

M/s Eco Tread Reclaimed Rubber (I) Pvt. Ltd. v. State Bank of India & Anr.

M/s Eco Tread Reclaimed Rubber (I) Pvt. Ltd.

...Appellant

State Bank of India & Anr.

...Respondent

Case No: Misc. Appeal No. 96/2022

Date of Judgement: 20/11/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Puneet Gogad, Advocate.

For Respondent: Mr Bidan C along with Ms Meenu P., i/b M/s M.V. Kini & Co., Mr Rajesh Nagory, Advocate.

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Facts

This order is passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai in a Miscellaneous Appeal filed by M/s Eco Tread Reclaimed Rubber (I) Pvt. Ltd. (Appellant) against the order dated 25/05/2022 of the Debts Recovery Tribunal (DRT), Pune in Misc. Application No. 30/2021. The Appellant is an auction purchaser aggrieved by the rate of interest (9% per annum) allowed by the DRT on the refund of sale consideration, consequent to the setting aside of the auction sale. The Appellant had purchased the mortgaged property of the borrower (2nd Respondent) from the State Bank of India (1st Respondent) through an auction on 08/11/2011 for ₹1,46,25,000/- plus ₹1,36,862/- for delayed payment. The 2nd Respondent (borrower) filed Securitisation

Application No. 26/2012 challenging the sale. Vide order dated 02/06/2018, the DRT allowed the application and set aside the sale and sale certificates. Despite requests, the Respondent Bank did not refund the sale consideration to the Appellant. The Appellant filed M.A. No. 30/2021 seeking refund with 18% interest and other charges. The DRT directed refund of the sale consideration with 9% interest from the date of filing the M.A. and declined security and legal charges claimed by the Appellant.

Arguments by the Parties

The Appellant argued for 18% interest, citing cases where higher interest rates were awarded to auction purchasers on refund of sale consideration. The Respondent Bank contended that the interest rate of 9% allowed by the DRT was reasonable, considering the current market rates.

Court's Elaborate Opinions

Interest Rate

The DRAT noted that the Appellant could not make any profitable use of the property due to the DRT's status quo order on existing structures. It referred to cases like Madhava Krishna Chaitanya v. UCO Bank (interest at 18%), Shaik Janimiya v. State Bank of India (interest at 12%), J. Rajiv Subramaniyan v. Pandiyas (interest at 18%) and Oasis Dealcom Pvt. Ltd. v. Khazana Dealcomm Pvt. Ltd. (interest at 10%) where higher interest rates were awarded to auction purchasers. However, the DRAT held that the rate of interest realized by the bank for belated payment of sale consideration by the auction purchaser cannot be the criteria for determining the interest rate payable by the bank on refund. The interest payable to the Appellant is by way of compensation for wrongful retention of money and should be determined based on current market rates. Hence, the DRAT found the interest rate of 9% awarded by the DRT to be reasonable. However, the DRAT held that the interest should be payable from the date of deposit of the sale consideration by the Appellant and not from the date of filing of the M.A. as ordered by the DRT.

Deduction for Removal of Movables

The DRAT noted that the Appellant had admittedly removed some movable scrap worth ₹2,69,000/- from the property before the status quo order. As per the Respondent Bank, the value of movables as per the Sale Certificate was ₹65,56,000/-. In the absence of evidence regarding removal of all movables, the DRAT held that the refund amount of ₹1,47,61,862/- should be reduced by ₹2,69,000/- being the value of scrap removed by the Appellant as admitted.

Security Charges and Legal Expenses

The DRAT upheld the DRT's decision to decline the Appellant's claim for security charges and legal expenses, as the Appellant could not make any profitable use of the property due to the status quo order.

Restoration of Possession

The DRAT directed that after assessing the value of movables as per the Sale Certificate, the possession of both movable and immovable secured assets shall be restored to the Respondent Bank/borrower after deducting the said value from the refund amount payable to the Appellant.

Conclusion

The DRAT allowed the appeal in part and directed the Respondent Bank to: a) Refund ₹1,44,92,862/- (₹1,47,61,862/- minus ₹2,69,000/-) to the Appellant. b) Pay interest at 9% per annum on the refund amount from the date of deposit till realization. c) Deposit the refund amount with interest before the DRT. d) The DRT shall disburse the refund amount to the Appellant after assessing and deducting the value of movables to be restored to the Bank/borrower as per the Sale Certificate valuation.

Sections and Laws Referred

Section 17(1) of the SARFAESI Act – Provision for making an application to the DRT for challenging the measures taken by the secured creditor under the Act.

Cases Cited

Madhava Krishna Chaitanya v. UCO Bank (2018 SCC OnLine Hyd 196) – Andhra Pradesh High Court awarded 18% interest to auction purchaser.

Shaik Janimiya v. State Bank of India (MANU/TL/0086/2020) – Telangana High Court awarded 12% interest to auction purchaser.

J. Rajiv Subramaniyan & Anr. v. Pandiyas & Ors. (2014) 5 SCC 651 – Supreme Court awarded 18% interest to auction purchaser.

Oasis Dealcom Private Limited v. Khazana Dealcomm Private Limited & Ors. (2016) 10 SCC 214 – Supreme Court awarded 10% interest to auction purchaser.

Mathew Verghese v. M. Amritha Kumar (2014) 5 SCC 610 – Supreme Court decision referred to in Madhava Krishna Chaitanya case regarding rate of interest.