

Mahip Industries Ltd. & Ors. v. Reliance Commercial Finance Ltd.

Mahip Industries Ltd. & Ors.

...Appellant

Reliance Commercial Finance Ltd.

...Respondent

Case No: Appeal on Diary No. 2287/2023

Date of Judgement: 20/12/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr S.S. Panesar along with Mr A. S. Panesar, Advocate.

For Respondent: Mr Sanjay Anabhawane along with Mr Mohit Shamdasani, i/b Mr Nikhil Salvi, Advocate.

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Facts:

The case involves an appeal filed by Mahip Industries Ltd. & Others (Appellants) challenging the order dated 07.12.2023 in Securitisation Application (S.A.) No. 365 of 2023 on the files of the Debts Recovery Tribunal-I, Ahmedabad. The Debts Recovery Tribunal (D.R.T.) declined to grant any protection to the applicants against the SARFAESI measures initiated against the secured assets by the Respondent financial institution (F.I.), Reliance Commercial Finance Ltd., under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Appellants had approached the D.R.T. with an application under Section 17(1) of the SARFAESI Act, raising various challenges. One of the main

challenges raised was that the claimed debt is not a secured debt. The Appellants contended that two indentures of mortgage concerning three properties limit the mortgage to a sum of ₹20 lakhs each, totaling ₹40 lakhs. The Appellants further contended that the Section 13(2) notice did not provide a breakup of the principal and interest as required under Section 13(3) of the SARFAESI Act. The Appellants also challenged the order passed under Section 14, alleging that the mortgage documents were not adequately perused or considered. The Appellants argued that the SARFAESI measures could not have been initiated due to the embargo under Section 26(D) of the SARFAESI Act, which requires registration before proceeding with securitization measures. The Ld. Presiding Officer considered the contentions raised and found that the prima facie case was not sustainable, hence declining to grant any protection.

Argument by the Appellants:

The Appellants contended that they have a strong prima facie case. They argued that they were under financial strain because a major portion of their factory had been acquired through a notification in 2018 for a National Highway project, substantially affecting the factory's functioning and profitability. The Income Tax Returns of all the Appellants, including the company, were produced to show that the income derived was insufficient to pay 50% of the mandatory pre-deposit. The Appellants sought the indulgence of the Tribunal to reduce the mandatory pre-deposit to a minimum of 25% of the amount due. The Appellants argued that even though Chapter IV-A of the SARFAESI Act came into effect from 24.01.2020, Section 26(D) makes it clear that recovery measures could be effected only after registration, and therefore, issuing a notice under Section 13(2) required CERSAI registration. The Appellants contended that the fact that the loan was sanctioned in 2017 would not help the Respondent.

Argument by the Respondent:

The Ld. Counsel for the Respondent F.I. vehemently opposed the application for reducing the pre-deposit amount to 25%. Citing the Supreme Court decision in Sidha Neelkanth Paper Industries Private

Limited & Ano. vs Prudent ARC Limited & Ors. (2023 SCC OnLine SC 12), the Respondent argued that since the measures under Sections 13(4) and 14 were challenged, the Appellants were liable to pay 50% of the amount demanded in the notice under Section 13(2), which was ₹5,80,99,420/-. The Ld. Counsel for the Respondent pointed out that CERSAI registration was not mandatory, and the provision under Section 26(D) came into effect only on 24.01.2020, while the loan was sanctioned and disbursed in 2017. The Ld. Counsel for the Respondent referred to the demand notice under Section 13(2), which provided a breakup of the principal amount and interest claimed, complying with Sub-Section (3) of Section 13 of the SARFAESI Act. Regarding the land acquisition for the National Highway, the Ld. Counsel for the Respondent assumed that the Appellants had received substantial compensation under the Land Acquisition Act, as nothing was mentioned about it in the application. In response, the Ld. Counsel for the Appellants contended that the compensation amount was used to clear loans due to the Punjab National Bank, as they were the secured creditors of the factory, and therefore, no compensation amount remained with the Appellants.

Court's Elaborate Opinions:

The Tribunal found that the Appellants had succeeded in establishing a prima facie case challenging the SARFAESI measures. The Tribunal also noted that the Appellants had succeeded in establishing their impecuniosity to some extent and could not be directed to deposit 50% as a pre-deposit. Considering the entire facts and circumstances of the case, the Tribunal directed the Appellants to deposit a sum of ₹1.75 crores as a pre-deposit. The Tribunal accepted the submission of a demand draft for ₹30 lakhs by the Appellants towards payment of the pre-deposit. The balance amount of ₹1.45 crores was ordered to be paid in three installments within a gap of two weeks each, with specific dates mentioned in the order. The Tribunal warned that any default in payment of the installments would result in the dismissal of the appeal without further reference. Given the payment of ₹30 lakhs, the taking over of physical possession of the secured asset on the 25th instant was deferred until the next date of hearing. The Tribunal

directed that the amount deposited should be invested in term deposits in the name of the Registrar, DRAT, Mumbai, with any nationalized bank, initially for 13 months, and then renewed periodically.

Sections and Laws Referred:

Section 17(1) of the SARFAESI Act – The Appellants approached the D.R.T. with an application under this section, raising various challenges.

Section 13(2) of the SARFAESI Act – The Appellants contended that the notice under this section did not provide a breakup of the principal and interest as required under Section 13(3).

Section 13(3) of the SARFAESI Act – This section requires the demand notice under Section 13(2) to provide a breakup of the principal and interest.

Section 13(4) of the SARFAESI Act – The Respondent cited the Supreme Court decision in the context of challenging measures under this section.

Section 14 of the SARFAESI Act – The Appellants challenged the order passed under this section, alleging that the mortgage documents were not adequately perused or considered.

Section 26(D) of the SARFAESI Act – The Appellants argued that the SARFAESI measures could not have been initiated due to the embargo under this section, which requires registration before proceeding with securitization measures.

Section 18(1) of the SARFAESI Act – The amount to be paid as a pre-deposit is based on this section.

Cases Cited:

Sidha Neelkanth Paper Industries Private Limited & Ano. vs Prudent ARC Limited & Ors. (2023 SCC OnLine SC 12) – The Respondent cited this Supreme Court decision in the context of challenging measures under Sections 13(4) and 14 of the SARFAESI Act.