

# **Jyotsna Prashant Khandagle v. Abhudaya Co- Operative Bank Ltd.**

Jyotsna Prashant Khandagle

**...Appellant**

Abhudaya Co- Operative Bank Ltd.

**...Respondent**

**Case No: Appeal on Dairy No.1203/2023**

**Date of Judgement: 17/07/2023**

**Judges:**

Mr Justice Ashok Menon, Chairperson

**For Appellant: Mr. S.S.Panchpor, Advocate.**

**For Respondent: Merlyn Vasudeo Monteiro, along with Mr. R.S. Gaurav M, Advocate.**

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**Facts:**

The case involves an Interim Application (I.A.) No. 480/2023 filed by the Appellant, Jyotsna Prashant Khandagle, in Appeal on Dairy No. 1203/2023 against Abhudaya Co-Operative Bank Ltd. (the Respondent). The Appellant is appealing against the order dated 17.11.2022 in I.A. No. 1804/2022 in Securitisation Application (S.A.) No. 489/2022 on the files of the Debts Recovery Tribunal, Pune (DRT). The DRT's order had stalled the securitization measure of taking over possession of the secured flat on the condition that the Appellant deposits 25% of the amount mentioned in the demand notice. The Appellant did not pay the amount and filed the appeal with a delay of 6 months and 26 days. The Appellant has challenged the SARFAESI measures on various grounds,

including the contention that the nine-pointer affidavit required while filing the application under Section 14 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) before the District Magistrate has not been complied with. The DRT, after considering the rival contentions, concluded that the amount due from the Appellant is more than ₹1,99,00,000/- and directed the Appellant to deposit at least 25% of the amount mentioned in the demand notice for a stay of the SARFAESI measures. The DRT also directed the bank to consider an One-Time Settlement (OTS) proposal intended to be made by the Appellant in accordance with their policy. However, the OTS proposal failed, and the Appellant deposited around ₹8,80,000/- with the bank but could not comply with the direction to deposit 25% of the demanded amount. The Appellant did not succeed in getting any favorable order from the DRT and is now aggrieved, leading to the appeal.

### **Arguments by the Parties:**

#### **Appellant's Arguments:**

The Appellant has challenged the SARFAESI measures on various grounds, including the contention that the nine-pointer affidavit required under Section 14 of the SARFAESI Act has not been complied with. The Appellant submitted that their business failed, and they sustained heavy losses during the COVID-19 pandemic, but no evidence regarding their income was produced to substantiate the claim of financial strain.

#### **Respondent's Arguments:**

The Ld. Counsel for the Respondent Bank submitted that as of date, the outstanding amount after deducting the payments made and the proceeds from the sale of certain properties, which is not challenged, is ₹1,59,00,000/-.

### **Court's Elaborate Opinions:**

The court noted that to entertain the appeal, the Appellant must first cross the hurdle of complying with the mandatory provisions of pre-

deposit contemplated under Section 18(1) of the SARFAESI Act. The court found that the Appellant is not entitled to any indulgence on the part of the Tribunal to get the amount reduced to the minimum of 25% as contemplated under the third proviso of Section 18(1) of the SARFAESI Act. The Appellant was directed to deposit a sum of ₹77,00,000/- as pre-deposit. The Ld. Counsel for the Appellant submitted that the Appellant will deposit ₹2,00,000/- today by way of a Demand Draft in favor of the Registrar of the Tribunal. The balance amount of ₹75,00,000/- shall be payable in three equal installments of ₹25,00,000/- each, with the first installment due on or before 07.08.2023, the second installment due on or before 21.08.2023, and the third installment due on or before 04.09.2023. Since the Appellant agreed to deposit a Demand Draft of ₹2,00,000/- today, the possession intended to be taken today shall be deferred until further orders. In default of payment of the installments, the Appeal shall stand dismissed without any further reference to the Tribunal. The amounts shall be deposited in the form of a Demand Draft with the Registrar of the Tribunal and invested in term deposits in the name of the Registrar, DRAT, Mumbai, with any nationalized bank, initially for 13 months, and thereafter to be renewed periodically. The Respondent was given liberty to file a reply in the Appeal with an advance copy to the other side.

**Cases Cited:**

None

**Sections and Laws Referred:**

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

- Section 14 (regarding the nine-pointer affidavit)
- Section 18(1) (regarding mandatory pre-deposit)
- Third proviso of Section 18(1) (regarding the minimum 25% pre-deposit)