

Gold Digitech Theatres Pvt. Ltd. v. Religare Finvest Ltd. & Ors.

Gold Digitech Theatres Pvt. Ltd.

...Appellant

Religare Finvest Ltd. & Ors.

...Respondent

Case No: Misc. Appeal No. 100/2023

Date of Judgement: 07/08/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Gaurang Kinkhabwala i/b Mr Puneet Gogad, Advocate.

For Respondent: Mr Charles D'souza along with Mr Archit Virmani and Mr Atul Gupta, i/b Optimus Legal, Mr Sidharth Samantaray, Advocate.

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Facts:

This case involves two Miscellaneous Appeals (Misc. Appeal No. 100/2023 and Misc. Appeal No. 101/2023) filed before the Debts Recovery Appellate Tribunal, Mumbai. The Appellants in both appeals claim to be tenants in occupation of the secured premises and face the threat of being dispossessed from the property in the execution of an order obtained against the borrower/landlord (third Respondent) by Religare Finvest Ltd. (first Respondent Financial Institution) for the realization of the debt allegedly due. The borrower (third Respondent) and the Appellants had filed separate Securitisation Applications (S.A. Nos. 218 of 2023, 255 of 2023, and 256 of 2023) before the Debts Recovery Tribunal (D.R.T.). The borrower (third Respondent) had made a

proposal to settle the debt through a One-Time Settlement (OTS). In S.A. No. 218 of 2023 filed by the borrower, the D.R.T., vide order dated 11.07.2023, concluded that sufficient time had already been granted, and although the borrower had paid ₹1 crore towards the loan, the balance of nearly ₹12 crores was yet to be paid. Therefore, further time could not be granted, and the Financial Institution was permitted to proceed with the SARFAESI measures based on the order obtained under Section 14 from the Chief Judicial Magistrate, Thane, to take physical possession of the secured assets. In S.A. Nos. 255 of 2023 and 256 of 2023 filed by the Appellants, no orders were passed on the merits of the claim of tenancy put up by the Appellants. However, these S.A.s were adjourned to 12.02.2024 in view of the order passed in S.A. No. 218 of 2023 (filed by the borrower). No interlocutory or interim orders were passed in these two S.A.s. The possession of the property was scheduled for the day of the hearing before the Debts Recovery Appellate Tribunal, and the Appellants were apprehending that they might be dispossessed from the property.

Arguments by the Parties:

Arguments by the Appellant in Misc. Appeal No. 101/2023 (Fiitjee Ltd.):

The Appellant produced a lease deed purportedly executed on 21.05.2008 and an addendum cum rectification deed executed on 18.09.2017, whereby the term of the lease was extended up to 2032 with an enhancement of rent every three years. The addendum cum rectification deed corrected a mistake in the original lease deed regarding the description of the floor leased to Fiitjee Ltd. The original lease deed mentioned the second floor, whereas it was actually the first floor that was leased out, and this mistake was rectified. The Appellant pointed out the sanction letter pertaining to the three loan facilities granted to the borrower, the notice issued under Section 13(2), the possession notice under Section 13(4), and the application filed under Section 14 before the Chief Judicial Magistrate. In all these documents, it was mentioned that the Appellant was in possession of the first floor of the mortgaged premises. The order of the Chief Judicial Magistrate under Section 14 also contained the description of the property in the

schedule, which clearly stated that the three floors of the building were in occupation of the Appellants.

Arguments by the Appellant in Misc. Appeal No. 100/2023 (Gold Digitech Theatres Pvt. Ltd.):

Although there was no registered lease deed executed between the borrower and Gold Digitech Theatres Pvt. Ltd., it was stated that there was an agreement executed between them.

Arguments by the Respondent Financial Institution:

The Respondent vehemently opposed the right of Gold Digitech Theatres Pvt. Ltd. to continue in occupation of the premises under a document that was not legally valid.

The Respondent pointed out that the addendum cum rectification document registered between the borrower and Fiitjee Ltd. was intended to correct an alleged mistake that had purportedly crept into the first lease deed without any bona fides and was intended only to defeat the interest of the mortgagee.

Arguments by the Borrower (third Respondent):

The borrower's counsel offered to settle the entire debt by the end of the year and requested the Financial Institution to provide details of the statement of account, which they disagreed with, as revealed from the order passed in S.A. No. 218 of 2023.

It was undertaken that whatever the amount, the borrower was willing to settle it by the end of the year.

Court's Elaborate Opinions:

The Debts Recovery Appellate Tribunal observed that in the orders impugned in these two Miscellaneous Appeals, the Presiding Officer of the D.R.T. had not gone into the contentions raised by the Appellants regarding their right to continue in possession of the property as tenants. The Tribunal opined that since the Appellants were admittedly in occupation of the property and claiming a right of tenancy, the

Presiding Officer should have taken a decision on whether they were entitled to continue in possession of the property and whether the possession of the property belonging to the debtor was to be taken subject to the claims raised by the tenants. The Tribunal held that the interlocutory applications filed by the Appellants should have been taken into consideration, and orders should have been passed based on the available material before the D.R.T. The Tribunal directed the Presiding Officer of the D.R.T. to consider the interlocutory reliefs of the Appellants in S.A. Nos. 255 of 2023 and 256 of 2023 and decide whether they were entitled to continue in possession of the property based on the tenancy rights claimed by them. The Tribunal stated that it was not going into the merits but since there were materials and admission on the part of the mortgagee accepting the fact that the Appellants were in actual possession of the property, their claims should be considered. The Tribunal ordered that the Appellants shall not be physically dispossessed from the property until a decision was taken by the D.R.T. on the interlocutory reliefs sought, and until then, the status quo shall continue. The Tribunal directed the D.R.T. to take a decision on the applications filed by the Appellants in the S.A.s untrammelled by whatever was stated in the Tribunal's order and based on the documents already on record. The Tribunal instructed the D.R.T. to decide the interlocutory applications as expeditiously as possible, within a period of one month, and the parties were directed not to seek any unnecessary adjournments.

Cases Cited:

None

Sections and Laws Referred:

Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Section 13(4) of the SARFAESI Act

Section 14 of the SARFAESI Act

In summary, the Debts Recovery Appellate Tribunal disposed of the Miscellaneous Appeals by directing the Debts Recovery Tribunal to consider the interlocutory reliefs sought by the Appellants (tenants) regarding their right to continue in possession of the secured premises and decide the matter expeditiously without being influenced by the Tribunal's observations. The Appellants were granted protection against dispossession until the D.R.T.'s decision on their interlocutory applications.