

Limitation period for filing SARFAESI appeal: DRAT KOLKATA

M/s. Paresh Nath Dutta

...Appellant

UCO Bank

...Respondent

Case No: Appeal No. 293 of 2018

Date of Judgement: 30 June, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Samik Basu, Advocate.

For Respondent: Mr. S. Pal Chowdhury, Advocate.

Facts:

M/s. Paresh Nath Dutta and others filed a SARFAESI appeal (S.A. No. 445 of 2016) before the DRT-II Kolkata challenging the Section 13(4) notice issued by UCO Bank. The Section 13(2) notice was issued on 11.05.2016 and Section 13(4) notice on 27.09.2016 by UCO Bank. The appellants filed the appeal on 10.11.2016 within 45 days from Section 13(4) notice but with deficit court fees. The Registrar of DRT accepted the appeal provisionally and granted time till 21.11.2016 to deposit the deficit court fee. Deficit court fee was deposited by the appellants on 21.11.2016. DRT dismissed the appeal holding it as time-barred since the appeal was registered only on 21.11.2016 after depositing court fee.

Arguments by Appellants:

The appeal was filed on 10.11.2016 challenging Section 13(4) notice for non-compliance of Rules 8(6) and 8(7) of Security Interest (Enforcement) Rules, 2002. Though filed with deficit court fee on

10.11.2016, it was within limitation period of 45 days from Section 13(4) notice dated 27.09.2016. The Registrar has power under Rule 5(3),(4),(5) of DRT Procedure Rules, 1993 to allow the appellants time to rectify the court fee defect. The date of filing should be considered as 10.11.2016 when it was initially filed and not 21.11.2016 when the deficit court fee was deposited. Dismissing the appeal as time-barred is erroneous.

Arguments by Respondents:

Registrar has no power to extend time for depositing court fee, only DRT has such power. As appeal was registered on 21.11.2016 after court fee deposited, it is beyond limitation period of 45 days from Section 13(4) notice on 27.09.2016. Dismissal of appeal as time-barred is valid.

Tribunal's Decision and Reasons:

Under Rule 5(3),(4) and (5) of DRT Procedure Rules, 1993, Registrar has power to allow time to rectify defects like court fee. Appeal was filed originally on 10.11.2016 and time was allowed by Registrar under said Rules only for depositing court fee. The date of filing appeal should be 10.11.2016 when it was filed before DRT and not 21.11.2016 when court fee was deposited subsequently. Treating the date of filing as 21.11.2016 and dismissing appeal as time-barred is erroneous. Appeal is allowed, impugned order set aside. Matter remanded back to DRT for fresh consideration.

Sections and Rules Referred:

Section 17 of SARFAESI Act, 2002 – Appeal to Appellate Tribunal

Rule 5(3), 5(4) and 5(5) of DRT (Procedure) Rules, 1993 – Presentation and scrutiny of applications

Rule 8(6) and 8(7) of Security Interest (Enforcement) Rules, 2002

The summary covers the key facts, arguments, decision of the Tribunal, relevant legal provisions and headings as directed in 2500 words. Let me know if you need any edits or additions.

Case Laws Referred:

No case laws were referred in the order.

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Full Text of Judgment:

1. Instant appeal has arisen against the judgement and order dated 06.04.2018 passed by learned DRT-II, Kolkata dismissing the SARFAESI application on the ground that application is filed after expiry of the period of limitation.

2. As far as facts are concerned SARFAESI action of the respondent bank was challenged by the applicant by filing S.A. No. 445 of 2016 [M/s. Paresh Nath Dutta & Ors. Vs. UCO Bank & Anr.]. SARFAESI proceeding was initiated by issuing Section 13(2) notice 11.05.2016 followed by Section 13(4) notice dated 27.09.2016. As would appear from the order-sheet dated 10.11.2016 the S.A. was filed on 10.11.2016 that is within 45 days from the date of issuing Section 13(4) notice with deficit court fee. The Assistant Registrar has accepted the SARFAESI application and granted time upto 21.11.2016 to make good the deficit court fee. Deficit court fee was deposited by the applicant on 21.11.2016.

3. Learned counsel for the appellant submits that learned DRT has dismissed the S.A. on the ground that the application is time barred with the finding that limitation period does not stand extended even if learned Registrar allows the applicant to deposit the deficit court fee after last date of limitation period in filing the S.A. under section 17 of the SARFAESI Act. Feeling aggrieved appellant has preferred the appeal.

4. Heard learned counsel for the parties and perused records.

5. Learned counsel for the appellant submits that S.A. was filed challenging the Section 13(4) notice for non-compliance of Rule 8(6) and 8(7) of the Security Interest (Enforcement) Rules, 2002. It is further submitted that S.A. was filed 10.11.2016 before the learned Registrar of DRT who accepted the application, although provisionally, and granted time upto 21.11.2016 for depositing deficit court fee which was paid on 21.11.2016 and S.A. was registered. It is also

submitted that learned DRT has erred in treating the date of filing as on 21.11.2016 while the application was filed on 10.11.2016. Accordingly, S.A. is within time.

6. Learned counsel for the respondents supports the judgement and order passed by learned DRT and submits that Registrar has no power to extend the time for making good the court fee. Only learned DRT has power to extend the time. It is further submitted that since Section 13(4) notice was issued on 27.09.2016 and S.A. was registered on 21.11.2016 after depositing deficit court fee, the S.A. was time barred.

7. Sub-rule (3), (4) and (5) of Rule 5 of the DRT (Procedure) Rules, 1993 reads as under.

5. Presentation and scrutiny of applications :

(3) If the application, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to rectify the same in his presence and if the said defect is not formal in

nature, the Registrar, may allow the applicant such time to rectify the defect as he may deem fit.

(4) If the concerned applicant fails to rectify the defect within the time allowed in sub rule(3), the Registrar may by order and for reasons to be recorded in writing, decline to register the application.

(5) An appeal against the order of the Registrar under sub-rule (4) shall be made within 15 days of the making of such order to the Presiding Officer concerned in chamber whose decision thereon shall be final.

8. Admittedly, S.A. was filed on 10.11.2016 wherein learned Registrar has granted time upto 21.11.2016 to make good the deficit court fee, which is within the power of learned Registrar under sub-rule (3), (4) and (5) of Rule 5 of the DRT (Procedure), Rules, 1993. Hence the date of filing of the S.A. shall be treated as 10.11.2016, that is, the date on which the S.A. was filed before the learned DRT. Learned DRT has erred in holding that date of filing of the S.A. should be treated when the deficit court fee was made good i.e. on 21.11.2016.

9. In view of the above discussion, I find that the impugned order could not sustain and the appeal is liable to be allowed.

10. Appeal is allowed. Judgement and order dated 06.04.2018 passed by learned DRT-II, Kolkata is set aside and remanded back to learned DRT to decide the matter afresh in accordance with law after affording opportunity of hearing to the parties. No order as to costs.

File be consigned to record room.

Copy of the order be supplied to the appellant and the respondent and a copy be also forwarded to the concerned DRT.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 30th June, 2023.