

M/s. Janvi Ornament & Anr. v. M/s. Cholamandalam Investment & Finance Company Ltd.

M/s. Janvi Ornament & Anr.

...Appellant

M/s. Cholamandalam Investment & Finance
Company Ltd.

...Respondent

Case No: Appeal on Diary No. 1507/2023

Date of Judgement: 31/08/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

**For Appellant: A.R. Gupta & Mr. Aditya Bhatt & Ms. Neeta Pandit,
Advocate.**

For Respondent: An Advocate for the Respondent is present.

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Facts

M/s. Janvi Ornament & Anr. (Appellants) have filed an appeal aggrieved by the order dated 24.08.2023 passed by the Debts Recovery Tribunal-II, Ahmedabad (DRT) in Securitisation Application (S.A.) No. 518/2023. The DRT declined to grant any interlocutory reliefs to the Appellants regarding the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 measures initiated by M/s. Cholamandalam Investment & Finance Company Ltd. (Respondent). The Appellants have filed an application (I.A. No. 588/2023) seeking a waiver of the mandatory pre-deposit under Section 18(1) of the SARFAESI Act.

Arguments by the Appellants

The Appellants have challenged the SARFAESI measures on various grounds, including: Defects in the notice issued under Section 13(2) of the SARFAESI Act, as it does not show the bifurcation of interest calculated and the classification of the debt as a Non-Performing Asset (NPA). Part of the order of the Chief Judicial Magistrate under Section 14 of the SARFAESI Act is challenged due to the absence of a proper 9-pointer affidavit. The reply sent to the notice under Section 13(2) by the Appellants' lawyer was responded to by the Respondent's lawyer under Section 13(3A), which is improper as the Authorized Officer should have replied. The reply under Section 13(3A) does not clarify the queries raised by the Appellants in their reply to the demand notice and is, therefore, inadequate. The Appellants argue that they have a good prima facie case and are not in good financial condition to pay the pre-deposit of 50% of the debt due. They seek the Tribunal's indulgence to reduce the amount of pre-deposit to the minimum of 25% under the third proviso to Section 18(1) of the SARFAESI Act. The Appellants point out discrepancies in the principal amount mentioned in the demand notice and the foreclosure notice issued by the Respondent. The Appellants also argue that if there was a change in the floating rate of interest, the demand notice should have shown the rate of interest as and when it changed. The Appellants state that the first Appellant is a physically disabled person with a 70% disability and is not in a position to earn a livelihood. Additionally, the Appellant's income tax returns show that the business is running at a loss.

Arguments by the Respondent

The Respondent's counsel argues that the Appellant is running a lucrative jewelry business, and the disability will not be an impediment. The disability certificate is dated 2015, at least three years before availing the loan, indicating that despite the disability, the Appellant was running a successful jewelry business that did not affect the means of livelihood. The Appellant had been paying some amount but later defaulted. The Respondent contends that

the bifurcation required under Section 13(3) of the SARFAESI Act is provided in the demand notice, and the rate of interest is in accordance with the sanction letter, which indicates that it would be fluctuating. The Respondent is not obligated to provide details of every change in the interest rate in the demand notice. The Respondent's counsel argues that there is no embargo on resorting to the assistance of a lawyer for sending the reply under Section 13(3A) of the SARFAESI Act.

Court's Elaborate Opinions

The Presiding Officer considered all the contentions raised by the Appellants in detail, followed precedents, and concluded that the contentions raised are not prima facie sustainable. The Tribunal did not intend to delve deep into the merits of the contentions raised by the Appellants at this stage when determining the pre-deposit amount. The Tribunal found that the contentions raised by the Appellants put forth an arguable case. The Appellants' income tax returns and audit reports of the statement of accounts for the year 2021-2022 indicate that the Appellant has limited income and is not in a financial position to deposit 50% of the demanded amount. After considering the entire facts, circumstances, rival submissions, and records, the Tribunal opined that although the Appellants are not entitled to get the amount reduced to 25% of the demanded amount, some concession needs to be given.

Order by the Tribunal

The Tribunal fixed the amount payable as pre-deposit at ₹30 lakhs. The Appellants produced a demand draft of ₹12.5 lakhs on the same day, and the balance amount of ₹17.5 lakhs shall be payable within four weeks, i.e., on or before 29.09.2023. In view of the Appellants producing the demand draft for ₹12.5 lakhs, the further SARFAESI measures shall stand stalled until the next date of hearing before the bench. The amount shall be deposited in the form of a Demand Draft with the Registrar of the Tribunal. 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 then renewed periodically. The Respondent is at liberty to file a reply in the Appeal with an advance copy to the other side. The matter is posted for 03.10.2023 for reporting compliance.

Sections and Laws Referred

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

- Section 13(2) – Issuance of demand notice
- Section 13(3) – Representation to the secured creditor
- Section 13(3A) – Reply to the representation
- Section 14 – Enforcement of security interest by a secured creditor
- Section 18(1) – Appeal to the Appellate Tribunal (including provisions for pre-deposit)