

Ramadevi R. Prajapati v. IDFC First Bank Ltd. & Ors.

Ramadevi R. Prajapati

...Appellant

IDFC First Bank Ltd. & Ors.

...Respondent

Case No: Appeal on Diary No. 249/2023

Date of Judgement: 20/02/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Mr. Minesh K. Shah, Advocate.

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

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Facts:

This is an order passed in I.A. No. 110/2023 (WoD) in Appeal on Diary No. 249/2023 by the Debts Recovery Appellate Tribunal, Mumbai. The appellant, Ramadevi R. Prajapati, is appealing against the order dated 03.02.2023 of the Debts Recovery Tribunal-III, Vashi, Mumbai (DRT) in I.A. No. 375/2023 in Securitisation Application (SA) No. 45/2020. The DRT declined to grant an interlocutory order stalling the taking over of possession of the secured assets by IDFC First Bank Ltd. (Respondent No. 1). The secured asset is Room-105, 1st floor Jai Ambika Palace, CHS Navghar Road, Bhayander (East), Thane, co-owned by the appellant and her husband (4th Respondent). The appellant claims to have no knowledge of mortgaging her property to any financial institution and alleges fraud by Respondent No. 1 in securing possession of the title deeds.

Respondent No. 1 contends that the debt was originally granted by Capital First Limited, which merged with Respondent No. 1, and the property was mortgaged by deposit of the title deed.

Respondent No. 1 took symbolic possession under Section 13(4) of the SARFAESI Act and obtained an order of possession from the District Magistrate under Section 14 in 2019.

Court's Elaborate Opinions:

The court found that the appellant did not make out a prima facie case and did not approach the Tribunal with clean hands, and therefore, was not entitled to interlocutory relief of injunction. The court observed that the appellant had been sleeping over her rights despite being aware of the SARFAESI measures taken by Respondent No. 1 as early as 2019. The court directed the appellant to deposit a sum of ₹20 lakhs as a pre-deposit in two equal installments, considering that the demand included certain amounts that cannot be added to the demand. The court granted an extension for taking over possession until further orders, subject to the appellant depositing the pre-deposit amounts within the stipulated time.

Arguments by the Parties:

Appellant's Arguments: The appellant claimed to have no knowledge of mortgaging her property and alleged fraud by Respondent No. 1 in securing possession of the title deeds.

The appellant contended that the notice under Section 13(2) of the SARFAESI Act was never delivered. The appellant pleaded that the secured asset is her residential flat and that she should not be rendered homeless due to her impecunious condition and her husband's limited means of income. The appellant sought to invoke the discretionary power under the third proviso to Section 18(1) of the SARFAESI Act to reduce the amount of pre-deposit to 25%.

Respondent's Arguments: Respondent No. 1 contended that the notice under Section 13(2) was served at the same address mentioned by the appellant in the SA and the Appeal Memorandum, attracting the

presumption under Section 27 of the General Clauses Act.

Respondent No. 1 argued that the appellant had come up with a fictitious case of fraud and that the non-cognizable (NC) complaint lodged by her before the police only attracted offenses under Sections 504 and 509 of the IPC, with no allegation of fraud.

Respondent No. 1 submitted that the appellant had not made out a case to get the mandatory 50% pre-deposit reduced to 25%.

Sections and Laws Referred:

Section 13(2), 13(4), and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Section 18(1) of the SARFAESI Act (proviso for reducing pre-deposit amount)

Section 17 of the SARFAESI Act (application to DRT by aggrieved persons)

Section 27 of the General Clauses Act (presumption of service of notice)

Rule 3 of the Security Interest (Enforcement) Rules

Sections 504 and 509 of the Indian Penal Code (IPC)

No specific cases were cited in the order.