

Return of title deeds deposited as collateral security after loan closure: DRAT KOLKATA

State Bank of India

...Appellant

Sri N. Anji Reddy

...Respondent

Case No: Appeal No. 93 of 2022

Date of Judgement: 6th July, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Pankaj Kumar Mukherjee, Advocate.

For Respondent: Mr. Rajarshi Dutta, Mr. Shounak Mukhopadhyay, Mr. Vikas Baisya, Advocates.

Facts:

Respondents were directors of M/s Inkollu Cold Storage Pvt Ltd which availed a Rs 2.5 crore term loan from the Appellant Bank in 2009. Drawing power was restricted to Rs 1.95 crore. The company's manager fraudulently got loans sanctioned to 90 farmers from the Bank by standing as surety on behalf of the company. Bank issued notice u/s 13(2) of SARFAESI Act on 02.07.2014 demanding Rs 1.94 crores. Possession notice was issued on 17.09.2014. Respondents filed SARFAESI Application no. 681/2014 and got conditional stay. Bank proceeded under SARFAESI Act. Respondents filed another SARFAESI Application which was contested by the Bank. Based on Bank's memo dated 03.12.2016 that the loan account was settled on 31.01.2016 after appropriating

auction amount, the DRT held that the relief sought in SARFAESI Application does not subsist anymore and hence dismissed it. However, DRT allowed IA 3499/2019 directing the Bank to return the title deeds given as security by Respondents for the company's loan. Bank filed this appeal against DRT's order.

Court's Opinions:

When the loan account is closed and satisfied from the auction proceeds, the guarantor has to be discharged and his properties released. Other properties not related to the loan cannot be held back. Even if other loans were given to farmers, Bank can pursue appropriate proceedings to get relief as per law. But holding title deeds against a closed loan account is illegal. Section 171 of Contract Act does not apply here as Respondents were not party to those other alleged loans. Bank illegally holding Respondents' title deeds unrelated to the term loan was rightly directed to be released by DRT. This was also affirmed by the High Court. Appeal lacks merit and is liable to be dismissed. DRT's impugned order deserves to be affirmed.

Arguments:

Appellant Bank:

Loan account settled on 31.01.2016 by appropriating auction amount. Physical possession also handed over to auction purchaser. DRT had no jurisdiction to pass any interim order unrelated to the SARFAESI Application while dismissing it. The direction to return title deeds is against law. Section 171 of Indian Contract Act is also applicable here.

Respondents:

DRT's directions are as per law. The title deeds were collateral securities for the term loan which got closed. Hence, they have to be released. The High Court in a writ petition filed by Respondent 1 also directed the Bank to comply with DRT's order, subject to DRAT's decision. The loan against the company was completely recovered. Respondent stood as guarantor by pledging personal properties. Once loan recovered and account closed, guarantor has to be discharged and properties released. These High Court findings have attained finality

and are binding. Respondents were not party to other loans on which Bank has filed recovery suits. Hence, section 171 does not apply.

Sections:

Section 13(2) of SARFAESI Act: Demand Notice

Section 171 of Indian Contract Act: Liability of guarantor/surety

Cases Referred:

N Anji Reddy v State Bank of India, WP 14685/2020 dated 18.08.2022 (Telangana High Court)

Laws Referred:

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

Indian Contract Act, 1872

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Court

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Full Text of Judgment:

1.The instant appeal arises against a judgment and order dated 3rd February, 2020 passed by Learned Debts Recovery Tribunal-II, Hyderabad (hereinafter referred to as DRT) in S.A. 1500 of 2017 (Old S.A. 130 of 2015 of DRT-I, Hyderabad) along with I.A. 3499 of 2019 (N. Anji Reddy -vs- State Bank of India) whereby the Learned DRT dismissed the SARFAESI Application being redundant but allowed I.A. 3499 of 2019 by directing the Bank to return the title deeds deposited by the Appellants as a security for the loan availed by M/s. Inkollu Cold Storage Private Limited. Accordingly, I.A. 3499 of 2019 was allowed.

2. As per the pleadings of the parties, brief facts are to the effect that the Respondents herein were SARFAESI Applicants, who were the Directors of M/s. Inkollu Cold Storage Private Limited. A Term Loan of Rs.2.5 crore was sanctioned by the Appellant Bank in the year 2009. Drawing power was restricted to Rs.1.95 crore. There was some fraud played by the Manager of M/s. Inkollu Cold Storage Private Limited and he got loan sanctioned to ninety farmers from the Appellant Bank by standing as surety on behalf of the M/s. Inkollu Cold Storage Private

Limited. A Demand Notice under Section 13 (2) of the SARFAESI Act was issued by the Bank on 2nd July, 2014 demanding Rs.1,94,21,029.00. Possession Notice was issued on 17th September, 2014. SARFAESI Application No. 681 of 2014 was filed wherein conditional stay was granted. Thereafter, Bank proceeded under the SARFAESI Act. Respondents preferred SARFAESI Application which was duly contested by the Appellants. Ultimately, on the basis of a Memo dated 3rd December, 2016, issued by Appellant Bank, Learned DRT held that the relief sought for in the SARFAESI Application does not subsist. Accordingly, it was dismissed as redundant. However, I.A. 3499 of 2019 was allowed by issuing a direction to the Bank to return the title deeds, deposited by the SARFAESI Applicants as security of the loan availed by M/s. Inkollu Cold Storage Private Limited. Feeling aggrieved, Appellant preferred the appeal. Heard the Learned Counsel for the Appellant and perused the record.

3. Learned Counsel for Appellant submits that the loan account was settled and the Term Loan was closed on 31st January, 2016 by appropriating the auction amount. Physical possession of the property was also handed over to the Auction Purchaser. On the basis of the Memo dated 3rd December, 2016, Learned DRT dismissed the SARFAESI Application but allowed the interim application for return of the title deeds which were in possession of the Bank. Learned Counsel submits that while dismissing the SARFAESI Application, Learned DRT had no jurisdiction to pass any interim order which was not the subject matter of the SARFAESI Application. Accordingly, the direction issued by the Learned DRT is against law. Learned Counsel has further placed reliance upon Section 171 of the Indian Contract Act.

4. Per contra Learned Counsel for Respondents submits that directions issued by the Learned DRT are in accordance with law. It is further submitted that a Writ Petition No. 14685 of 2020 by the Respondent No. 1 before the Hon'ble High Court of Telangana at Hyderabad which was decided on 18th August, 2022 wherein the Hon'ble High Court directed the Bank to comply the order passed by the DRT allowing I.A. 3499 of 2019 although subject to the decision of the DRAT, Kolkata. It is further submitted that in the judgment and order specific findings are

recorded to the effect that the Bank cannot and should not hold the title deeds of other properties which are not secured assets of the Term Loan which was closed as per Memo dated 3rd December, 2016. The Term Loan amount was duly appropriated from the sale proceeds of the secured assets. When the directions, issued by the Learned DRT, were not complied by the Bank, Bank preferred a Writ Petition before the Hon'ble High Court of Telangana at Hyderabad wherein it was held that loan amount sanctioned against the Company was completely recovered. Petitioner therein was a Guarantor for the loan obtained by the Company by pledging his personal properties as collateral security. Paragraphs 10 and 11 of the order is reproduced below:

"10. Admittedly, no stay is granted by the Appellate Tribunal. Prima facie, it is seen from the record that the loan amount sanctioned against the company is completely recovered. Petitioner stood as guarantor for the loan obtained by the company by pledging his personal properties as collateral securities. Once loan amount is completely recovered and loan account is closed, the guarantor also stood discharged from any liability and properties pledged by him should be released. Therefore, prima facie, subject to ultimate view to be taken by the Appellate Tribunal, the order of the Tribunal requires compliance, whereas the respondent bank is dragging on the matter for more than one and half years depriving the petitioner enjoyment of the order secured by him from the Tribunal-II. Unless the order of DRT-11 is stayed or set aside, it has to be complied. Non compliance of an order of a Tribunal has to be viewed seriously.

11. The writ petition is disposed of directing the respondent- Bank to comply with the order dated 03.02.2020 passed in S.A.No.1500 of 2017 along with I.A.No.3499 of 2019 by the Debts Recovery Tribunal-II at Hyderabad, within three (3) weeks from the date of receipt of copy of this order. Implementation of the directions of the Debts Recovery Tribunal- II shall be subject to the outcome of Appeal Dairy No.297 of 2020 before the Debts Recovery Appellate Tribunal, Kolkata. In the event the Debts Recovery Appellate Tribunal reversing the decision of Debts Recovery Tribunal-II, petitioner shall deposit the title deeds with the respondent-Bank. No costs. Miscellaneous applications, if any pending, stand closed." These findings by the Division Bench of the

Hon'ble High Court are between the parties who are litigating before this Appellate Tribunal. These findings are not challenged by the Appellant Bank and have attained finality.

5. Admittedly, Respondent was a Guarantor to the Term Loan which was satisfied out of the proceeds of the auction sale. When the account is closed, Respondent has to be discharged as Guarantor and his properties have to be released; other properties are not the subject matter of the loan. Even if some other loans were sanctioned in favour of the farmers, appropriate proceedings are being pursued by the Appellant Bank wherein they may get the relief in accordance with law but holding those title deeds for a loan account which is closed in no manner can be held as legal.

6. It is recorded by the Learned DRT that the Appellant Bank had filed suits in respect of warehouse loan accounts and have also obtained decrees against the borrowers. Respondents herein were not parties to those proceedings. As far as applicability of Section 171 of the Indian Contract Act is concerned, it does not apply to the facts of the present case as the Respondents therein were not parties to those alleged loans.

7. Title deeds of the Respondents, which were in no manner connected with the Term Loan, were illegally detained by the Appellant Bank which was rightly directed to be released in favour of the Respondents herein by the Learned DRT which order was affirmed by the Hon'ble High Court in the writ petition. Although that was filed for issuing contempt against the Bank but the fact remains that the order of the Learned DRT was affirmed by the Hon'ble High Court.

8. In such circumstances, on the basis of the discussion made above, I am of the view that the appeal lacks merits and is liable to be dismissed.

The appeal is dismissed. Judgment and order dated 3rd February, 2020, passed by Learned Debts Recovery Tribunal-II, Hyderabad, is hereby affirmed.

Copy of the order be supplied to Appellant and the Respondents and a

copy be also forwarded to the concerned DRT.

File be consigned to Record room.

Order dictated, signed, dated and pronounced in open Court.

Copy of the Judgment/Final Order be uploaded in the Tribunal's Website.