

Parekh Automotives Pvt Ltd & Anr. v. Apna Sahakari Bank Ltd & Anr.

Parekh Automotives Pvt Ltd & Anr.

...Appellant

Apna Sahakari Bank Ltd & Anr.

...Respondent

Case No: Appeal on Dairy No.1584/2023

Date of Judgement: 01/09/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Ayush Kotari, along with Mr. Sailesh Kumar Rai, Advocate.

For Respondent: Mr. Charles D'souza, along with Mr. Nikhil Rajani, i/b M/s. V. Deshpande & Co., Advocate.

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Facts:

This case is an appeal before the Debts Recovery Appellate Tribunal (DRAT) in Mumbai. The appellants are Parekh Automotives Pvt Ltd (Appellant No. 1), a company, and its directors (Appellant Nos. 2 & 3). The respondent is Apna Sahakari Bank Ltd (Respondent No. 1). In 2021, Respondent Bank classified Appellant No. 1's account as a Non-Performing Asset (NPA). On 01.10.2021, Respondent Bank issued a demand notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) demanding Rs. 9,62,22,796/- as of 31.08.2021 from the appellants. The appellants responded to the

notice, admitting the debt and seeking: a) Six months time to pay the loan in quarterly instalments of Rs. 24,00,000/- each b) Concession on the interest rate There was a prior arbitration proceeding between the parties, whose award was challenged unsuccessfully by the appellants before the High Court. Before the Debt Recovery Tribunal (DRT), the appellants sought three months time to pay the amount, undertaking to attempt to sell Appellant No. 2's ancestral property to raise funds to pay off the debt. The DRT refused to grant any order stalling the SARFAESI proceedings initiated by the bank against the appellants' secured assets, which comprised four flats in Ville Parle, Mumbai. Aggrieved by the DRT order, the appellants filed this appeal before the DRAT.

Arguments by the Appellants:

Appellant No. 1 company is running at a loss and has almost become defunct. Appellant No. 2 is a 77-year-old man who was incarcerated for about 9 months in 2022. Appellant No. 3 is a 70-year-old lady. Appellants 2 & 3 do not have substantial means of income to pay off the debt. The appellants seek minimum 25% of the debt amount as pre-deposit citing their financial strain. They have challenged the bank's action for physical possession u/s 14 of SARFAESI Act, arguing that the name and designation of the authorized officer have not been specified, which is a requirement under the Rules.

Arguments by the Respondent Bank:

Despite replying to the Section 13(2) notice seeking time to pay, the appellants have not made any payments. The outstanding dues have now mounted to approximately Rs. 12,31,00,000/-. Four flats have been provided as security assets, and the bank intends to take possession of these properties. There is no material to show that the appellants are under financial strain. The appellants have not made out any prima facie case or arguable case against the SARFAESI measures initiated by the bank.

Court's Observations and Order:

The court finds that the appellants have not been able to make out

a strong prima facie case, much less an arguable case, in support of their challenge to the SARFAESI measures initiated by the bank. In their reply to the Section 13(2) demand notice, the appellants admitted their liability and only sought indulgence in reducing the interest rate and time to pay off the debt in instalments. There is little material to show the impecunious condition of the appellants to justify bringing down the pre-deposit amount to a minimum of 25% of the debt. Following the Supreme Court's decision, the appellants would have to deposit 50% of the amount demanded in the Section 13(2) notice if the SARFAESI measures under Sections 13(2) and 13(4) are challenged. 50% of the amount demanded in the notice would be approximately Rs. 4.8 crores. Apart from Appellants 2 and 3 being over 70 years old, there is no other consideration that could be given to the appellants. The appellants are directed to deposit a sum of Rs. 4 crores as pre-deposit. The counsel for the appellants undertakes to produce a demand draft of Rs. 10,00,000/- the next day before the scheduled time for taking over possession of the properties. In such a case, the taking over of possession shall be deferred till the next date of hearing, and the balance amount of Rs. 4 crores shall be paid in three equal instalments as follows: a) First instalment of Rs. 1.30 crores on or before 22.09.2023 b) Second instalment of Rs. 1.30 crores on or before 13.10.2023 c) Third instalment of Rs. 1.30 crores on or before 03.11.2023 In default of payment of instalments, the appeal shall stand dismissed without any further reference to the DRAT. The amounts shall be deposited in the form of a Demand Draft with the Registrar of the DRAT, Mumbai, and invested in term deposits in the name of the Registrar, DRAT, Mumbai, with any nationalised bank, initially for 13 months and thereafter renewed periodically. The respondent bank is at liberty to file a reply in the appeal with an advance copy to the appellants. The matter is posted on 25.09.2023 for reporting compliance regarding the payment of the first instalment.

Sections and Laws Referred:

Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (SARFAESI Act) a) Section 13(2) – Demand notice by secured creditor b) Section 13(4) – Secured creditor’s right to take possession of secured assets c) Section 14 – Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset

Rules under the SARFAESI Act (specific rule not mentioned, but relating to the requirement of specifying the name and designation of the authorized officer for taking possession of secured assets).

Cases Cited:

Supreme Court decision regarding the requirement of depositing 50% of the amount demanded in the Section 13(2) notice if the SARFAESI measures under Sections 13(2) and 13(4) are challenged (specific case name not mentioned).