

Punam Kumari Singh & Ors. v. The South India Bank Ltd. & Ors.

Punam Kumari Singh & Ors.

...Appellant

The South India Bank Ltd. & Ors.

...Respondent

Case No: Appeal on Diary No. 1493/2023

Date of Judgement: 04/09/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Ms Payal S Kaware, Advocate.

For Respondent: Mr Benny Joseph, i/b M/s BJ Law Offices LLP, Advocate.

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Facts:

The case involves an appeal filed by Punam Kumari Singh & Ors. (Appellants) against The South India Bank Ltd. & Ors. (Respondents) regarding Securitisation Application (S.A.) Diary No. 1357 of 2022. The Appellants challenged the order dated 20.07.2023 in Interlocutory Application (I.A.) No. 1131 of 2022, wherein the Debts Recovery Tribunal, Pune (D.R.T.) declined to grant interlocutory relief against the Sarfaesi measures under Section 17(1) of the SARFAESI Act. The S.A. was filed by the Appellants, challenging the Sarfaesi measures initiated against a property offered as security by Defendants Nos. 3 to 5 to the first Respondent, M/s South Indian Bank Ltd. (SIB), towards a cash

credit facility availed by the second Defendant company, M/s Goodday Venture (India) Pvt. Ltd. The Appellants claimed to have approached Defendants Nos. 3 to 5 for purchasing the subject property for ₹1,20,00,000/-, which was more than the market price. The Appellants held a joint meeting with the borrowers and SIB, where SIB agreed to come up with an One-Time Settlement (OTS) proposal for the borrowers to settle the debt by accepting the said amount. The Appellants conducted due diligence, including publishing a notice in the newspaper inviting objections to the sale, and inspected the title deeds held by SIB. The Appellants entered into an agreement to sell on 14.02.2020, registered the deed with the Sub-Registrar, Haveli, and paid ₹32,00,000/- as an advance, which was handed over to SIB and accepted as payment towards the OTS scheme. The Appellants took possession of the subject property after the pandemic and expended huge sums to renovate the existing building. The agreement dated 14.02.2020 was cancelled and re-registered due to corrections required in the names of the Appellants. The borrowers defaulted further payment, and the Bank initiated Sarfaesi measures, including issuing a demand notice and taking symbolic possession on 30.11.2019 under Section 13(4) of the SARFAESI Act. Physical possession of the subject property was taken on 21.07.2022, and it was subsequently put up for public auction and sold to the highest bidder, M/s Vcreatek Consulting Services Pvt. Ltd., for ₹2.04 crores. The Appellants approached the D.R.T. with the S.A., seeking interim relief to protect their possession over the subject property as bona fide purchasers, but the prayer was declined. The Appellants filed the present appeal with a delay of 395 days and sought condonation of the delay.

Arguments by the Parties:

Appellants' Arguments:

The Appellants stated that the borrowers had tried their level best to negotiate with the Bank and settle the debt, and although the Bank Authorities initially assured settlement, the Appellants were shocked to hear that a possession notice was issued. The

Appellants sought condonation of the 395-day delay in filing the appeal due to the delay caused by the borrowers' negotiations with the Bank.

Respondent's Arguments:

The Respondent Bank argued that there is no provision to condone the delay in filing an appeal under Section 18 of the SARFAESI Act, as the provisions of Section 5 of the Limitation Act are not applicable to such proceedings. The Bank contended that the subject property has already been sold to the highest bidder, who has deposited the entire sale consideration, and the Sale Certificate has been issued. The Bank argued that the Appellants are trying to set up a private transaction, and the agreement to sell was cancelled due to an error regarding the Appellants' names, making it hit by the provisions of Section 23 of the Indian Contract Act. The Bank further submitted that after taking possession of the subject property, the Appellants broke open the seal and trespassed onto the property on 21.08.2023, leading to a police complaint being filed against them for offenses punishable under Sections 448 and 34 of the Indian Penal Code.

Court's Elaborate Opinions:

The Tribunal observed that the Appellants had negotiated with the borrowers for purchasing the subject property, knowing fully well that it was mortgaged in favor of the Respondent Bank for a debt availed by the borrowers. The Tribunal noted that there was no sale deed executed in favor of the Appellants, and the agreement to sell dated 14.02.2022 was cancelled due to an error. The Tribunal found that the Appellants were admittedly not yet the owners in possession of the subject property, and even if they were given possession by the borrowers and expended money for improvement, their remedy against the borrowers would lie before a civil court of competent jurisdiction and not before the D.R.T. The Tribunal prima facie found no defect in the impugned order of the D.R.T. which was challenged in this appeal.

Regarding the Respondent Bank's contention that there is no provision for condoning delay under the SARFAESI Act, the Tribunal referred to the Hon'ble Supreme Court's decision in Baleshwar Dayal Jaiswal vs. Bank of India & Ors (2016) 1 SCC 444, which held that:

- Even though no provision for condonation of delay is provided for in filing an appeal in the SARFAESI Act, Section 18(2) expressly adopts and incorporates the provisions of the Recovery of Debts & Bankruptcy Act, 1993 ('RDB Act'), which provides for condonation of delay in filing an appeal under the proviso to Section 20(3).
- The Appellate Tribunal is empowered to entertain the appeal filed beyond the period of limitation on being satisfied that there is sufficient cause for not filing the appeal within the statutory period.
- Even though Section 5 of the Limitation Act may be impliedly inapplicable, the principle may be applied.

The Tribunal considered whether there was "sufficient cause" for condoning the delay in the instant case. The Tribunal found that the Appellants' contention of waiting for a favorable negotiation between the Bank and the borrowers for over a year before filing the appeal was not a "sufficient cause" with no bona fides and was not acceptable. The Tribunal stated that the court does not come to the assistance of those who sleep over their rights, and the application for condonation of delay lacked merits and was, therefore, dismissed.

Cases Cited:

Baleshwar Dayal Jaiswal vs. Bank of India & Ors (2016) 1 SCC 444

Sections and Laws Referred:

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

- Section 13(4) (Measures after issuing Demand Notice)
- Section 17(1) (Right to lodge a caveat)
- Section 18 (Appeals to Appellate Tribunal)

Recovery of Debts & Bankruptcy Act, 1993 (RDB Act)

- Section 20(3) (Appeal to Appellate Tribunal)

Indian Contract Act

- Section 23 (What considerations and objects are lawful, and what not)

Indian Penal Code

- Section 448 (Punishment for house-trespass)
- Section 34 (Acts done by several persons in furtherance of common intention)

Limitation Act

- Section 5 (Extension of prescribed period in certain cases)