

# M/s. Bhavani Enterprises & Ors. v. Saurashtra Gramin Bank

M/s. Bhavani Enterprises & Ors.

...Appellant

Saurashtra Gramin Bank

...Respondent

Case No: Appeal on Diary No.1634/2023

Date of Judgement: 26/09/2023

**Judges:**

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Dhrumit Chauhan, Advocate.

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

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**Facts:**

The case pertains to an appeal filed by M/s. Bhavani Enterprises & Ors. (hereafter referred to as "Appellants") against the order dated 06.09.2023 of the Debt Recovery Tribunal – II, Ahmedabad, wherein the Presiding Officer declined to grant any protection order concerning the secured assets being proceeded against by Saurashtra Gramin Bank (hereafter referred to as "Respondent Bank") under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Respondent Bank had issued a notice under Section 13(2) of the SARFAESI Act demanding an amount of ₹74,57,300/- from the Appellants. The Appellants challenged the notice under Section 13(2), stating that there was no bifurcation of the

amount claimed from them by the Respondent Bank for various facilities granted. The Appellants also alleged that the application filed by the Respondent Bank under Section 14 of the SARFAESI Act before the District Magistrate was defective as it was not accompanied by a 9-pointer affidavit as required. Additionally, the details of the objection filed by the Appellants to the demand notice and the reply received from the bank were not stated in detail in the application filed under Section 14. The Appellants claimed to have a strong prima facie case to maintain an application under the SARFAESI Act and cited financial strain as the reason for their inability to deposit 50% of the demanded amount as mandatory pre-deposit under Section 18(1) of the SARFAESI Act. To prove their financial strain, the Appellants produced income tax returns of Appellant Nos. 2 and 6, who were stated to be the persons concerned with the property against which the SARFAESI measures had been initiated.

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

##### **Appellants' Arguments:**

The Appellants prayed for a reduction of the mandatory pre-deposit to a minimum of 25%, exercising the jurisdiction of the Tribunal under the third proviso of Section 18(1) of the SARFAESI Act. The Appellants challenged the notice under Section 13(2), stating that there was no bifurcation of the amount claimed from them by the Respondent Bank for various facilities granted. The Appellants argued that the application filed by the Respondent Bank under Section 14 of the SARFAESI Act before the District Magistrate was defective as it was not accompanied by a 9-pointer affidavit as required, and the details of the objection filed by the Appellants to the demand notice and the reply received from the bank were not stated in detail. The Appellants claimed to have a strong prima facie case to maintain an application under the SARFAESI Act and cited financial strain as the reason for their inability to deposit 50% of the demanded amount. To prove their financial strain, the Appellants produced income tax returns of Appellant Nos. 2 and 6.

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

The Respondent Bank vehemently opposed the application, stating that the Appellants had no prima facie case. The Respondent Bank argued that the financial strain had not been sufficiently proven because the tax returns of all the Appellants had not been produced. Since the Appellants were jointly and severally liable to repay the debt as mortgagors/guarantors, the financial strain of all the Appellants needed to be established to get the benefit under the third proviso of Section 18(1).

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

The Tribunal referred to the decisions of the Hon'ble Supreme Court in the case of M/s. Sidha Neelkanth Paper Industries Private Limited & Another 2023 SCC Online 12 and the Hon'ble High Court of Gujarat in the case of M/s. Shree Rajmoti Industries V/s The Authorized Officer, Union Bank of India R/Special Civil Application No. 9564/2022. These cases established that the threshold amount for determining the pre-deposit is the amount mentioned in the demand notice. Considering the Appellants' plea and the financial strain relied upon by them, the Tribunal was of the opinion that the Appellants should be directed to deposit a sum of ₹30,00,000/- as pre-deposit, which was less than the mandatory pre-deposit of 50% of the demanded amount. The Tribunal directed the Appellants to deposit the pre-deposit amount in three installments – ₹7,00,000/- to be deposited on the same day, the first installment of ₹10,00,000/- to be paid within one week, and the second installment of ₹13,00,000/- to be paid within two weeks thereafter. The Tribunal ordered that in case of default in the payment of any of the installments, the Appeal shall stand dismissed without any further reference to the Tribunal. The Tribunal directed that the deposited amounts shall be 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:**

M/s. Sidha Neelkanth Paper Industries Private Limited & Another 2023 SCC Online 12

M/s. Shree Rajmoti Industries V/s The Authorized Officer, Union Bank of India R/Special Civil Application No. 9564/2022

**Sections and Laws Referred:**

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

- Section 13(2) (Demand Notice)
- Section 14 (Application to District Magistrate)
- Section 18(1) (Mandatory Pre-deposit)

Third proviso of Section 18(1) of the SARFAESI Act (Power of the Tribunal to reduce the pre-deposit amount)

In conclusion, the Debts Recovery Appellate Tribunal, while considering the Appellants' plea of financial strain and the arguments of both parties, exercised its power under the third proviso of Section 18(1) of the SARFAESI Act and directed the Appellants to deposit a reduced pre-deposit amount of ₹30,00,000/- in three installments. The Tribunal also provided guidelines for the investment of the deposited amounts and warned of dismissal of the Appeal in case of default in payment of any installment.