

Dr. Santosh Uttam Sawane & Ors. v. Indodstar Capital Finance Ltd. & Anr.

Dr. Santosh Uttam Sawane & Ors.

...Appellant

Indodstar Capital Finance Ltd. & Anr.

...Respondent

Case No: Appeal on Diary No. 1174/2023

Date of Judgement: 14/07/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Ms. Aarti Suvarna, Advocate.

For Respondent: None.

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Facts:

The matter relates to an appeal filed by Dr. Santosh Uttam Sawane & Ors. (Appellants) challenging the order dated 08.03.2023 passed by the Debts Recovery Tribunal, Pune (DRT) dismissing Securitization Application (S.A.) No. 100/2022. Appellants Nos. 1 and 2 are a doctor couple conducting a nursing home, which is the 3rd Respondent, a proprietorship owned by the 1st Appellant. The Appellants admittedly took a term loan of ₹1.92 crores and a top-up loan of ₹30 lakhs from the 1st Respondent (Indostar Capital Finance Ltd.), totaling ₹2.26 crores. The Appellants defaulted on payment, and consequently, the account was classified as a Non-Performing Asset (NPA). A demand notice was issued on 24.05.2019 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002 (SARFAESI Act), demanding a sum of ₹1,78,31,551/-. The Appellants allegedly mortgaged three flats and two shop rooms as security for the loans. It is contended that with the consent of the 1st Respondent, two flats were sold in 2018 for a sum of ₹74,76,000/-, and thereafter, a 3rd flat was also sold with the consent of the 1st Respondent. However, a third party has allegedly filed a civil suit challenging the bank's right over the 3rd flat, and the litigation is pending consideration. The Appellants contend that the memorandum of deposit of title deed relied upon by the 1st Respondent is forged and fabricated, and therefore, the mortgage is not valid. The Appellants filed a police complaint regarding the alleged forgery and fabrication, but the police refused to register a crime. The Appellants approached the Magistrate with a private complaint under Section 156 of the Code of Criminal Procedure (CrPC), but after a preliminary inquiry, the complaint was dismissed. The Appellants have filed a revision before the Sessions Court, which is pending consideration. The Appellants thereafter filed the S.A. and also filed an application for a stay of the SARFAESI measures. The DRT, while considering I.A. No. 366/2022, granted an interlocutory order of stay in favor of the Appellants on the condition of depositing a sum of ₹40 lakhs, which was complied with by depositing the amount with the 1st Respondent. The 1st Respondent challenged the order in an appeal before the Debts Recovery Appellate Tribunal (DRAT), which was disposed of with directions to expedite the disposal of the S.A. and consider any One-Time Settlement (OTS) proposal submitted by the Appellants for settling the dues. The Appellants allegedly submitted an OTS proposal, which was rejected by the 1st Respondent. Subsequently, the S.A. was dismissed by the DRT vide order dated 08.03.2023, aggrieving the Appellants, who are now in appeal. To entertain the appeal, the Appellants must comply with the mandatory pre-deposit requirement under the second proviso to Section 18(1) of the SARFAESI Act. The Appellants contend that they are under financial strain, with the 2nd Appellant suffering from cancer and unable to work as a doctor, placing the entire burden on the 1st Appellant as the sole earning member of the family. The Appellants contend that they have a strong prima facie case, as the memorandum of mortgage deposited as the title deed is forged, and they would be able to

establish that there was no mortgage. The Respondents, though served, have not appeared to date. The counsel for the Appellants submits that a notice for taking possession of the secured assets has been received, and possession is intended to be taken on 17.07.2023 at 9:00 AM. The notice was received only on 08.07.2023, which the counsel deems defective.

Arguments by All Parties:

Appellants' Arguments:

The Appellants contend that the memorandum of deposit of title deed relied upon by the 1st Respondent is forged and fabricated, and therefore, the mortgage is not valid. The Appellants are under financial strain, with the 2nd Appellant suffering from cancer and unable to work as a doctor, placing the entire burden on the 1st Appellant as the sole earning member of the family. The Appellants have a strong prima facie case, as the memorandum of mortgage deposited as the title deed is forged, and they would be able to establish that there was no mortgage. The notice for taking possession of the secured assets, received on 08.07.2023, is defective, as possession is intended to be taken on 17.07.2023, which is less than the prescribed time period.

Respondents' Arguments:

The Respondents, though served, have not appeared to date, and no specific arguments have been mentioned in the order.

Court's Elaborate Opinions:

The court finds that the Appellants had, despite challenging the validity of the mortgage, sold two flats admittedly with the consent of the 1st Respondent. If there was no mortgage, there was no need to obtain the consent of the 1st Respondent for the sale of those flats. The police had initially refused to register a criminal case despite the allegation of forgery, and the Learned Magistrate has also refused to proceed with the private complaint preferred by the Appellants. Under the circumstances, there is no prima facie evidence of any

fabrication of documents pertaining to the mortgage. The Appellants have not produced any documents pertaining to their income to establish that they are under financial strain. Under the circumstances, the Appellants are not entitled to any indulgence on the part of the court to invoke the third proviso to Section 18(1) of the SARFAESI Act to get the amount reduced to a minimum of 25%. After having paid ₹40 lakhs towards the amount demanded under Section 13(2), the outstanding balance would approximately be ₹1,38,31,551/-. Subsequent interest would also become due. Since the Respondents have not appeared to contest the matter, the court fixes the threshold amount at around ₹1.40 crores. The Appellants are directed to deposit a sum of ₹60 lakhs toward the pre-deposit in two equal installments of ₹30 lakhs each for entertaining the appeal. The first installment of ₹30 lakhs shall be payable within two weeks, i.e., on or before 28.07.2023, and the second installment of ₹30 lakhs shall be payable within three weeks thereafter, i.e., on or before 18.08.2023. Failure to pay the amount within the stipulated time shall result in the dismissal of the appeal without any further reference to the court.

Cases Cited:

No specific cases have been cited in the order.

Sections and Laws Referred:

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

- Section 13(2) (Demand Notice)
- Section 18(1) (Pre-deposit requirement for entertaining an appeal)

Code of Criminal Procedure, 1973 (CrPC)

- Section 156 (Police officer's power to investigate a cognizable case)