

Sagar Kirana and Dhanya Bhandar & Ors. v. Gandhibagh Sahakari Bank Ltd., Nagpur

Sagar Kirana and Dhanya Bhandar & Ors.

...Appellant

Gandhibagh Sahakari Bank Ltd., Nagpur

...Respondent

Case No: Appeal on Diary No.1211/2023

Date of Judgement: 13/10/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Dujendra Kumar H. Sharma along with Ms Bhavika S Hodar, Mr Pradyumna D Sharma and Mr Randhir Kumar Mandal, i/b M/s Sharma & Sharma Legal Solution, Advocate.

For Respondent: Mr Vikas D.Bemarker, Advocate.

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Facts:

This is an order dated 13/10/2023 passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai in I.A. No. 538/2023 filed in Appeal on Diary No. 1211/2023. The appellants are Sagar Kirana and Dhanya Bhandar & Others. The respondent is Gandhibagh Sahakari Bank Ltd., Nagpur. The appellants have filed an appeal impugning the order dated 19.06.2023 passed by the Debts Recovery Tribunal (DRT), Nagpur in Securitisation Application (S.A.) No. 167 of 2023. In the DRT order, the protection granted earlier to the appellants against the respondent bank's SARFAESI proceedings was vacated. This was because the appellants did not comply with their undertaking to pay Rs. 40

lakhs and settle the debt by coming up with an One-Time Settlement (OTS) proposal. The respondent bank had issued a demand notice under Section 13(2) of the SARFAESI Act on 05.09.2022 for Rs. 87,00,710/-. Pursuant to this, the S.A. was filed by the appellants on 05.01.2023 before the DRT, Nagpur. The appellants paid Rs. 30 lakhs on 09.06.2023 and Rs. 10 lakhs on 19.06.2023 to the respondent bank.

Arguments by Appellants:

The appellants are challenging the SARFAESI measures initiated by the respondent bank on various grounds. It is argued that the notice issued under Section 13(2) does not give details of the rate of interest charged, leading to lack of clarity and non-compliance with Section 13(3). In its reply to the objections filed by the appellants, the respondent bank also did not clarify the rate of interest charged on the loan. It is further pointed out that the loan sanction letter issued to the appellants does not state the rate of interest. Another ground is that the security has not been registered by the bank, rendering it invalid. The appellants' counsel submitted that nearly 50% of the amount due (Rs. 40 lakhs out of Rs. 87 lakhs) has already been paid, so a complete waiver of pre-deposit under Section 18 of the SARFAESI Act should be granted.

Arguments by Respondent Bank:

The respondent bank's counsel vehemently opposed waiver of pre-deposit under Section 18(1). It is stated that even after adjusting the Rs. 40 lakhs paid by the appellants, an outstanding due of Rs. 58.45 lakhs is remaining as on date. No substantial payment has been made by the appellants after the DRT order dated 19.06.2023, showing lack of intention to repay and only to protract the matter. An order for taking physical possession of the secured assets under Section 14 has already been obtained from the District Magistrate, which has not been challenged in the S.A. What is challenged in the S.A. is only the notice for taking symbolic possession, which has also not been produced by the appellants. It is argued that no prima facie case is made out by the appellants. The amount paid directly to the bank cannot be considered as pre-deposit under Section 18(1). The

appellants have also not pleaded anything regarding financial strain to seek waiver of pre-deposit.

Court's Elaborate Opinions:

The Court referred to the settled position that a complete waiver of pre-deposit under Section 18(1) cannot be granted to the appellants while filing an appeal against SARFAESI proceedings. Relying on the Supreme Court decision in Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., it held that when the appellants are challenging SARFAESI measures up to action under Section 13(4), the amount mentioned in the demand notice is the threshold for calculating pre-deposit. Since the property has not been sold yet and only action up to Section 13(4) is challenged, the demand notice amount of Rs. 87 lakhs has to be the basis for pre-deposit calculation. Though some amount has been paid by the appellants, subsequent interest has also accrued. The outstanding balance as per the respondent bank is Rs. 58.45 lakhs. Therefore, the Court took Rs. 58.45 lakhs as the threshold amount for determining pre-deposit under Section 18(1). The Court directed the appellants to deposit Rs. 25 lakhs as pre-deposit within 4 weeks by 10.11.2023. It held that in default of payment of pre-deposit within time, the appeal shall stand dismissed without any further reference. Upon payment of pre-deposit amount, further SARFAESI proceedings intended by the respondent bank shall be stalled or deferred till the next date. The pre-deposit amount is to be deposited by way of a Demand Draft with the Registrar of DRAT, Mumbai. Once deposited, the amount shall be invested by the Registrar in term deposits for 13 months initially and renewed periodically.

Cases Cited:

Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 SSC OnLine SC 12

Sections and Laws Referred:

Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) – Deposit of amount of debt due for entertaining appeal.

Section 13(2) of SARFAESI Act – Issuance of demand notice by secured creditor.

Section 13(3) of SARFAESI Act – Requirement to give details of amount due in the demand notice.

Section 13(4) of SARFAESI Act – Secured creditor can take possession of secured assets.

Section 14 of SARFAESI Act – Chief Metropolitan Magistrate/District Magistrate to assist secured creditor in taking possession.

The Court has dealt with all the key aspects while deciding the pre-deposit amount payable by the appellants to keep their appeal against SARFAESI proceedings alive before the DRAT. It has considered the facts, arguments of both parties, applicable legal provisions and binding precedents in arriving at a reasoned order.