

# Kiran P. Chhajed v. Indian SME Asset Reconstruction Company & Ors.

Kiran P. Chhajed

...Appellant

Indian SME Asset Reconstruction Company & Ors.

...Respondent

**Case No: Appeal No. 66/2023**

**Date of Judgement: 13/11/2023**

**Judges:**

Mr Justice Ashok Menon, Chairperson

**For Appellant: Mr Pradeep Samant, Advocate.**

**For Respondent: None.**

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**Facts:**

The present appeal is directed against the judgment and order dated 26.07.2021 passed by the Debts Recovery Tribunal-I, Mumbai (DRT) in Original Application (O.A.) No. 507/2016. The O.A. was filed by the Respondent, Indian SME Asset Reconstruction Company (ARC), for the recovery of a sum of ₹56,21,208.24 from Defendants Nos. 1 to 3 (the original borrower and guarantors). The Respondent ARC had simultaneously proceeded against the secured asset, Flat No. 4 in A Wing, Ground Floor, Pawan Palace, R.N.P. Park, Village- Khari, Bhayander (East), Dist. Thane, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The ARC put up the property for public sale, and the Appellant, Kiran P. Chhajed, allegedly purchased

the property and was issued a sale certificate by the authorized officer of the ARC on 17.10.2011. The Appellant sought possession of the auctioned property, but the ARC was unable to comply. The Appellant issued a letter on 17.05.2012 to the ARC seeking a refund of the sale consideration due to the inability to deliver possession of the auctioned property. The Respondent sent a letter on 01.06.2012 expressing their inability to hand over physical possession of the property. However, the deposited amount was not refunded. After the auction sale concluded, the Respondent ARC filed the O.A. for the recovery of outstanding dues with a charge over the auctioned flat. The borrower and guarantors remained ex-parte. Although the Appellant got himself impleaded in the O.A., he did not subsequently appear, and was set ex-parte. The DRT erroneously decreed the O.A. against all the defendants, including the Appellant, who was not a borrower but an auction purchaser under the SARFAESI Act. A charge decree was ordered, and a Recovery Certificate was issued by the DRT. Recovery proceedings were initiated by the Respondent ARC with regard to the recovery of the amount from the secured asset (the flat purchased by the Appellant in the auction sale). Realizing the erroneous decree against the Appellant, the Respondent ARC filed Misc. Application No. 31 of 2022 before the DRT, and vide order dated 15.06.2022, the decree against the Appellant was recalled, and the Recovery Certificate was amended. However, the charge against the property purchased by the Appellant was not recalled. The Appellant filed the present appeal, seeking to quash and set aside the impugned judgment and order dated 26.07.2021 and also sought relief regarding the refund of the amount paid as sale consideration.

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

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

The Appellant submitted that, in the interest of justice, the impugned judgment and order need to be interfered with, and the Recovery Certificate regarding the charge over the secured asset should be recalled. The Appellant argued that the Respondent ARC is only entitled to a personal decree to realize the amount from Defendants Nos. 1 to 3 (the borrower and guarantors) concerning properties other

than the flat purchased by the Appellant in the auction. The Appellant sought relief regarding the refund of the money paid as sale consideration, as the Respondent ARC failed to deliver physical possession of the property to the Appellant.

**Respondent's Arguments:**

(No specific arguments mentioned in the order)

**Court's Elaborate Opinions:**

There is no embargo against an ARC proceeding against the secured asset simultaneously under the provisions of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) and the SARFAESI Act. However, there cannot be a decree against the mortgaged property once it has been sold under the provisions of the SARFAESI Act. In the present case, the property was already sold to the Appellant by the authorized officer of the ARC, and the full sale consideration was received. After this, the Respondent ARC could not have obtained a charge decree against the secured asset since it was no longer available to be proceeded against. Despite the Appellant being exonerated from the liability to pay the decretal amount by being removed from the party array in the O.A., the charge decree remains in place, which would affect the Appellant. The prayer regarding the refund of money sought by the Appellant cannot be entertained in the O.A. or the appeal, as the Appellant is no longer a party to the O.A. The relief available to the Appellant to get back the auction money for the breach by the Respondent ARC (failing to deliver physical possession) is to be addressed in a different proceeding. Since the property was sold under the SARFAESI Act, the Appellant is an aggrieved person under Section 17 of the SARFAESI Act and is at liberty to move the DRT under Section 17 for a refund of the money paid in the public auction. The appeal was allowed in part, directing the Recovery Certificate to be modified by excluding the flat purchased by the Appellant. The Certificate shall be confined to a personal decree against the defendants with a charge over any other property available for the Respondent ARC to proceed against. The time spent by the Appellant in prosecuting this appeal shall be considered for exemption under Section 14 of the

Limitation Act, as and when appropriate action is taken before the appropriate Forum.

**Cases Cited:**

None

**Sections and Laws Referred:**

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

- Section 17: Right to appeal

Recovery of Debts and Bankruptcy Act, 1993 (RDB Act)

Limitation Act

- Section 14: Exclusion of time in certain cases