

M/s. Sukhdham Residency & Ors. v. Asset Care and Reconstruction Enterprise Ltd

M/s. Sukhdham Residency & Ors.

...Appellant

Asset Care and Reconstruction Enterprise Ltd

...Respondent

Case No: Appeal on Diary No. 957/2023

Date of Judgement: 08/08/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Mr Puneet Gogad, Advocate.

For Respondent: An Advocate for the Respondent is present.

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Facts:

M/s. Sukhdham Residency & Ors. (appellants) filed an appeal against the interlocutory order dated 12.05.2023 of the Debts Recovery Tribunal-II, Ahmedabad (DRT) in Securitization Application (S.A.) No. 227/2023. The appellants are the borrowers/guarantors/mortgagers aggrieved by the DRT's order, which declined to grant them any interlocutory reliefs concerning the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) measures initiated by the respondent, Asset Care and Reconstruction Enterprise Ltd. (ARC). The appellants filed S.A. No. 227/2023 under Section 17(1) of the SARFAESI Act, challenging the demand notice issued under Section 13(2) of the Act by the respondent ARC on 18.10.2018, demanding a sum of ₹56,54,450/-. The appellants alleged

that the demand notice did not comply with the mandatory requirement of Section 13(3) as it did not provide a breakup of the total amount demanded. One of the debtors, Hareshbhai Muljibhai Shah, died on 18.12.2022, before the filing of the application under Section 14 of the SARFAESI Act by the respondent before the Chief Judicial Magistrate, Vadodara. The appellants claimed that the proceedings under Section 14 were defective as they were initiated against a deceased person.

Arguments by the Appellants:

The appellants argued that the demand notice under Section 13(2) did not comply with the mandatory requirement of Section 13(3) as it did not provide a breakup of the total amount demanded. The appellants contended that the steps taken under Section 14 of the SARFAESI Act were defective as the proceedings were initiated against a deceased person, Hareshbhai Muljibhai Shah, who had died before the filing of the application under Section 14. The appellants claimed that the 1st appellant, a partnership firm, and the 2nd appellant, the main partner who was in judicial custody since August 2022 and without any income, were undergoing financial strain. The 3rd appellant, a widow and a senior citizen without any source of income, was also facing financial hardship. The appellants relied on the decisions of the Supreme Court in Sidha Neelkanth Paper Industries Pvt. Ltd. & Anr v. Prudent ARC Ltd & Ors (2023 SCC OnLine SC 12) and the Gujarat High Court in M/s. Shree Rajmoti Industries v. The Authorized Officer, Union Bank of India (Special Civil Application No. 9564/2023), arguing that they were liable to pay only 25% to 50% of the debt due as demanded in the notice under Section 13(2) of the SARFAESI Act.

Arguments by the Respondent (Asset Care and Reconstruction Enterprise Ltd.):

The respondent contended that along with the demand notice under Section 13(2), a copy of the foreclosure letter and statement of account was also attached, providing the breakup of the amount demanded. The respondent argued that the death of one of the debtors, Hareshbhai Muljibhai Shah, was not intimated to the bank, and

therefore, the bank did not have the opportunity to incorporate the legal representative of the deceased borrower in the application filed under Section 14 of the SARFAESI Act. The respondent contended that the amount due from the appellants would be the amount inclusive of interest up to date, as the definition of 'debt due' includes interest. The respondent relied on the decision of the Supreme Court in Sidha Neelkanth Paper Industries Pvt. Ltd. & Anr (Supra), wherein it was held that the borrowers have to deposit 50% of the debt due as claimed by the bank along with the interest as claimed in the notice under Section 13(2).

Court's Elaborate Opinions:

The Debts Recovery Appellate Tribunal (DRAT) observed that the demand notice under Section 13(2) did not provide a breakup of the amount demanded, and there was no indication that a detailed statement of account or a foreclosure notice was enclosed or attached with the demand notice. The DRAT held that prima facie, it could not be believed that a separate addendum was attached to the demand notice, providing a description of the amount due from the appellants. The DRAT opined that the DRT erred in accepting the oral submission made by the respondent's counsel regarding the compliance with Section 13(3) of the SARFAESI Act, as oral submissions across the bar by counsel are not evidence. The DRAT referred to the decision of the Gujarat High Court in Punjab National Bank v. M/s. Mithilanchal Industries Pvt. Ltd. (MANU/GJ/1069/2020), which held that the notice would be defective if it does not comply with Section 13(3) of the SARFAESI Act. Regarding the inadequacy of the application under Section 14 of the SARFAESI Act, the DRAT refrained from going into the details, stating that further inquiry into that aspect would have to be undertaken while determining the S.A. The DRAT observed that the appellants had succeeded in establishing a prima facie case and had also proved their financial strain to some extent. The DRAT directed the appellants to deposit a sum of ₹16 lakhs as a pre-deposit under Section 18(1) of the SARFAESI Act for the appeal to be entertained, considering that the appellants had already deposited ₹7.5 lakhs. The DRAT clarified that the amount to be deposited should be the amount

mentioned in the notice under Section 13(2), relying on the decisions of the Supreme Court in Sidha Neelkanth Paper Industries Pvt. Ltd. & Anr (Supra) and the Gujarat High Court in M/s. Shree Rajmoti Industries v. The Authorized Officer, Union Bank of India (Special Civil Application No. 9564/2023). The DRAT held that since the appellants were challenging the measures under Sections 13(2) and 13(4) of the SARFAESI Act, and not the auction sale of the secured assets, the 'debt due' within the meaning of the proviso to Section 18 of the SARFAESI Act would be the amount mentioned in the notice under Section 13(2), and not the amount inclusive of further interest.

Cases Cited:

Punjab National Bank v. M/s. Mithilanchal Industries Pvt. Ltd. (MANU/GJ/1069/2020)

Sidha Neelkanth Paper Industries Pvt. Ltd. & Anr v. Prudent ARC Ltd & Ors (2023 SCC OnLine SC 12)

M/s. Shree Rajmoti Industries v. The Authorized Officer, Union Bank of India (Special Civil Application No. 9564/2023)

Sections and Laws Referred:

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

- Section 13(2) (Demand notice)
- Section 13(3) (Requirement for providing a breakup of the amount demanded)
- Section 13(4) (Measures for recovery of secured debt)
- Section 14 (Chief Metropolitan Magistrate's power to assist secured creditors in taking possession)
- Section 17(1) (Right to appeal)
- Section 18(1) (Deposit of amount of debt due for entertaining appeal)