

# M/s. Express Hotel and Ors v. Bank Of Baroda & Anr.

M/s. Express Hotel and Ors

...Appellant

Bank Of Baroda & Anr.

...Respondent

Case No: Appeal Dairy No.1089/2023

Date of Judgement: 17/07/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mohit Agarwal, Advocates.

For Respondent: None.

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**Facts:**

The case involves an Interim Application (I.A.) No. 477/2023 filed by the Appellants, M/s. Express Hotel and Ors., in Appeal Dairy No. 1089/2023 against Bank of Baroda & Anr. (the Respondents). The Appellants are borrowers/guarantors/mortgagers who had borrowed money from the 1st Respondent Bank. On failing to repay the amount, the account was classified as a non-performing account (NPA), and a notice under Section 13(2) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) was issued on 06.10.2017, claiming a sum of ₹59,20,000/-. The Appellants did not pay the amount within the stipulated time, and steps under Section 13(4) of the SARFAESI Act were initiated. An order for taking physical possession was obtained under Section 14 from the District Magistrate, Nashik, on 11.01.2022. The property was auctioned, and Respondent No. 2 purchased it for a

sale consideration of ₹69,79,000/-. The sale was confirmed, and the sale certificate was issued on 04.08.2021. It was alleged that the property was undervalued and sold for a pittance. The physical possession of the property is yet to be handed over to the auction purchaser. Soon after the sale, the Appellants filed the present S.A. challenging the SARFAESI measures right from the issuance of the notice under Section 13(2), the subsequent measures under Sections 13(4) and 14, as well as the sale. The Ld. Presiding Officer found the contentions raised in the S.A. unsustainable and dismissed it. The Appellants claim to have a strong prima facie case and are under financial strain because the 3rd Appellant is suffering from a neurological disease and is under treatment. Their business has failed due to the pandemic.

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

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

The Appellants contend that they have a very strong prima facie case and are under financial strain due to the 3rd Appellant's neurological disease and treatment, as well as their business failing due to the pandemic. The Appellants requested a complete waiver of the pre-deposit or, alternatively, limiting the amount to the minimum of 25% of the amount due and payable. According to the notice under Section 13(2) and the sale notice, the amount claimed is ₹59,20,000/-, but the exact amount due on the day is not specified. The Respondent Bank subsequently filed O.A. 338/2020 before the Tribunal, seeking recovery of ₹54,48,207.97 as of 18.06.2020. The Appellants had subsequently paid ₹27,50,000/-, and therefore, the calculation should not be ₹80,16,022/- as claimed by the Respondent. The Appellants argue that the calculation has gone wrong, and the pre-deposit should be calculated based on the amount mentioned in the auction notice and the demand notice under Section 13(2).

#### **Respondents' Arguments:**

The Ld. Counsel for the Respondents submitted that the Appellants have not come up with clean hands, and there is no infirmity in any of the

procedures initiated under the SARFAESI Act. The notice was properly served, there was no undervaluation as alleged, and the property was sold for the best available price, which would not have fetched more than the amount for which it was sold. Three attempts were made earlier to sell the property, and the sale was accomplished only on the third attempt, refuting the plea of undervaluation. The Appellants have not produced any documents to prove their financial strain, and the mere fact that one of the Appellants is suffering from a disease requiring treatment and expense does not exempt them from the pre-deposit amount being reduced.

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

The court found that the Appellants may probably have an arguable case, which would be considered while deciding the appeal. The Appellants will not be entitled to get the amount reduced to 25%, taking the threshold amount at ₹80,00,000/-. The court directed the Appellants to deposit a sum of ₹30,00,000/- as pre-deposit. The Ld. Counsel for the Appellants undertook to produce a demand draft for ₹5,00,000/- on 18.07.2023. The balance of ₹25,00,000/- shall be paid in two equal installments, with the first installment due on or before 07.08.2023 and the second installment due on or before 21.08.2023. Upon producing a demand draft for ₹5,00,000/- on 18.07.2023, the handing over of possession scheduled for 18.07.2023 shall stand deferred until the next date of hearing. In default of payment of the installments, the Appeal shall stand dismissed without any further reference to the Tribunal. 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 taking possession)
- Section 14 (regarding taking physical possession)