

M/s. Shree Nivasan Sales v. State Bank of India & Anr.

M/s. Shree Nivasan Sales

...Appellant

State Bank of India & Anr.

...Respondent

Case No: Appeal on Diary No. 1136/2023

Date of Judgement: 03/10/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Mr. Sandeep Bhatt, Advocate.

For Respondent: Mr. Vinaya Chavan, Mr. S.S. Panesar, Advocate.

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Facts:

This is an Interim Application (I.A.) No. 489/2023 (WoD) filed by M/s. Shree Nivasan Sales (Appellant) in Appeal on Diary No. 1136/2023, impugning the order dated 30.06.2023 passed by the Debts Recovery Tribunal-II, Ahmedabad (D.R.T.) in I.A. No. 1641/2023 in Securitization Application (S.A.) No. 240/2023. The Respondents are the Authorized Officer of State Bank of India (Respondent No. 1) and the highest bidder in the sale of the secured asset (Respondent No. 2). The D.R.T. had dismissed the Appellant's application for amendment of the S.A. The Appellant had filed the S.A. challenging various SARFAESI measures initiated by the Respondent Bank, including the validity of the notice under Section 13(2), the symbolic possession taken under Section 13(4), and the order passed by the District Magistrate, Surat, on 06.06.2022 under Section 14 of the SARFAESI Act. The S.A. was filed on 30.03.2023, challenging the measures up to the

steps taken under Section 14 of the SARFAESI Act. The sale notice received by the Appellant, fixing the sale on 28.03.2023, was also challenged in the S.A. However, due to the absence of an interlocutory order in favor of the Appellant, the sale was completed, and the Respondent No. 2, being the highest bidder, got a confirmation of the sale, paid the entire sale consideration, and obtained a registered sale certificate and physical possession of the property. The Appellant filed an application for amendment to incorporate the challenge to Section 14, which was declined by the D.R.T.

Arguments by the Appellant:

The Appellant's counsel, Mr. Sandeep Bhatt, contended that the Appellant has a very good prima facie case regarding the challenge raised about the notice issued under Section 13(3) and the amendment sought in the S.A. Mr. Bhatt pleaded that the Appellant is under financial strain since his business has come to a halt, and he has no income whatsoever. The Appellant is a proprietorship represented by a sole proprietor. However, no statement of account pertaining to the business of the proprietorship or income tax returns were produced to prove the financial status of the Appellant.

Arguments by the Respondents:

The Respondent Bank was represented by Mr. Vinaya Chavan, Advocate, and Respondent No. 2 was represented by Mr. S.S. Panesar, Advocate.

The Respondents' counsel contended that the Appellant has not made out any case to invoke the indulgence of the Tribunal to reduce the amount to the minimum of 25%, and hence, the Appellant may be directed to deposit 50% of the amount due as on date.

Court's Elaborate Opinions:

The Tribunal observed that a complete waiver of the pre-deposit is not possible as the Appellant is admittedly a borrower. The Tribunal's concern is whether the pre-deposit amount should be reduced from the mandatory 50% to 25% of the debt due from the Appellant. The amount demanded in the notice issued under Section 13(2) was

₹3,28,89,052.43/- as of 30.04.2021. The Respondent Bank stated that as of the date, the amount due from the Appellant, inclusive of interest, is ₹3,41,99,057.47/-. The Tribunal found that the Appellant has not succeeded in establishing that he is under financial strain or in establishing a strong prima facie case in his favor, as the challenges raised regarding the order under Section 14, the inadequacy of the symbolic possession taken under Section 13(4), and the demand notice under Section 13(2) do not appear to be adequate. In view of the latest decision of the Hon'ble Supreme Court of India in Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 OnLine SC 12, since the Appellant has challenged the entire SARFAESI measures, including the sale, the Appellant will have to deposit 50% of the amount due from him, which includes the interest as of the date. Considering these aspects, the Tribunal directed the Appellant to deposit ₹1.70 crores as a pre-deposit, payable in three instalments with specific dates mentioned in the order. The Tribunal warned that in default of any amount, the appeal shall be dismissed without any further reference to the Tribunal. Upon the deposit of the first instalment amount on time, the Appellant shall be entitled to get interim relief to the extent that the Respondent No. 2 shall not create any third-party interest over the property until the next date of hearing. The Tribunal directed that the amounts deposited 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:

Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 OnLine SC 12

Sections and Laws Referred:

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

- Section 13(2) (Notice of Demand)
- Section 13(3) (Contents of Notice)

- Section 13(4) (Possession of secured asset)
- Section 14 (Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset)
- Section 18(1) (Right to appeal)

Conclusion:

Based on the above analysis, the Tribunal disposed of the I.A. No. 489/2023 with the following directions: The Appellant shall deposit ₹1.70 crores as a pre-deposit, payable in three instalments with specific dates mentioned in the order. In default of any amount, the appeal shall be dismissed without any further reference to the Tribunal. Upon the deposit of the first instalment amount on time, the Appellant shall be entitled to get interim relief to the extent that the Respondent No. 2 shall not create any third-party interest over the property until the next date of hearing. The amounts deposited 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. The Respondents are at liberty to file a reply in the Appeal with an advance copy to the other side. The matter is posted on 26.10.2023 for reporting compliance regarding the payment of the first instalment.