

Ramchandra Khandu Shinde v. GIC Housing Finance Ltd.

Ramchandra Khandu Shinde

...Appellant

GIC Housing Finance Ltd.

...Respondent

Case No: Appeal on Diary No. 445/2023

Date of Judgement: 27/03/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Ms. Sonali Jain along with Ms. Khushboo Agarwal, Advocate.

For Respondent: Mr. Sanjay Anabhawane, i/b M/s. M & S Legal Ventures, Advocate.

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Facts:

This is an order passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai in I.A. No. 183/2023 arising out of Appeal on Diary No. 445/2023. The appellant is Ramchandra Khandu Shinde, and the respondent is GIC Housing Finance Ltd. The appellant is challenging the order dated 29.08.2022 passed by the Debts Recovery Tribunal (DRT)-II, Mumbai in I.A. No. 1974/2022 in Securitization Application (S.A.) No. 256/2022. In the DRT order, the injunction sought by the appellant against the respondent bank from taking physical possession of the secured assets was declined. The DRT found no prima facie case as the appellant did not respond to the demand notice under Section 13(2) of the SARFAESI Act despite being served. The appellant had approached the bank with a One-Time Settlement (OTS) proposal, which

was accepted, but he failed to pay the OTS amount. The demand notice claimed an amount of ₹38,16,781/- as of 31.03.2019, dated 25.03.2019. After receiving the notice and measures under Sections 13(4) and 14 of the SARFAESI Act, the appellant paid some amounts in instalments. The OTS offer was for ₹56,61,000/-, and the appellant paid ₹23 lakhs in four instalments towards that amount. However, there was a subsequent default, and the OTS proposal failed. After adjusting the amount paid under the OTS proposal, the respondent claims an outstanding of ₹38,31,275/- due from the appellant as of the date of the appeal.

Arguments by the Appellant:

As per the OTS proposal, the outstanding amount was only ₹60,99,631/- as of January 2023, and the interest accrued thereafter could not have increased the amount to over ₹67 lakhs as claimed by the respondent. Even after adjusting the amount paid subsequently, there would be a very minimal balance due from the appellant. The order under Section 14 of the SARFAESI Act states the outstanding amount as only ₹38,16,781/- as of 28.01.2020. The appellant should be asked to deposit only 25% of the amount actually due. The appellant offers to deposit ₹5 lakhs towards the pre-deposit today. The appellant argues that the notice under Section 13(2) was not served, and the proceedings under Section 13(4) are also challenged. The appellant claims financial strain and has little income, but his income tax returns have not been filed.

Arguments by the Respondent:

The respondent submits that after adjusting the amount paid under the OTS proposal to the balance of ₹67 lakhs, there is still an outstanding amount of ₹38,31,275/- due from the appellant as of the date of the appeal.

Court's Elaborate Opinions:

The court observes that two orders cannot be challenged in one appeal, and the appellant shall file a separate appeal to challenge the subsequent order. The court notes that the appellant approached the bank with an OTS proposal consequent to the notice received under

Sections 13(2) and 13(4), which indicates an element of waiver that needs consideration. The court is not readily acceptable of the appellant's plea regarding financial strain, as his income tax returns have not been filed. However, as the appellant made some payments after the demand notice, the court observes that he has made an earnest attempt to wipe off the debt. The court directs the appellant to pay a total sum of ₹15 lakhs towards the pre-deposit under Section 18(1) of the SARFAESI Act. The court accepts the payment of ₹5 lakhs made by the appellant towards the pre-deposit. The court orders the appellant to pay the balance of ₹10 lakhs in two equal instalments: a) First instalment of ₹5 lakhs on or before 10.04.2023 b) Second instalment of ₹5 lakhs on or before 24.04.2023 The court warns that failure to pay the subsequent instalment shall entail the dismissal of the appeal. Since ₹5 lakhs have been paid, the further SARFAESI measures stand stalled until further orders. The amount 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 nationalized bank, initially for 13 months, and thereafter to be renewed periodically. The respondent bank is at liberty to file a reply to the appeal with an advance copy to the other side.

Sections and Laws Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) a) Section 13(2) – Demand notice b) Section 13(4) – Measures for secured creditor 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 d) Section 18(1) – Deposit of amount of debt due for filing appeal

Cases Cited:

None

In summary, this order deals with an appeal filed by the borrower (appellant) against the DRT order refusing to grant an injunction

against the bank (respondent) from taking possession of the secured assets. The DRAT has directed the appellant to deposit a pre-deposit amount of ₹15 lakhs in instalments, while considering the appellant's attempt to repay the debt through an OTS proposal and subsequent payments. The DRAT has also stalled further SARFAESI measures by the bank until further orders, subject to the payment of the pre-deposit amount by the appellant.