

M/s. M. B. Shah Jewellers & Ors. v. Deutsche Bank AG

M/s. M. B. Shah Jewellers & Ors.

...Appellant

Deutsche Bank AG

...Respondent

Case No: Appeal on Diary No. 1423/2022

Date of Judgement: 15/03/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Ms Sonali Jain, i/b Ms Khushboo Agarwal, Advocate.

For Respondent: Mr R. L. Motwani, Advocate.

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Facts:

The case is an appeal filed by M/s. M.B. Shah Jewellers & Ors. (Appellants) against Deutsche Bank AG (Respondent) before the Debts Recovery Appellate Tribunal, Mumbai. The Appellants have challenged the judgment passed by the Debts Recovery Tribunal-I, Mumbai (DRT) in S.A. No. 46 of 2019, dismissing their Securitisation Application (S.A.) vide order dated 27.12.2021. The Appellants have filed an application under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for invoking the discretionary power of the Tribunal to reduce the amount of mandatory pre-deposit. The first Appellant is a proprietorship represented by the second Respondent before the DRT, while in the appeal, it is the fourth Respondent representing the proprietorship, indicating confusion about the actual owner of the business.

The Appellants have challenged the SARFAESI measures on various grounds, including:

1. The demand notice issued under Section 13(2) of the SARFAESI Act on 07.09.2017, demanding a sum of ₹6,32,83,506.61, is not in accordance with the law, and the requirement under Section 13(3) to provide a break-up of the demanded amount has not been complied with.
2. The demand notice was not issued by a proper Authorized Officer, who should be a Chief Manager of the Bank. The person who signed the notice, Mr. D.V. Satelkar, was not authorized on the date of issuance, and his authority came later.
3. There is no CERSAI Registration of the mortgage, which is mandatory.
4. Certain payments made by the Appellants have not been recorded in the statement of account.

The Appellants had initially obtained a favorable interlocutory order from the DRT, stalling the SARFAESI measures. However, when the S.A. was heard finally, the DRT's stand changed, and the Appellants' contentions, except for the appointment of a Commissioner to take over possession by the Chief Metropolitan Magistrate (CMM), were not upheld.

Arguments by the Appellants:

The Appellants argue that since the demand notice claimed an amount of ₹6,32,83,506.61, the appeal should be entertained upon receiving 25% of that amount as a pre-deposit, exercising jurisdiction under the third proviso to Section 18(1) of the SARFAESI Act. They further contend that they are all senior citizens with little source of income, as evidenced by their Income Tax Returns for the period 2020-2021 to 2022-23. Given their strong prima facie case and pecuniary strain, the Appellants seek the Tribunal's indulgence to keep the pre-deposit at a minimum.

Arguments by the Respondent Bank:

The Respondent Bank vehemently opposes the application, stating that

the Appellants do not come with clean hands. The interlocutory order obtained by the Appellants in their favor from the DRT was undone by the Hon'ble High Court of Bombay in a Writ Petition filed by the Bank. The Writ Petition was disposed of with a direction to dispose of the S.A. untrammelled by the observations made in the interlocutory order. The observations made in the interlocutory stage by the Presiding Officer in the S.A. cannot be regarded as substantive and should not be considered. All other objections raised regarding the SARFAESI measures have been disregarded by the DRT in the final order, and therefore, the Appellants cannot contend that they have a strong prima facie case. The Respondent Bank has filed an account statement indicating that as of the date of filing the appeal, the outstanding amount due from the Appellants is ₹12,25,48,453. The Respondent Bank argues that the Appellants should be asked to deposit 50% of that amount for entertaining the appeal.

Court's Elaborate Opinions:

The court notes that the Respondent did not raise any objections regarding the insufficiency of the steps taken under Sections 13(2) and 13(4) of the SARFAESI Act. They only challenged the steps taken under Section 14 before the CMM. Prima facie, the objections regarding Sections 13(2) and 13(4) stand waived. The court observes that at no point did the Appellants seek clarification regarding the break-up of the amount claimed and demanded in the notice under Section 13(2). While the notice states the amount due as of 01.09.2017 and future interest, the rate of interest is not shown for a housing loan, as it could fluctuate. However, towards the end of the notice, it is clarified that an account statement is enclosed, which provides details of the rate of interest and a break-up of the principal amount and interest. The court finds the Appellants' contention that they did not receive the account statement along with the Section 13(2) notice doubtful, as this objection comes very late. The court notes that all other contentions were considered by the Presiding Officer and concluded against the Appellants. The contentions raised regarding the insufficiency of the proceedings under Section 14 have been addressed, and relief has been granted. Even if certain amounts pointed out by

the Appellants have not been accounted for, the court finds that the amount would have definitely swelled close to ₹12 crores on the date of filing the appeal, as it was more than ₹6 crores as of 01.09.2017. Under these circumstances, the court concludes that the Appellants would have to pay a sum of ₹3 crores as a pre-deposit under Section 18(1) of the SARFAESI Act for entertaining the appeal.

Order:

The Appellants have furnished a demand draft for ₹50 lacs (₹5 million) on the date of the order. The balance of ₹2.50 crores (₹25 million) shall be paid in two equal installments of ₹1.25 crores (₹12.5 million) each. The first installment shall be payable on or before 05.04.2023, and the second installment shall be payable on or before 26.04.2023. Since the Appellants have already deposited ₹50 lacs, there shall be a stay of further SARFAESI measures with regard to the secured assets. Breach of payment of the subsequent installments shall entail the dismissal of the appeal without 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. The Respondent Bank is at liberty to file a reply in the Appeal with an advance copy to the other side. The matter is posted on 06.04.2023 for reporting compliance concerning the payment of the first installment.

Sections and Laws Referred:

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

- Section 13(2) – Issuance of demand notice
- Section 13(3) – Requirement to provide a break-up of the demanded amount
- Section 13(4) – Subsequent steps after issuance of demand notice
- Section 14 – Enforcement of security interest

- Section 18(1) – Deposit of amount of debt due for entertaining an appeal

CERSAI Registration of mortgage (mentioned but not elaborated upon)

Case Laws Referred:

No case laws were referred in the order.