

# Matrukrupa Calcin Industry and Ors. v. ICICI Bank Ltd & Anr.

Matrukrupa Calcin Industry and Ors.

...Appellant

ICICI Bank Ltd & Anr.

...Respondent

Case No: Appeal on Diary No. 1790/2023

Date of Judgement: 19/10/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Puneet Gogad, i/b Ms. S. Singh, Advocate.

For Respondent: Mr. R. L. Motwani, Advocate.

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**Facts:**

This is an order dated 19/10/2023 passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai in I.A. No. 701/2023 filed in Appeal on Diary No. 1790/2023. The appellants are Matrukrupa Calcin Industry and Others. The respondents are ICICI Bank Ltd. & Another. The appellants have filed an appeal impugning the order dated 01.09.2023 passed by the Debts Recovery Tribunal-II (DRT), Ahmedabad in S.A. No. 435/2023. In the DRT order, the interim protection granted earlier to the appellants from the respondent bank's SARFAESI proceedings was vacated. The DRT had refused to grant any further protection to the appellants. The respondent bank had issued a demand notice under Section 13(2) of the SARFAESI Act on 12.04.2022 for Rs. 85,93,711.13/- . The appellants had raised objections to this notice, but the bank

initiated action under Section 13(4) without filing a Securitisation Application (S.A.) before the DRT. The S.A. was filed by the bank only after orders under Section 14 were passed by the Chief Metropolitan Magistrate (CMM) for taking physical possession of the secured assets. On 17.08.2023, the DRT had directed the appellants to deposit Rs. 10,00,000/- within 7 days and submit an One-Time Settlement (OTS) proposal for remaining dues. The appellants deposited Rs. 10,00,000/- in time and interim protection was granted. However, their OTS proposal was rejected by the respondent bank as the amount offered was meagre. On 01.09.2023, the DRT was informed that the outstanding debt was Rs. 90,48,959.73 and the appellants were not making earnest efforts to settle. The appellants sought 4 months' time before the DRT to settle entire dues, which was denied. The appellants apprehend that the respondent bank may proceed to take physical possession of the secured assets under Section 14 on 22.10.2023.

#### **Arguments by Appellants:**

The appellants have challenged the SARFAESI measures initiated by the respondent bank under Sections 13(4) and 14 of the Act. It is argued that the notice contemplated under Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules has not been complied with by the bank. In the application filed under Section 14, the nine-pointer affidavit has not been filed by the bank. The name and designation of the authorized officer have also not been specified by the bank. The appellants state that they have a strong prima facie case to sustain the S.A. filed before the DRT. It is pleaded that the 1st appellant is a proprietorship owned by the 2nd appellant, who has filed income tax returns showing insufficient income to deposit 50% of the debt amount. The remaining appellants do not have any source of income and have not filed any income tax returns. Hence, the appellants seek indulgence under the third proviso of Section 18(1) to reduce the pre-deposit amount to 25% of the debt demanded under Section 13(2) notice.

#### **Arguments by Respondent Bank:**

The respondent bank vehemently opposes waiver or reduction of the pre-deposit amount of 50% under Section 18(1). It is argued that the

appellants had no substantial challenge against the SARFAESI measures initiated. The appellants were only purchasing time by making submissions before the DRT, which generously granted them opportunities. However, the OTS offer made by the appellants was too meagre to be accepted by the bank. Even in the impugned order, the appellants had sought 4 months' time to settle the entire dues, showing lack of intention to repay promptly. It is contended that the appellants are only protracting the matter and are not interested in repaying the debt. Therefore, the respondent bank urges that the appellants should be directed to deposit 50% of the debt amount as pre-deposit.

**Court's Elaborate Opinions:**

The Court observed that while the appellants may not have a strong prima facie case, it is sufficiently proven that they are under financial strain. There is no business being conducted by the appellants currently, and most of them do not have any income source. Considering the entire facts and circumstances, the Court directed the appellants to deposit a sum of Rs. 25,00,000/- as pre-deposit under Section 18(1). The appellants offered to deposit Rs. 10,00,000/- by way of demand draft on the same day (19.10.2023). For the balance amount of Rs. 15,00,000/-, the Court granted time till 09.11.2023 to the appellants. In view of the part payment of Rs. 10,00,000/- on 19.10.2023, the taking over of possession scheduled for 22.10.2023 by the bank under Section 14 shall stand deferred till the next hearing date. The Court made it clear that in default of payment of the remaining pre-deposit amount of Rs. 15,00,000/- by 09.11.2023, the appeal shall stand dismissed without any further reference. The pre-deposit amounts are to be deposited by way of demand drafts with the Registrar of DRAT, Mumbai. Once deposited, the amounts shall be invested by the Registrar in term deposits with any nationalized bank for 13 months initially, and thereafter renewed periodically. The respondent bank was granted liberty to file a reply in the appeal by serving an advance copy to the appellants. The matter was posted for next hearing on 10.11.2023 to report compliance regarding payment of the remaining pre-deposit instalment.

## **Sections and Laws Referred:**

Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) – Deposit of amount of debt due for entertaining appeal.

Third proviso to Section 18(1) – Power of DRAT/DRAT to reduce the pre-deposit amount below 25% in certain circumstances.

Section 13(2) of SARFAESI Act – Issuance of demand notice by secured creditor.

Section 13(4) of SARFAESI Act – Secured creditor can take possession of secured assets.

Section 14 of SARFAESI Act – Chief Metropolitan Magistrate/District Magistrate to assist secured creditor in taking possession.

Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002 – Procedure for taking possession of secured assets.

No specific cases were cited by the Court in this order.

The Court has adjudicated the issue of pre-deposit payable by the appellants by considering the relevant facts, arguments of both sides, financial capacity of the appellants, and applicable legal provisions under the SARFAESI Act. A reasoned and balanced order has been passed, granting some leeway to the appellants while ensuring compliance with the statutory pre-deposit requirement.