

Sam Family Trust & Anr. v. Catalyst Trusteeship Limited & Ors.

Sam Family Trust & Anr.

...Appellant

Catalyst Trusteeship Limited & Ors.

...Respondent

Case No: Appeal on Diary No. 388/2023

Date of Judgement: 25/04/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Rafeeq Peermohideen, i/b M/s T. N. Tripathi & Co., Advocate.

For Respondent: Mr Tushad Cooper, Senior Counsel along with Mr Sachin Chandarana, Mr Archit Shah & A Mehta, i/b M/s. M. K. Ambalal & Co., Advocate.

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Facts:

This is an order passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai in an application filed by Sam Family Trust & Anr. (Appellants) seeking waiver of pre-deposit mandated under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Appellants are challenging the order of the Debts Recovery Tribunal (DRT), Pune in I.A. No. 6 of 2023 in Securitisation Application (S.A.) No. 01 of 2023 dated 10.03.2023, wherein the DRT declined to grant any interlocutory relief concerning the secured assets against the

Respondents. The S.A. was filed under Section 17 of the SARFAESI Act, challenging the SARFAESI measures adopted by the first Respondent, Catalyst Trusteeship Limited (a Debenture Trustee), under Section 13(1) of the SARFAESI Act. Catalyst Trusteeship Limited had issued a demand notice on 03.07.2020 under Section 13(2) of the SARFAESI Act, demanding payment of Rs. 268,98,77,917/- from the borrower, Smaaash Entertainment Pvt. Ltd. (fourth Respondent), and thereafter obtained an order from the District Magistrate, Pune, under Section 14 of the SARFAESI Act. The Appellants had challenged the demand notice and the order under Section 14 by filing S.A. No. 207 of 2021, which was allowed by the DRT vide order dated 28.02.2022. The Respondents challenged this order before the DRAT by filing Appeal No. 30 of 2022. The DRAT stayed the operation of the DRT's order in S.A. No. 207 of 2021 by an interlocutory order dated 11.11.2022. This appeal is still pending, and the merits are yet to be decided. The Appellants aver that the stay of the DRT's order does not amount to quashing or setting aside the order, and the demand notice under Section 13(2) remains quashed. Subsequent actions initiated by the first Respondent, including taking possession of the property and the consequent sale, are alleged to be violative of the SARFAESI Act and Security Interest (Enforcement) Rules. The Appellants contend that they are under financial strain and unable to pay the amount of pre-deposit. The first Respondent argues that the appeal has been filed with malafide intention and that the application seeking a complete waiver of pre-deposit is unsustainable. The first Respondent provides details of the transaction, default, assignment of debt, and subsequent actions taken under the SARFAESI Act.

Arguments by the Parties:

Appellants' Arguments:

The stay of the DRT's order does not mean that the order has been wiped out from existence. The demand notice under Section 13(2) of the SARFAESI Act stands quashed by the DRT's order, and there is no legally enforceable demand in the absence of a legally sustainable demand notice. Hence, the question of making a pre-deposit under Section 18(1) does not arise (relying on Shree Chamundi Mopeds Ltd.

vs. Church of South India Trust Association). The subsequent actions initiated by the first Respondent, including taking possession of the property and the consequent sale, are violative of the provisions of the SARFAESI Act and Security Interest (Enforcement) Rules. The 14 days' notice contemplated under the Rules was not served, the Authorized Officer was not empowered, a valuation report was not obtained as required under Rule 8(5) before the property was sold, and the sale notice was not published in two newspapers having wide circulation, particularly in the vernacular language as required under Rule 8(6). The sale is, therefore, bad under Rule 9(1) (relying on In Re Saraf Paper Mills Ltd. (in liquidation) through Official Liquidator and Asha Mehta & Ano. vs. Allahabad Bank). The fact regarding the pendency of Appeals Nos. 30 of 2022 and 31 of 2022 was not disclosed. The Appellants have a strong prima facie case on merits and are under financial strain, unable to pay the amount of pre-deposit.

Respondents' Arguments:

The appeal has been filed with malafide intention, and the application seeking a complete waiver of pre-deposit is unsustainable. No appeal shall be entertained unless the borrower deposits with the DRAT 50% of the debt due as claimed by the secured creditor or determined by the DRT, whichever is less. The only relief the Appellant can seek is to get the deposit amount reduced to 25%. The Appellants have no prima facie case. Since the issuance of the notice under Section 13(2) of the SARFAESI Act, the Appellants have been attempting to delay and derail the legitimate recovery of the huge outstanding dues. The first Respondent provides details of the transaction, default, assignment of debt, and subsequent actions taken under the SARFAESI Act, including the issuance of the demand notice under Section 13(2), possession notice under Section 13(4), obtaining an order from the District Magistrate under Section 14, and the Tahsildar's notice to take possession of the secured property. The publication of the sale notice was made in a Marathi newspaper named "Nav Shakthi," which has circulation in Pune and the entire State of Maharashtra, complying with the requirement of publishing in a vernacular newspaper with wide circulation. The Appellants' objection that the auction sale was

confirmed exactly for the reserve price and that only one bid was received is addressed, stating that the description of the building situated on the property is not required to be given in the auction notice.

Court's Elaborate Opinions:

The DRAT acknowledges the Appellants' argument regarding the distinction between a 'stay of an impugned order' and 'quashing of the order' based on the Supreme Court's decision in Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association. The DRAT notes that it had issued orders of stay suspending the operation of the DRT's judgments in S.A. Nos. 207 & 208 of 2021 and had modified the earlier order directing the parties to maintain the status quo. Under these circumstances, the DRAT finds the Appellants' argument that there is no demand notice under Section 13(2) unacceptable. The DRAT addresses the Appellants' objection regarding the publication of the sale notice in a vernacular newspaper, stating that the first Respondent has produced a certificate certifying that the newspaper "Nav Shakthi" has circulation in Pune and the entire State of Maharashtra. The DRAT holds that the Rule requires publication in two newspapers with wide circulation, one of which must be in the vernacular language, and prima facie, the first Respondent has complied with this direction. Regarding the Appellants' contention that the auction sale was confirmed exactly for the reserve price and that only one bid was received, the DRAT notes that the description of the building situated on the property is not required to be given in the auction notice. The DRAT finds that the Appellants do not have any prima facie case, and the impecunious state of the Appellants is not satisfactorily established. The DRAT is not inclined to exercise its discretionary jurisdiction to reduce the amount payable as pre-deposit to the minimum of 25%. The DRAT directs the Appellants to deposit a sum of Rs. 135 crores (50% of the claimed debt of Rs. 280 crores) as pre-deposit within 8 weeks, failing which the Appeal shall stand dismissed without any further reference to the DRAT.

Cases Cited:

Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association (1992) 3 SCC 1 (relied upon by the Appellants to draw the distinction between 'stay of an impugned order' and 'quashing of the order').

In Re Saraf Paper Mills Ltd. (in liquidation) through Official Liquidator 2008 SCC OnLine Del 1262 (relied upon by the Appellants to argue that the auction sale has to be conducted in a transparent manner).

Asha Mehta & Ano. vs. Allahabad Bank 2011 (1) Mh. L.J 1011 (relied upon by the Appellants to argue that the auction sale has to be conducted in a transparent manner).

Sections and Laws Referred:

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

Section 13(1) (Enforcement of security interest)

Section 13(2) (Demand notice by the secured creditor)

Section 13(4) (Possession notice)

Section 14 (Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking over possession)

Section 17 (Right to appeal)

Section 18 (Deposit of amount of debt due for filing appeal)

Section 18(1) (Pre-deposit requirement for filing appeal)

Security Interest (Enforcement) Rules:

Rule 8(5) (Valuation of the immovable secured asset)

Rule 8(6) (Publication of sale notice)

Rule 9(1) (Time of sale, issues of sale certificate, and delivery of possession)

In conclusion, the order summarizes the facts, arguments by both parties, the DRAT's opinions on various contentions, the cases cited, and the relevant sections and laws referred to in the matter. The DRAT ultimately directs the Appellants to deposit a sum of Rs. 135 crores as pre-deposit within 8 weeks, failing which the Appeal shall stand dismissed.