

M/s Shekhar Enterprises v. Tirupati Urban Co-op. Bank Ltd.

M/s Shekhar Enterprises

...Appellant

Tirupati Urban Co-op. Bank Ltd.

...Respondent

Case No: Appeal No. 52/2019

Date of Judgement: 01/03/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr S. N. Fuladi and Mr. S.D. Fuladi, i/b M/s. N.K. Fuladi & Associate, Advocate.

For Respondent: Mr. P. D. Meghe, Advocate.

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Facts:

M/s Shekhar Enterprises, through its Proprietor Shekhar Laxmanrao Khodke & others (Appellants), filed an appeal against the order dated 12/04/2019 of the Debts Recovery Tribunal (D.R.T.), Nagpur, in Securitisation Application (S.A.) No. 29/2013. The Appellants had filed the application under Section 17(1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Appellants are the original borrower (M/s Shekhar Enterprises), guarantors, legal representatives of a deceased guarantor, and a guarantor/mortgagor. The Respondent is the Authorised Officer/CEO of Tirupati Urban Co-op. Bank Ltd. The

Respondent bank had provided a cash credit facility of ₹75 lakhs to the Appellants, which was later enhanced to ₹1.4 crores. Four properties were mortgaged as security. The Appellants defaulted on payment, and the account was classified as a Non-Performing Asset (NPA) effective from 01/07/2010. The Respondent bank issued a demand notice under Section 13(2) of the SARFAESI Act on 18/01/2011, demanding payment of ₹42,89,820/- together with interest outstanding as of 13/11/2010. The Respondent bank issued a notice under Section 13(4) of the SARFAESI Act on 13/08/2007, seeking possession of the property for default of payment of ₹41,50,030/- as of 30/07/2011. The Respondent bank approached the District Magistrate with an application under Section 14 of the SARFAESI Act.

Court's Elaborate Opinions:

The Debts Recovery Appellate Tribunal (DRAT) observed that the Appellants did not challenge the correctness of the notice under Section 13(2) or the action under Section 13(4), which would amount to a waiver, and cannot be challenged at a later stage. The DRAT noted that the Securitisation Application (S.A.) was not filed within 45 days of taking symbolic possession of the secured assets under Section 13(4), as required by Section 17(1) of the SARFAESI Act. The DRAT held that the findings of the Presiding Officer in the impugned order cannot be challenged, as the action against the notices issued under Sections 13(2) and 13(4) was barred by waiver and limitation.

Arguments by Parties:

Appellants:

Argued that a sum of ₹21 lakhs paid by them towards the outstanding dues after receipt of notice under Section 13(2) was not accounted for. Contended that the notices under Sections 13(2) and 13(4) of the SARFAESI Act were not proper, and that Sub-Section 3 to Section 13 was violated. Argued that Sarfaesi measures could not have been initiated because the amount due was less than 20% of the principal amount. Offered to deposit ₹10 lakhs in two instalments of ₹5 lakhs each before the D.R.T. Contended that the period of limitation would begin

to run only from 19/03/2013 when the notice under Section 14 was received.

Respondent Bank:

Objected to the maintainability of the S.A. mainly on the ground of limitation. Pointed out that the demand notice under Section 13(2) was issued on 18/01/2011, and the possession notice under Section 13(4) was issued on 13/08/2011, but the S.A. was filed only on 09/04/2013, beyond the 45-day period contemplated under Section 17(1) of the SARFAESI Act.

Sections and Laws Referred:

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

- Section 13(2) (Demand notice)
- Section 13(3)
- Section 13(4) (Possession notice)
- Section 14 (Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset)
- Section 17(1) (Filing of Securitisation Application within 45 days of taking possession)

Case Laws Referred:

No case laws were referred in the order.