

M/s. U Tech Agro Industries & Ors. v. Dombivli Nagari Sahakari Bank Ltd. & Anr

M/s. U Tech Agro Industries & Ors.

...Appellant

Dombivli Nagari Sahakari Bank Ltd. & Anr

...Respondent

Case No: Appeal on Diary No. 555/2021

Date of Judgement: 15/03/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Puneet Gogad, Advocate.

For Respondent: Mr Sanjay Anabhawane, i/b M/s. M & S Legal Ventures, Advocate.

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Facts:

The case involves an appeal filed by M/s. U Tech Agro Industries & Ors. (Appellants) against the Authorized Officer of Dombivli Nagari Sahakari Bank Ltd. & Anr. (Respondents) before the Debts Recovery Appellate Tribunal (DRAT), Mumbai. The Appellants have challenged the order dated 16/11/2021 passed by the Debts Recovery Tribunal-III (DRT), Mumbai, in I.A. No. 1064/2021 in Securitisation Application (S.A.) No. 135/2021, wherein the Presiding Officer declined to grant a stay in favor of the Appellants.

The Appellants are the Applicants in the aforementioned S.A. filed under Section 17(1) of the Securitisation and Reconstruction of

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

The 1st Appellant is a partnership firm and the principal borrower. Appellants 2 and 3 are partners of the firm, while Appellants 4 to 7 are guarantors/mortgagors for the loan availed by the 1st Appellant firm.

The 1st Appellant firm had availed five financial assistances from the 1st Respondent bank, consisting of a cash credit facility, three term loans, and a vehicle loan. Due to losses, the 1st Appellant firm stopped functioning, and the Respondent bank classified its account as a Non-Performing Asset (NPA) on 31/03/2018.

Subsequently, the Respondent bank issued a demand notice under Section 13(2) of the SARFAESI Act on 14/07/2018, demanding payment of ₹2,00,75,260.81 from the Appellants. Alleging that the Appellants failed to clear the debt, the Respondent bank initiated steps under Section 13(4) of the SARFAESI Act by issuing a possession notice dated 14/09/2018. The 1st Respondent then filed an application under Section 14 of the SARFAESI Act before the Additional District Magistrate for physical possession of the secured assets.

Consequently, the Appellants approached the DRT with an application under Section 17(1) of the SARFAESI Act.

Arguments by the Appellants:

The demand notice under Section 13(2) was not served upon them. The notice is not in compliance with Section 13(3), as it does not provide a break-up of the demanded amount and is therefore vitiated. The proceedings under Section 14 of the SARFAESI Act are vitiated for not filing a 9-pointer Affidavit as required by law. The reply to the Appellants' response to the demand was not given by the Authorized Officer but by an advocate. The exercise of taking physical possession has been delegated by the Tahsildar to a subordinate officer, which contravenes the settled position that the person authorized by the District Magistrate cannot sub-delegate the authority of taking possession to any other officer.

Arguments by the Respondent Bank:

The Appellants have never denied the advancement of the loan, execution of loan documents, and creation of a mortgage over the secured assets. The Appellants had knowledge of the issuance of the demand notice under Section 13(2) of the SARFAESI Act on 14.07.2018, demanding payment of an outstanding dues of ₹2,00,75,266.81, despite feigning non-receipt of the notice. The Appellants failed to raise any objection regarding the demand made in the notice or send any representation as contemplated under Section 13(3A) of the SARFAESI Act. The Appellants have suppressed material facts regarding the availing of One-Time Settlement (OTS) concessions from the Respondent Bank and its consequent breach. The second Appellant sent a letter to the Bank on 02.03.2020, offering to pay an aggregate amount of ₹1.91 crores as full and final settlement of the debt. The 1st Respondent consented to the settlement offer, but the Appellants failed to honor their commitment. Despite failing to comply with the OTS proposal, the Appellants again offered to settle the dues within 45 days vide letter dated 05.08.2020, which was sanctioned by the Respondent Bank on 21.08.2020. However, the Appellants again failed to honor their commitments. An OTS made subsequently on 17.03.2021 by the 1st Appellant for ₹2.15 crores was also defaulted. The Appellants have conveniently suppressed these facts in their application and appeal and are seeking to take advantage of the orders passed by the Hon'ble High Court of Bombay under peculiar circumstances, aiming to pay just ₹51 lacs and circumvent the mandatory provisions of Section 18(1) of the SARFAESI Act. The Respondent Bank relies on the decision of the Hon'ble Bombay High Court in MRB Roadconst. Pvt. Ltd. v/s Rupee Co-operative Bank Ltd. (2016) 3 Mah. LJ. 589, which insists on the deposit of the amount demanded under the notice contemplated under Section 13(2) of the SARFAESI Act and subsequent interest accrued till the date of filing the appeal. The amount due from the Appellants as of 31.10.2022 is ₹2,70,28,184.81. Therefore, the Appellants are liable to pay 50% of the amount due.

Court's Elaborate Opinions:

The court finds that the Appellants had approached the 1st Respondent

Bank with OTS proposals after receiving the notice under Section 13(2), which they could not have done without being served with the demand notice. The Appellants had reached out to the 1st Respondent more than once with offers for settlement. Under these circumstances, it cannot be said that the Appellants were not served with the notice under Section 13(2). In the present case, the Appellants have challenged the SARFAESI measures only after receiving the notice of dispossession, consequent to taking steps under Section 14. The Appellants had admittedly paid some amount towards the debt after receiving the demand notice. The court does not find a prima facie case made out by the Appellants to challenge the SARFAESI measures. According to the definition of 'debt' under Section 2(g) of the RDB Act, 1993, it means any liability inclusive of interest claimed as due from any person. The Appellants are, therefore, liable to pay 50% of the amount outstanding as of the filing of the appeal, as per the account statement. The amount due, inclusive of interest as of 31.10.2022, is ₹2,70,28,184.81. The appeal was filed on 20.12.2021. Considering these facts, the court determines the amount payable as a pre-deposit to be ₹1.25 crores.

Order:

The Appellants have already deposited ₹51 lacs (₹5.1 million). The balance of ₹74 lacs (₹7.4 million) shall be paid in two equal installments of ₹37 lacs (₹3.7 million) each. The first installment shall be payable on or before 29.03.2023, and the second installment shall be payable on or before 19.04.2023. In default, the Appeal shall stand dismissed without any further reference to the Tribunal. The amounts shall be deposited in the form of 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. Upon payment of the first installment within the stipulated time, the Appellants shall be entitled to a stay of further SARFAESI measures initiated by the Respondents. The Respondent Bank is at liberty to file a reply in the Appeal with an advance copy to the other side. The matter is posted on 30.03.2023 for reporting compliance concerning the payment of the

first installment.

Cases Cited:

Sidha Neelkanth Paper Industries Pvt. Ltd & Ano v/s Prudent ARC Ltd & Ors. 2023 SCC OnLine SC 12

Relied upon by the Appellants' counsel to argue that in cases where the amount mentioned in the notice under Section 13(2) of the SARFAESI Act is challenged, the debt due would be that amount. In cases where subsequent steps taken under Section 13(4) and the auction sale of the secured assets are challenged, the liability would be inclusive of interest.

MRB Roadconst. Pvt. Ltd. v/s Rupee Co-operative Bank Ltd. (2016) 3 Mah. LJ. 589

Relied upon by the Respondent Bank, insisting on the deposit of the amount demanded under the notice contemplated under Section 13(2) of the SARFAESI Act and subsequent interest accrued till the date of filing the appeal.

Sections and Laws Referred:

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

- Section 13(2) – Issuance of demand notice
- Section 13(3) – Requirement to provide a break-up of the demanded amount
- Section 13(3A) – Provision for sending representation against the demand notice
- Section 13(4) – Subsequent steps after issuance of demand notice
- Section 14 – Enforcement of security interest
- Section 17(1) – Filing of securitization application
- Section 18(1) – Deposit of amount of debt due for entertaining an appeal

Recovery of Debts Due to Banks and Financial Institutions Act, 1993

(RDB Act)

- Section 2(g) – Definition of ‘debt’