar). Reasons act as a check on arbitrary exercise of power and impose judicial accountability and transparency (Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan). The order suffers from non-application of mind and is liable to be set aside.

Arguments by Respondents:

No contrary arguments advanced.

Opinion of the Tribunal:

Bare perusal of paragraph 6 shows no reasons assigned for dismissing the application. Settled law is that an order should always be a speaking one, reflecting the grounds for arriving at the conclusion. If reasons are not given, it amounts to arbitrary exercise of power. Reasons allow a party to demonstrate that extraneous/perverse considerations persuaded the authority to pass an adverse order (SBI v. Rajesh Agarwal). In the present case, the Presiding Officer has not assigned any reason for dismissing the application. An order without reasons is arbitrary. Reasons are imperative for administrative actions as well.

Sections:

The appellant has filed the appeal under Section 18 of SARFAESI Act before the DRAT against the DRT order passed under Section 17.

Cases Referred:

Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497

Kranti Associates Pvt. Ltd. v Masood Ahmed Khan, (2010) 9 SCC 496

SBI v. Rajesh Agarwal, (2023) 6 SCC 1

Conclusion:

As no reasons were assigned while dismissing the application, the matter deserves to be remanded back for fresh consideration after hearing both parties. The appeal is accordingly allowed.

Order:

Appeal allowed and impugned order set aside.

Matter remanded back to DRT for fresh disposal on merits and after hearing both parties.

DRT directed to decide the matter expeditiously within 4 months.

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Full Text of Judgment:

1.The instant appeal arises against a judgment and order dated 7th May, 2018, passed by the Learned DRT-I, Hyderabad, dismissing S.A.485 of 2013. Feeling aggrieved Appellant has preferred the present appeal.

2. As per the pleadings of the parties the Appellant availed a loan of Rs.2.00 lac after creating equitable mortgage. Loan instalments were not paid accordingly the account was classified as N.P.A. Thereafter, SARFAESI action was taken by Bank by issuing notices under Section 13 (2) and 13 (4) of the SARFAESI Act, 2002.

3. SARFAESI action was challenged by the Appellant by preferring a SARFAESI Application on various grounds. Respondent Bank filed opposition before the Learned DRT. Learned DRT framed following issue for determination:

“Whether the Appellant has made valid ground for quashing the SARFAESI proceedings, i.e. demand notice, possession notice and auction notices as initiated by the Respondent Bank against the schedule property under the provisions of SARFAESI Act and Security Interest (Enforcement) Rules, 2002.”

4. Bare perusal of paragraph 6 of the judgment would reveal that no reasons are assigned for arriving at the finding by the Presiding Officer. Paragraph 6 is reproduced as under :

“6. I have gone through the material grounds on record meticulously. The demand notice dated 08.06.2013 was served. The possession notice (symbolic) dated 07.09.2012 was published in Eenadu and Indian Express and as such no irregularities found in the impugned possession notice. The demand notice, possession notice and sale notices are barred by

limitation and auction notice is without any deviations. Therefore, the S.A. is liable to be dismissed.”

5. It is a settled legal proposition that an order should always be a speaking order wherein it should reflect the grounds upon which the Learned DRT have arrived at a particular conclusion. The grounds taken by the Appellant should also be considered before accepting or rejecting the same. If reasons are not given in the order, it is an arbitrary exercise of power by the DRT.

6. In *Brijmani Devi -vs- Pappu Kumar and Another*, reported in (2022) 4 SCC 497, The Hon'ble Apex Court held as under:

“22. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasijudicial authority, it would be useful to refer to a judgment of this Court in *Kranti Associates (P) Ltd., v. Masood Ahmed Khan*, (2010) 9 SCC 496 wherein after referring to a number of judgments this Court summarised at para 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:

(a) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(b) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasijudicial or even administrative power.

(c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(d) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(e) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(f) Judicial or even quasi-judicial opinions these days can be as

different as the Judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(j). It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the Judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(k) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

"24. The Latin maxim "cessante ratione legis cessat lex" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself, is also

apposite." In a recent judgment reported in SBI -vs- Rajesh Agarwal (2023 6 SCC 1 the The Hon'ble Chief Justice of India, placing reliance upon Kranti Associates Private Limited -vs- Masood Ahmed Khan (2010 9 SCC 496 held that

(i) A reasoned order allows an aggrieved party to administrate that the reasons which persuaded the authority to pass an adverse order against the interests of the aggrieved party are extraneous or perverse;

(ii) The obligation to record reasons acts as a check on the on the arbitrary exercise of the powers."

7. Order without reason is nothing but an arbitrary exercise of power.

In the administrative actions also reasons are required to be mentioned. An order must contain reasons for arrival at a particular finding. In the present case Learned Presiding Officer has not assigned any reason while dismissing the SARFAESI Application. On the basis of the discussion made above, I am of the view that since no reasons are assigned in the order, the matter should be remanded to Learned DRT for deciding the matter afresh after affording opportunity of hearing to the parties. Accordingly, the appeal is liable to be allowed.

The appeal is allowed. Impugned order dated 7th May, 2018 is set aside. The matter is remanded to DRT. Learned DRT to decide the matter afresh after affording opportunity of hearing to the parties. Matter is of 2013. Learned DRT should decide the matter as expeditiously as possible, preferably within four months from the date of receipt of the order copy.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

File be consigned to Record room.

Order dictated, signed, dated and pronounced in open Court.

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