

Pandiyan Nallakannu Naidu & Anr. v. Punjab National Bank & Anr.

Pandiyan Nallakannu Naidu & Anr.

...Appellant

Punjab National Bank & Anr.

...Respondent

Case No: Appeal No. 14/2021

Date of Judgement: 09/03/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Rajesh Nagory, i/b Ms Sanjana Ghogare, Advocate.

For Respondent: Ms Asha Bhuta, i/b M/s. Bhuta & Associates, Advocate.

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Facts:

Pandiyan Nallakannu Naidu & Anr. (Appellants) filed an appeal against the order dated 28.12.2020 of the Debts Recovery Tribunal-I, Ahmedabad (D.R.T.), dismissing Securitisation Application (S.A.) No. 5 of 2020. The Appellants are alleged to be guarantors for credit facilities granted to M/s. S. R. Constructions, a partnership firm, whose partners were the father-in-law and elder brother of the first Appellant. The borrowers defaulted on the loan payment, and the account was classified as a Non-Performing Asset (NPA) on 28.12.2018. The Respondent Bank (Punjab National Bank) issued a notice under Section 13(2) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) on 29.12.2018, demanding ₹1,14,00,405.05 within sixty days. The

Respondent Bank took physical possession of the secured assets belonging to the Appellants on 11.03.2019 without issuing notice as per the Security Interest (Enforcement) Rules, 2002. The Respondent Bank filed an application under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate, Ahmedabad, which was allowed on 03.09.2020. The Appellants submitted a one-time settlement (OTS) proposal for ₹95 lacs to the Respondent Bank, and paid ₹5 lacs towards it. The Respondent Bank proceeded with the auction sale of the property, citing delay in payment of the remaining ₹10 lacs towards the OTS.

Court's Elaborate Opinions:

The Debts Recovery Appellate Tribunal (DRAT) held that it is not necessary to bring the legal representatives of the deceased partners of a partnership firm on record in a Sarfaesi proceeding, as they do not step into the shoes of the borrowers for Sarfaesi measures. The DRAT found that the Presiding Officer was justified in not accepting the Appellants' contentions and in finding that the Appellants failed to challenge the Sarfaesi action within the stipulated time of limitation. The DRAT agreed with the impugned order's finding that the Appellants had voluntarily surrendered possession of the secured assets. Regarding the rejection of the OTS proposal, the DRAT stated that there is little scope for intervention by the Tribunal, as the acceptance of an OTS proposal should ultimately be left to the commercial wisdom of the bank.

Arguments by Parties:

Appellants:

Contended that the demand notice under Section 13(2) of the SARFAESI Act was never served upon the legal representatives of the borrowers, rendering the notice faulty. Argued that the Respondent Bank took physical possession of the secured assets without issuing notice as per the Security Interest (Enforcement) Rules, 2002. Claimed that the proceeding under Section 14 of the SARFAESI Act was bad for non-compliance with the mandatory affidavit required under Section

14(1)(i) to (ix). Contended that the Presiding Officer failed to appreciate the objections raised by the Appellants in the S.A. in the proper perspective, and that there was a gross violation of the provisions of the SARFAESI Act. Argued that the classification of the account as NPA was defective, and that the demand notice under Section 13(3) of the SARFAESI Act required a break-up of the amount demanded, and default in doing so would render the notice invalid. Contended that the non-acceptance of the OTS proposal by the Respondent Bank displayed a high-handed manner in handling the situation.

Respondent Bank:

No specific arguments mentioned in the summary.

Cases Cited:

The Bijnor Urban Co-Operative Bank Ltd. Bijnor & Ors. Vs. Minal Agarwal & Ors. AIR 2022 SC 56

Sections and Laws Referred:

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

- Section 13(2) (Demand notice)
- Section 13(3)
- Section 14 (Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset)
- Section 14(1)(i) to (ix)

Security Interest (Enforcement) Rules, 2002

- Rules 8(1) and 8(2)

Recovery of Debts and Bankruptcy Act, 1993