

Mr Amol Shivaji Rokade & Anr. v. Housing Development Finance Corporation Ltd.

Mr Amol Shivaji Rokade & Anr.

...Appellant

Housing Development Finance Corporation Ltd.

...Respondent

Case No: Misc. Appeal on Diary No. 944/2023

Date of Judgement: 14/06/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Herbert Noronha, i/b Mr Prafull Mahadik, Advocate.

For Respondent: Mr Shreesh Oak, i/b M/s. SC Legal, Advocate.

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Facts:

The matter pertains to I.A. No. 373/2023 (WoD), filed in Misc. Appeal on Diary No. 944/2023 before the Debts Recovery Appellate Tribunal (DRAT), Mumbai. The Appellants are Mr. Amol Shivaji Rokade & Anr., and the Respondent is Housing Development Finance Corporation Ltd. (HDFC). The I.A. is an application for waiver of deposit filed under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), seeking a reduction of the pre-deposit amount to a minimum of 25%. The appeal is directed against the order of the Debts Recovery Tribunal No. I, Mumbai (D.R.T.) dated 05.06.2023 in I.A. No. 2018/2023 in S.A. No. 102/2023, wherein the D.R.T. declined to grant any interlocutory order regarding the SARFAESI measures initiated by the Respondent Bank. The

Respondent Bank had issued a notice under Section 13(2) of the SARFAESI Act on 16.04.2019, demanding a sum of ₹1,61,38,521/- together with interest within 60 days from the Appellants. The Appellants had sent a reply seeking time to pay the amount but did not raise any contentions challenging the propriety of the notice. Upon defaulting payment within the stipulated time, the Respondent Bank initiated action under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate.

Arguments by the Parties:

Appellants' Arguments:

The notice under Section 13(2) is not proper because it has not been issued by an authorized officer as contemplated under Rule 2(a) of the Security Interest (Enforcement) Rules, 2002.

As per the resolution dated 15.07.2005, the authorized officer who issued the notice under Section 13(2) and filed the application under Section 14 of the SARFAESI Act was only a manager recovery and, therefore, does not come within the definition of Rule 2(a), which insists that an authorized officer should not be a person below the rank of the Chief Manager.

The proceedings under Section 14 are also impugned because the 9-pointer affidavit and accompanying application are not proper, as nothing has been stated regarding the reply sent by the Appellants to the Section 13(2) notice and the rejoinder sent by the Bank.

Respondent's Arguments:

The application under Section 14 states regarding the reply sent to the notice under Section 13(2) and the rejoinder sent, and there is no need to mention it again in the accompanying affidavit, as the application and affidavit are to be read together. In the reply sent to the demand notice under Section 13(2), no contention was raised except for seeking time to pay the amount, and therefore, it has to be taken that the Appellants have admitted their liability to the tune of ₹1,61,38,521/- together with interest demanded in the notice. The

Appellants are not entitled to any injunction because a prima facie case, the balance of convenience, and irreparable injury have not been sufficiently proved and established. The conduct of the parties has not been proper because despite seeking time to pay the amount in 2019, they have not made any substantial payment towards the debt as undertaken. Criminal proceedings have been lodged against the Appellants for not complying with the supply of flats they had constructed for their clients.

Court's Elaborate Opinions:

The Appellate Tribunal considered the decisions relied upon by the Respondent in Narayan Chandra Ghosh vs. UCO Bank & Ors. (2011) 4 SCC 548 and ASREC (India) Ltd. vs. Fastgrowth Hospitality LLP, represented by its Designated partner Bhaven Parikh & Ors., 2023 SCC OnLine Bom 174. The Appellate Tribunal found that the Appellants do not have a very strong prima facie case because they have waived their contentions to the Section 13(2) notice by sending a reply accepting the amount demanded and seeking time to pay. The reply was sent through counsel. Regarding the objection to the authorized officer's competence, the Tribunal noted that the Respondent still has the opportunity to provide evidence that the authorized officer was competent during the pendency of the S.A. The Tribunal agreed with the Respondent's counsel that the affidavit must be read together with the application under Section 14 of the SARFAESI Act. If there is a contention raised in the application that fulfills the requirement of the 9-pointer affidavit, that would be sufficient. The total amount due as of the filing date of the appeal was ₹2.28 crores. The Appellate Tribunal directed the Appellants to deposit a sum of ₹1 crore towards pre-deposit for the appeal to be entertained. The Appellants were allowed to deposit ₹14 lakhs by way of demand draft on the same day, and the balance amount of ₹86 lakhs was to be deposited in two equal installments of ₹43 lakhs each within a gap of three weeks each. Failure to pay any of the installments would entail the dismissal of the appeal without any further reference to the Tribunal. In view of the payment made towards the pre-deposit, there shall be a stay of further proceedings under the SARFAESI measures till further

orders. The deposited amounts were directed to be 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. The Respondent was given liberty to file a reply in the Appeal with an advance copy to the other side.

Sections and Laws Referred:

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

Section 13(2) (Notice of Demand)

Section 14 (Enforcement of Security Interest)

Section 18(1) (Deposit of amount of debt due for filing appeal)

Security Interest (Enforcement) Rules, 2002

Rule 2(a) (Definition of Authorized Officer)

Cases Cited:

Narayan Chandra Ghosh vs. UCO Bank & Ors. (2011) 4 SCC 548

ASREC (India) Ltd. vs. Fastgrowth Hospitality LLP, represented by its Designated partner Bhaven Parikh & Ors., 2023 SCC OnLine Bom 174