M/s. Ambika Jwellers & Ors. v. Shriram City Union Finance Ltd & Ors.

M/s. Ambika Jwellers & Ors.

…Appellant

Shriram City Union Finance Ltd & Ors.

…Respondent

Case No: Appeal on Dairy No.1166/2023

Date of Judgement: 17/07/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Prashant Pandit, along with Mr. Jay Pandit, Advocate.

For Respondent: Mr. Nikhil Rajani, along with Rupak Sawangikar, i/b M/s. V. Deshpande & Co., Advocate.

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Facts:

The case involves an Interim Application (I.A.) No. 461/2023 filed by the Appellants, M/s. Ambika Jewellers & Ors., in Appeal on Dairy No. 1166/2023 against the Authorized Officer of Shriram City Union Finance Ltd. & Ors. (the Respondents). The Appellants were the Applicants in S.A. No. 477/2020 on the files of the Debts Recovery Tribunal-II, Ahmedabad (DRT), and are aggrieved by the dismissal of the said S.A. by the Ld. Presiding Officer vide order dated 29.04.2023. The Appellants had filed the aforementioned S.A. under Section 17(1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act), challenging the entire

SARFAESI proceedings initiated by the 1st Respondent bank. The Appellants contend that the demand notice under Section 13(2), demanding a sum of ₹88,82,997/- as on 13.12.2018, was improper and not served upon them. The Appellants also contend that the requisite notice was not served before taking symbolic possession of the property under Section 13(4) of the SARFAESI Act, and that the proceedings under Section 14 for taking physical possession of the property were faulty. The 1st Appellant, who is the proprietor of the proprietorship firm M/s. Ambika Jewellers, had borrowed money from the 1st Respondent Bank. Respondent No. 2, who is the father of the proprietor, and Respondent No. 3, who is his wife, are the co-borrowers, mortgagers/guarantors. The Appellants defaulted in repayment, resulting in the account being classified as a non-performing asset (NPA). Subsequently, proceedings under Section 13(2) demanding the outstanding amount were initiated, and symbolic possession was allegedly taken under Section 13(4) of the SARFAESI Act. The property was put up for sale, and the auction sale failed twice when the reserve price was fixed at ₹1,29,93,341/-. On the third attempt, the reserve price was brought down to ₹1 crore, and the secured assets were sold to Respondent Nos. 2 to 4 on 30.03.2021 for a sum of ₹1 crore, which was the reserve price. The sale was confirmed, the sale certificate was issued and registered, and the possession of the property was handed over to the auction purchaser on 08.07.2021. The Appellants had approached the DRT with S.A. No. 363/2019, challenging all proceedings up to Section 14 of the SARFAESI Act, and while that was pending, the property was put up for sale. Hence, the Appellants filed the present S.A. No. 477/2020, challenging the sale on various grounds. The Appellants approached the Hon’ble High Court of Gujarat by filing a Civil Application No. 8655/2023, and vide order dated 05.05.2023, the Ld. Judge granted an interim relief to maintain the status quo. Subsequently, vide order dated 04.07.2023, the Hon’ble High Court disposed of the application on the submission made by the Ld. Counsel for the Appellants that they would withdraw the application and proceed with the matter before the Tribunal.

Arguments by the Parties:

Appellants' Arguments:

The Ld. Counsel for the Appellants submitted that there was a clear infringement of the procedures, as the property worth ₹4 crores was sold for a pittance of ₹1 crore. No notices were served on the Appellants for any of the measures taken under the SARFAESI Act. The sale took place without obtaining a valuation certificate from a government-approved valuer as required under the Security Interest (Enforcement) Rules. The sale was held without giving 30 days' notice to the borrowers, making it faulty. The Appellants have a very good prima facie case and are under financial strain, enabling them to request the Tribunal to exercise indulgence under the third proviso of Section 18(1) of the SARFAESI Act to reduce the amount of pre-deposit to the minimum of 25% of the amount due.

Respondents' Arguments:

The Ld. Counsel for the bank and the auction purchaser vehemently opposed the application and the appeal, stating that the Appellants do not have any prima facie case. All the requisite Rules prior to the auction sale were complied with, including the publication of notices in vernacular and English newspapers, and serving personal notices on the Appellants. On the date of sale, the outstanding amount of debt was ₹1,35,77,458/-, and since the Appellants had challenged all SARFAESI measures from the demand notice under Section 13(2) till the sale, they are liable to pay 50% of the entire amount due, inclusive of interest as on the date of filing the appeal. As of the date, a sum of ₹1,80,26,468/- is due to be paid. The Appellants do not have a prima facie case to sustain the appeal, and financial strain has not been adequately proved, as evident from the income tax returns filed by them showing substantial assets worth lakhs of rupees.

<u>Court's Elaborate Opinions:</u>

The court found that the Appellants do not have a very strong prima facie case, and it appears that all the formalities required under the SARFAESI Act and the Rules have been complied with. While the Appellants are not entitled to get the amount reduced to the minimum

of 25%, some indulgence can be shown considering their financial conditions. The court directed the Appellants to deposit a sum of ₹75,00,000/- as pre-deposit. The Ld. Counsel for the Appellants undertook to deposit a sum of ₹15,00,000/- by 18.07.2023. The balance of ₹60,00,000/- shall be paid in two equal installments of ₹30,00,000/- each, with the first installment due on or before 07.08.2023 and the second installment due on or before 21.08.2023. Failure to pay the amount shall entail the dismissal of the appeal. Upon payment of ₹15,00,000/- of the pre-deposit amount, the auction purchaser (Respondent Nos. 2 to 4) shall not create any third-party interest. 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.

Cases Cited:

None

Sections and Laws Referred:

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

- Section 13(2) (regarding the demand notice)
- Section 13(4) (regarding symbolic possession)
- Section 14 (regarding physical possession)
- Section 17(1) (under which the S.A. No. 477/2020 was filed)
- Section 18(1) (regarding mandatory pre-deposit)
- Third proviso of Section 18(1) (regarding the minimum 25% pre-deposit)

Security Interest (Enforcement) Rules (regarding the valuation certificate from a government-approved valuer)