

Mahesh Tannaya Kotiyan & Anr. v. Punjab National Bank & Anr.

Mahesh Tannaya Kotiyan & Anr.

...Appellant

Punjab National Bank & Anr.

...Respondent

Case No: Appeal on Diary No. 1465/2023

Date of Judgement: 31/08/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mukesh Dongare, Advocate.

**For Respondent: Mr Vinod N., i/b M/s Law Focus, Mr Rishabh Shah,
i/b Mr. Manmohan Rao, Advocate.**

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Facts:

The case involves an appeal filed by Mahesh Tannaya Kotiyan & Anr. (Appellants) against Punjab National Bank & Anr. (Respondents) regarding Securitisation Application (S.A.) No. 23 of 2023. The Appellants are the borrowers who had filed the S.A. challenging the Sarfaesi measures initiated by the first Respondent Bank. The Appellants had sought details of the auction purchaser who allegedly purchased the property in a public auction. On 11.03.2022, the Appellants filed Interlocutory Application (I.A.) No. 261 of 2022 for amendment and an interim order of stay of the order passed by the District Magistrate under Section 14 of the SARFAESI Act. The auction purchaser appeared and sought time to

file a reply to I.A. No. 261 of 2022, which was filed on 20.04.2022. In the meantime, the Appellants received a notice from the Tahsildar for taking possession of the secured assets on or before 23.06.2022. The Appellants filed I.A. No. 722 of 2022 for amendment of the S.A. based on subsequent events and I.A. No. 723 of 2022 for a stay. The Debts Recovery Tribunal-I, Mumbai (D.R.T.) posted I.A. No. 723 of 2022 for hearing on 20.06.2022. On 21.06.2022, the Appellants claimed to have deposited the entire dues along with interest in the Bank. The D.R.T. allowed I.A. No. 261 of 2022 to the extent of impleading the auction purchaser but did not dispose of the application entirely. The Appellants filed I.A. No. 2498 of 2023 seeking clarification on whether I.A. No. 261 of 2022 was allowed in its entirety or not. The D.R.T., in the impugned order dated 01.08.2023, dismissed I.A. No. 2498 of 2023, describing it as a dilatory tactic by the Appellants to protract the matter, and imposed a cost of ₹5,000/-. The Appellants filed the present appeal challenging the order dated 01.08.2023 and sought a waiver of deposit under Section 18(1) of the SARFAESI Act.

Arguments by the Parties:

Appellants' Arguments:

The Appellants argued that in I.A. No. 261 of 2022, they had not only sought impleadment of the auction purchaser but also challenged the sale by way of amendment. The Appellants contended that the D.R.T. was expected to dispose of the application for amendment before considering the S.A., but it did not clarify whether I.A. No. 261 of 2022 was disposed of in its entirety or not. The Appellants stated that they were forced to file I.A. No. 2498 of 2023 for clarification because the D.R.T. did not clarify the order and dismissed the application with costs. The Appellants argued that an application for amendment cannot be disposed of in a perfunctory manner, and the D.R.T. should have considered and allowed or disallowed the amendment sought with a speaking order. The Appellants contended that they had made out a prima facie case for maintaining the appeal.

Respondents' Arguments:

The Respondents' counsel argued that allowing a portion of an application assumes that the rest of the prayers are disallowed. The Respondents contended that on 21.06.2022, it was I.A. No. 723 of 2022 that was posted for orders, and I.A. No. 261/2022 had not come up for consideration. The Respondents argued that the D.R.T. allowed the application with regard to the impleading of the auction purchaser, but the Appellants carried out the entire amendment, including the impleadment, which was improper.

Court's Elaborate Opinions:

The Tribunal observed that in the order dated 21.06.2022, the D.R.T. had made it clear that the matter was listed for orders on I.A. No. 723/2022. The Tribunal noted that since the Appellants had already filed I.A. No. 261 of 2022 for impleadment of the auction purchaser, the said application, up to the extent of impleadment, was allowed. However, it did not state that the rest of the amendment was disallowed. The Tribunal criticized the D.R.T. for not clarifying the order and dismissing the clarification application (I.A. No. 2498 of 2023) with costs, stating that an application for amendment cannot be disposed of in a perfunctory manner. The Tribunal found that the Appellants had made out a prima facie case for maintaining the appeal. Regarding the pre-deposit amount, the Tribunal noted that the Appellants had contended that the entire amount due in the bank had been paid, and the amount in deposit with the Bank had not been appropriated towards the debt due because the auction purchaser had already deposited the entire amount. The Tribunal directed that the amount deposited by the Appellants on 12.07.2022 before the Bank, together with the accrued interest, be produced before the Tribunal to be retained as pre-deposit for entertaining the appeal. The Tribunal ordered the Respondent Bank to produce the said amount within a week and instructed that it be invested and fixed in deposit in the name of the Registrar, DRAT, Mumbai. The Tribunal stated that the handing over of possession of the secured asset to the auction purchaser shall await further orders from the

Tribunal.

Sections and Laws Referred:

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

- Section 14 (Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset)
- Section 18(1) (Deposit of amount of debt due for entertaining an appeal)