

M/s. Sandeep Textiles & Ors. v. IDFC First Bank Ltd.

M/s. Sandeep Textiles & Ors.

...Appellant

IDFC First Bank Ltd.

...Respondent

Case No: Misc. Appeal on Diary No. 1245/2023

Date of Judgement: 26/07/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Sachin Kaikini, i/b Mr Dhruvit, Advocate.

For Respondent: Mr. R.L. Motwani along with Mr. Sachin Salunke, Advocate.

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Facts:

M/s. Sandeep Textiles & Ors. (Appellants) filed I.A. No. 509/2023 (WoD) in Misc. Appeal on Diary No. 1245/2023 before the Debts Recovery Appellate Tribunal, Mumbai. The Appellants are in appeal against the order of the Debts Recovery Tribunal-II, Ahmedabad (D.R.T.) dated 17.07.2023 in Securitization Application (S.A.) No. 398/2022. The D.R.T. declined to grant relief to the Appellants to stall the Sarfaesi measures initiated by the 1st Respondent Bank (IDFC First Bank Ltd.) for recovery of the amount allegedly due from the Appellants towards the loan facilities granted to them. The 1st Appellant is a proprietorship concern, and the 2nd Appellant is the sole proprietor. The remaining Appellants are co-borrowers/guarantors/-mortgagors. The Appellants filed the S.A. after receiving a notice of physical possession pursuant to an order passed by the District

Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Appellants had earlier received a demand notice under Section 13(2) of the SARFAESI Act demanding a sum of ₹29,74,292.15 as of 13.03.2020, but they did not respond to the notice. The 1st Respondent Bank proceeded with Sarfaesi measures by taking symbolic possession of the secured assets on 17.10.2020 under Section 13(4) of the SARFAESI Act. The Appellants did not challenge the Sarfaesi measures after the symbolic possession was taken. The 1st Respondent Bank obtained an order from the District Magistrate for taking physical possession under Section 14 of the SARFAESI Act and issued a notice to the Appellants fixing the date for taking physical possession. The Appellants then approached the D.R.T. with an application to set aside the Sarfaesi measures, challenging the measures from the classification of debt as NPA to the order for physical possession. A notice was issued to the Appellants to take over possession of the property on 19.07.2023. The Appellants approached the D.R.T. seeking an interlocutory relief to stall the possession, stating their willingness to settle the debt. They made a deposit of ₹6.40 lakhs directly to the bank. The D.R.T. rejected the Appellants' One-Time Settlement (OTS) proposal, stating that it was for a meager amount. The Appellants did not take any steps to make a substantial payment thereafter, and the 1st Respondent Bank was at liberty to take possession of the property. The Appellants filed I.A. No. 509/2023 under Section 18(1) of the SARFAESI Act, seeking a waiver of the mandatory pre-deposit by exercising the Tribunal's jurisdiction under the third proviso to Section 18(1).

Arguments by Appellants:

The Appellants pleaded that they are under financial strain but produced income tax returns only for the 3rd Appellant (for the year 2013-14) and the 4th Appellant (for the year 2019-20). The income tax returns of the remaining Appellants, particularly the 2nd Appellant (the sole proprietor of the 1st Appellant), were not produced.

Arguments by Respondent Bank:

The Respondent Bank submitted that the Appellants do not have a prima facie case, as they made an OTS proposal for a meager amount, and the fact that they made an OTS proposal itself would indicate that they have waived all their challenges to the Sarfaesi measures.

The Respondent Bank argued that the Appellants did not take any action challenging the Sarfaesi measures after the symbolic possession was taken on 17.10.2020, and they cannot now contend that the Sarfaesi measures, starting from the classification of debt as NPA, were faulty.

Court's Elaborate Opinions:

The Tribunal observed that the Appellants are not entitled to any indulgence to get the amount of pre-deposit reduced to a minimum of 25% as pleaded. After adjusting the payment of ₹6.40 lakhs, the outstanding amount as of the date was ₹26,76,789.12. The Tribunal directed the Appellants to deposit a sum of ₹13 lakhs as pre-deposit for entertaining the Appeal. The Tribunal allowed the Appellants to submit a demand draft for ₹2 lakhs the next day and pay the balance ₹11 lakhs within three weeks, i.e., on or before 16.08.2023. The Tribunal warned that failure to pay the amount within the stipulated time would entail the dismissal of the Appeal without any further reference to the Tribunal. Upon payment of the aforesaid amount, the Appellants would be entitled to get the taking over of possession deferred until further order. The Tribunal ordered that the amount be deposited as 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 Tribunal disposed of the I.A. with these observations and granted liberty to the Respondents to file a reply in the Appeal with an advance copy to the other side.

Cases Cited:

None

Sections and Laws Referred:

Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Section 13(4) of the SARFAESI Act

Section 14 of the SARFAESI Act

Section 18(1) of the SARFAESI Act (including the third proviso)