

# M/s Arham Exim Pvt. Ltd. & Ors. v. Bank of Baroda

M/s Arham Exim Pvt. Ltd. & Ors.

...Appellant

Bank of Baroda

...Respondent

**Case No: Appeal No.194/2015**

**Date of Judgement: 21/12/2023**

**Judges:**

Mr Justice Ashok Menon, Chairperson

**For Appellant: Mr Rajesh Nagory, i/b Ms Sanjana Ghogare, Advocate.**

**For Respondent: Mr Anant B. Shinde, Advocate.**

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**Facts:**

The case involves an appeal filed by M/s Arham Exim Pvt. Ltd. & Others (Appellants) against the dismissal of Securitisation Application (S.A.) No. 30 of 2012 by the Debts Recovery Tribunal-III, Mumbai (D.R.T.), vide judgment dated 15.06.2015. The Appellants had filed the S.A. challenging the SARFAESI measures initiated by the Respondent Bank of Baroda on various counts under Section 17 of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act). Various properties were proceeded against as secured assets for the recovery of debt due. On 19.01.2019, the Appellants filed an application (Exhibit-01) in the S.A., stating that they did not have any objection to the bank taking physical possession of certain flats, shops, and office premises, which could be sold by the bank under the SARFAESI Act to recover the debt. The Appellants sought relief from the Tribunal in the form of an

injunction restraining the bank from taking immediate physical possession of three flats (Nos. 29, 39, and 41), as six couples and their children resided there, and the Appellants required some breathing time. The Appellants stated that they were not in a position to deposit any amount as a condition to stall the taking over of possession of those flats. The Respondent's counsel submitted that there was an outstanding debt of ₹14 crores due from the Appellants, and the value of the entire properties would only amount to ₹7.5 crores. If physical possession of all the flats were not taken, the bank could be put to hardship. The Ld. Presiding Officer, vide order dated 19.12.2012, observed that selling the voluntarily surrendered properties would take at least two months and granted an injunction restraining the bank from proceeding against the three residential flats for a period of 2½ months. The Appellants subsequently filed an application objecting to the fixing of the reserve price of the properties to be sold after the surrender. The Respondent bank had already published the sale notice in newspapers. In the order dated 19.01.2012, the Appellants were permitted to bring purchasers to facilitate the bank in selling the property by public auction at the best possible price. The Ld. Presiding Officer observed that the Exhibit-01 application was allowed on 19.01.2012 on the condition that the Appellants would retain the three flats and agreed to the sale of the remaining properties. The Ld. Presiding Officer found the Appellants' contentions concerning the sale to be without merit and dismissed them, directing that the S.A. would be disposed of on merits after hearing the parties. The Appellants contended that the impugned order dated 15.06.2015 dismissed the S.A. on the premise that, given the clear admission by the Appellants, a stay concerning the three flats (Nos. 29, 39, and 41) was granted only for 2½ months, indicating that the Appellants had to hand over physical possession of those flats after the stipulated period mentioned in the interlocutory order dated 19.01.2012, which was not challenged. The Appellants argued that the challenge to the possession notice raised in the S.A. would not survive, and hence, the S.A. was dismissed.

**Argument by the Respondent:**

The primary contention taken by the Respondent was that the appeal was not maintainable given the embargo under Section 20(2) of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act), which states that no appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

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

The Appellate Tribunal had to examine whether there was a consent order made by the D.R.T. The Appellants had voluntarily agreed to surrender the secured assets and permitted the bank to proceed with the sale, provided they were given breathing time about the surrender of the three flats (Nos. 29, 39, and 41). Based on the Appellants' submission, the Ld. Presiding Officer had granted 2½ months to the Appellants because the sale would take not less than two months to get completed. Given the surrender of the properties and agreeing to sell them under the SARFAESI Act, it had to be assumed that the Appellants had waived their challenges to the SARFAESI measures raised in the S.A. under Section 17(1). After having waived their challenges, the Appellants could not insist on the disposal of the S.A. on merits. The Ld. Counsel for the Respondent relied on the decision of the Supreme Court in State of Maharashtra vs. Ramdas Srinivas Nayak & Ano. (1982) 2 SCC 463, which held that statements of fact recorded in a judgment regarding what transpired at the hearing are conclusive, and a party cannot contradict such statements by affidavit or other evidence, except before the very same Presiding Officer. The Appellate Tribunal noted that the Appellants did not contradict the submissions made in the order of the D.R.T. dated 19.01.2012 or 25.04.2012 regarding the surrender of the properties subject to retaining three flats to get a 'breathing time'. After having earned the indulgence shown by the D.R.T. granting two and a half months to surrender the three flats while surrendering the rest of the properties and agreeing to proceed with the sale, the Appellants could not, at the appeal stage, resile from their submissions made before the Tribunal.

### **Sections and Laws Referred:**

Section 17 of the Securitisation and Reconstruction of Financial

Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) – The Appellants had filed the S.A. challenging the SARFAESI measures initiated by the Respondent Bank under this section.

Section 17(1) of the SARFAESI Act – The Appellants had waived their challenges to the SARFAESI measures raised under this section after agreeing to surrender the properties and proceed with the sale.

Section 20(2) of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) – This section states that no appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

**Cases Cited:**

State of Maharashtra vs. Ramdas Srinivas Nayak & Ano. (1982) 2 SCC 463 – The Respondent relied on this Supreme Court decision, which held that statements of fact recorded in a judgment regarding what transpired at the hearing are conclusive, and a party cannot contradict such statements by affidavit or other evidence, except before the very same Presiding Officer.