

M/s Tajshree Enterprises v. IDFC First Bank Ltd. & Anr.

M/s Tajshree Enterprises

...Appellant

IDFC First Bank Ltd. & Anr.

...Respondent

Case No: Misc. Appeal No. 116/2023

Date of Judgement: 21/09/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mohammed Qubbawala, Advocate.

For Respondent: Mr Rajesh Nagory along with Ms Bhagyashree Lemble and Mr Vidhur Malhotra, i/b M/s Naik Naik & Co., Advocate.

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Facts:

Misc. Appeal No. 116/2023 was filed by M/s Tajshree Enterprises, through its partner Ms Khushita Prashant Bhute (the Appellant), against IDFC First Bank Ltd. and another (the Respondents). The appeal sought a stay on the order dated 08/08/2023 in I.A. No. 1687/2023 in the Securitisation Application (S.A.) filed by the Applicant before the Debts Recovery Tribunal, Nagpur (D.R.T.). The Appellant claimed to be a tenant in the premises that were being proceeded against as a secured asset by the Respondent bank for the recovery of debt from the 2nd Respondent borrower, Tajshree Motors Pvt. Ltd., represented by its director Rahul Bhute. The Appellant firm, Tajshree Enterprises, was constituted on 04/04/2018, and the secured asset was allegedly its place of functioning. The property belonged to the borrower company and was allegedly mortgaged to the 1st Respondent bank in connection

with the debt availed on 27/12/2014. The borrower defaulted on the loan repayment, and the account was classified as a Non-Performing Asset (NPA). Consequently, a demand notice under Section 13(2) of the SARFAESI Act was issued to the company on 13/04/2018. The Appellant firm claimed to have executed a registered leave and license agreement on 10/06/2021 and was allegedly ignorant about the mortgaging of the secured asset by the borrower company. The 1st Respondent bank obtained an order from the District Magistrate under Section 14 of the SARFAESI Act to take physical possession of the secured asset. The Appellant, claiming to be a tenant, approached the D.R.T. with an application under Section 17 of the SARFAESI Act, seeking protection of the tenancy rights under subsection 4A of Section 17. The D.R.T. passed an order dated 10/10/2023, rejecting the application without examining the requirements of Section 17(4A), leading to the Appellant's grievance.

Court's Elaborate Opinions:

The Court observed that even though the Appellant claimed to have tenancy rights over the secured asset, the registered document produced in support of the purported tenancy was a leave and license agreement executed on 10/06/2021, after the loan was taken on 27/12/2014, the mortgage was created, and the demand notice was issued on 13/04/2018. The Court noted that the Appellant firm was represented by the daughter of the borrower company's director, and both the firm and the company bore the identical name "Tajshree," indicating close ties between the entities. The Court found that the firm was constituted on 04/04/2018, nine days before the demand notice under Section 13(2) of the SARFAESI Act was issued, and the leave and license agreement did not state anything about a prior entrustment of the premises to the Appellant on lease. The Court observed that there was no evidence to indicate an oral lease as argued by the Appellant's counsel, and no evidence of rent payment by the firm to the borrower company, which should have been reflected in the company's balance sheet if there was such an oral lease entrustment. The Court held that the mortgagor could not have created a lease or license in violation of Section 13(13) of the SARFAESI Act, which prohibits the transfer of

secured assets by the borrower without the secured creditor's prior written consent after receiving the demand notice. The Court examined Section 17(4A) of the SARFAESI Act, which allows the D.R.T. to examine whether a claimed tenancy or leasehold right over the secured asset has expired, is contrary to Section 65A of the Transfer of Property Act, 1882, is contrary to the terms of the mortgage, or was created after the issuance of the demand notice by the bank under Section 13(2). The Court found that there was no tenancy or leasehold right created in favor of the Appellant firm, and the leave and license agreement contained an untrue statement in Clause No. 6, which stated that no adverse notices had been issued or received by the licensor, despite the borrower company having received the demand notice under Section 13(2) of the SARFAESI Act. The Court held that the leave and license agreement, though not a lease, violated Section 65A of the Transfer of Property Act, as the duration exceeded three years and was without the consent of the mortgagee. The Court concluded that the totality of the evidence indicated that the leave and license agreement or even the constitution of the firm was intended to defeat the mortgage. Although the Presiding Officer did not discuss examining the provisions of Section 17(4A) in detail, the Court found the conclusion that the Appellant did not have a prima facie case to earn a protection order was justified.

Arguments by All Parties:

Appellant's Arguments:

The Appellant contended that the D.R.T. ought to have examined the application of subsection 4A of Section 17, which was not done, rendering the impugned order inherently defective and requiring a stay. The Appellant argued that the firm was constituted on 04/04/2018, prior to the issuance of the demand notice, and the registration certificate showed the address of the firm as the secured asset. The Appellant claimed that there was an oral lease entrustment of the premises to the Appellant prior to the execution of the registered leave and license agreement on 10/06/2021.

Respondent's Arguments:

The Respondent pointed out that the Appellant firm was represented by the daughter of the director of the borrower company, and both the firm and the company bore similar names ("Tajshree"), indicating that the setting up of the tenancy was a collusive act to thwart the Sarfaesi measures initiated by the bank. The Respondent argued that the leave and license agreement was executed on 10/06/2021, long after the default of the loan and the demand made by the creditor bank, indicating that it was an attempt to defeat the mortgage.

Cases Cited:

None

Sections and Laws Referred:

1. Section 13(2) of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)
2. Section 13(13) of the SARFAESI Act
3. Section 14 of the SARFAESI Act
4. Section 17 of the SARFAESI Act
5. Section 17(4A) of the SARFAESI Act
6. Section 65A of the Transfer of Property Act, 1882