

M/s Golden Erectors v. The Pandharpur Urban Co-operative Bank Ltd. & Ors.

M/s Golden Erectors

...Appellant

The Pandharpur Urban Co-operative Bank Ltd. & Ors.

...Respondent

Case No: Appeal on Diary No. 1291/2023

Date of Judgement: 01/08/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Dinesh D Tiwari, i/b M/s Dinesh D. Tiwari & Associates, Advocate.

For Respondent: Mr S. S. Natu, Advocate.

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Facts:

M/s Golden Erectors, a partnership firm through its partners Padma Motiala Gadia & Others (Appellants), filed an appeal against the order dated 19.07.2023 passed by the Debts Recovery Tribunal (DRT), Pune, in I.A. No. 1626 of 2023 in Securitisation Application (S.A.) at Diary No. 1446 of 2023. The DRT had granted a stay against the Pandharpur Urban Co-operative Bank Ltd. (Respondent No. 1) from taking possession of the secured assets, subject to the condition that the Appellants deposit 25% of the amount mentioned in the demand notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The DRT had directed the Appellants to deposit 10% of the demand

notice amount by 1:00 PM on 20.07.2023 (the intended date of taking over possession) and the remaining 15% within one month from the date of the order. The Appellants did not comply with the DRT's order and filed the present appeal before the Debts Recovery Appellate Tribunal (DRAT), Mumbai. The Appellants had filed the S.A. before the DRT, challenging the SARFAESI measures initiated by the Respondent Bank on various grounds, including the validity of the demand notice under Section 13(2) of the SARFAESI Act, the lack of a 60-day clear notice, improper symbolic possession, and the order obtained from the District Magistrate to take physical possession of the property. The Respondent Bank had obtained a Recovery Certificate from the Registrar of Co-operative Societies, adjudicating the claim under the provisions of the Maharashtra Co-operative Societies Act, leading to the freezing of the Appellants' bank accounts.

Arguments by Parties:

Appellants (M/s Golden Erectors):

The demand notice under Section 13(2) of the SARFAESI Act does not contain the details of the amount claimed. The 60-day clear notice was not given. The symbolic possession was not properly taken. The order obtained from the District Magistrate to take physical possession of the property is challenged. The Appellants have a good prima facie case. The Appellants are under financial strain due to the freezing of their bank accounts.

Respondent No. 1 (Pandharpur Urban Co-operative Bank Ltd.):

The contentions raised by the Appellants are untenable. As of the present date, the amount due from the Appellants is more than ₹7 crores, which has already been determined by the Registrar of Co-operative Societies.

Court's Elaborate Opinions:

The DRT has the power to grant a stay against the secured creditor from taking possession of the secured assets, subject to the condition of pre-deposit of a certain amount. The Appellants have not produced

any documentary evidence to substantiate their claim of financial strain, except for pleadings regarding the attachment of their properties and the freezing of their bank accounts. The Appellants are not entitled to the indulgence of the Tribunal to get the pre-deposit amount reduced to the bare minimum of 25% of the amount claimed, considering the facts and circumstances of the case.

The Appellants are directed to deposit a sum of ₹2.25 crores as pre-deposit, to be paid in installments, as follows:

- ₹10 lakhs by Demand Draft or RTGS by 02.08.2023
- First installment of ₹1,02,50,000/- by 22.08.2023
- Second installment of ₹1,02,50,000/- by 12.09.2023

Failure to pay any of the installments shall result in the dismissal of the appeal without further reference to the Tribunal. If the Appellants deposit the amount of ₹10 lakhs by Demand Draft by 02.08.2023, the possession shall be deferred until the next date of hearing. The pre-deposit amount shall be deposited in the form of a Demand Draft with the Registrar of the DRAT, Mumbai, and 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:

None

Sections and Laws Referred:

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

- Section 13(2) (Demand notice)

Maharashtra Co-operative Societies Act (Mentioned in the context of the Recovery Certificate obtained by the Respondent Bank from the Registrar of Co-operative Societies)