

Sampat Bhima Khalkar v. Kotak Mahindra Bank Ltd. & Ors.

Sampat Bhima Khalkar

...Appellant

Kotak Mahindra Bank Ltd. & Ors.

...Respondent

Case No: Appeal on Diary No. 364/2023

Date of Judgement: 27/04/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Gaurang Kinkhabwala i/b Mr Kushal Sawant, Advocate.

For Respondent: Mr Rajesh Nagory along with Mr Nikhil Rajani, i/b M/s. V. Deshpande & 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 Sampat Bhima Khalkar (Appellant) for condonation of delay in filing an appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Appellant has filed an appeal challenging the order of the Debts Recovery Tribunal-III, Mumbai (DRT) in Securitisation Application (S.A.) No. 305 of 2022, dated 30/11/2022. The Appellant claims to be a tenant in possession of the secured asset bearing Municipal No. 811/3/52//003, index No. 8/111282, in Nasik, allegedly entrusted to him on a monthly lease of ₹15,000/- by the third Respondent, who is the owner of the property. The fact regarding the tenancy was informed to the first Respondent, Kotak Mahindra Bank Ltd., on 02/09/2013 by

the landlord at the time the property was mortgaged. Respondents 2 to 7 mortgaged the secured asset to Respondent No. 1 (Kotak Mahindra Bank Ltd.) and borrowed money. The loan was defaulted and classified as a non-performing asset (NPA), and consequently, a demand notice was issued under Section 13(2) of the SARFAESI Act on 24/03/2018, demanding an outstanding amount of ₹9,75,86,636.51, together with further interest. No notice was served on the Appellant, even though the first Respondent was aware of the Appellant being in possession of the property as a tenant. The third Respondent wanted an enhancement of rent and tried to forcibly dispossess the Appellant from the property on 19/03/2018. The Appellant approached the local Police at the Bhadrakali Police Station with a complaint against forcible dispossession and filed a civil suit No. 195/2018 before the Court of the Civil Judge, Junior Division, Nasik. An interim order of protection was granted on 10/05/2018, restraining the third Respondent and his agents from dispossessing the Appellant from the property. The first Respondent filed a petition before the District Magistrate under Section 14 of the SARFAESI Act as No. 264/2019 for taking over physical possession of the secured asset. The Appellant filed an objection, and the petition was dismissed. The first Respondent challenged this order by filing a Writ Petition No. 167/2022 before the Hon'ble Bombay High Court, which was dismissed, and the order has now become final. The first Respondent filed another petition under Section 14 before the District Magistrate as No. 277 of 2020 and, without disclosing the fact regarding the earlier petition's dismissal and the Writ Petition's dismissal, obtained a favorable order on 30/09/2022 to take over physical possession of the property. The Tahsildar issued a notice informing the borrowers that physical possession of the property would be taken on 01/12/2022. The Appellant, therefore, approached the DRT with the present S.A. The DRT, after hearing both sides, declined to accept the Appellant's contention against the SARFAESI measures and concluded that the Appellant had not established his right of tenancy, and dismissed the S.A. vide the impugned order dated 30/11/2022. The Appellant is aggrieved by the impugned order and has filed an appeal before the DRAT. The present application is for condonation of delay of 66 days in filing the appeal.

Arguments by the Parties:

Appellant's Arguments:

The Appellant has produced a rent receipt for ₹15,000 dated 14/06/2013 to prove that he is a tenant on the premises. The Appellant contends that the first Respondent was informed by the third Respondent on 02/09/2013 about the existence of the tenancy, but the DRT did not accept this contention as the dispatching receipt of such communication was not proved. The Appellant alleges that the third Respondent had demanded a hike in the rent, and upon the Appellant's refusal, threatened to dispossess him. The DRT considered this a "make-believe story." The Appellant argues that the principles of res judicata should apply concerning the filing of the second application before the District Magistrate, which the DRT did not accept. The Appellant contends that the dismissal of the Writ Petition by the Hon'ble Bombay High Court should have helped his case, but the DRT did not consider it. The Appellant submits that the delay of 66 days in filing the appeal is well-explained.

Respondent's Arguments:

The Respondent (Kotak Mahindra Bank Ltd.) has vehemently opposed the application for condonation of delay, stating that the reasons stated for getting the delay condoned are unacceptable. The Respondent alleges that the Appellant's only intention is to protract the proceedings, and he has no prima facie case to establish his tenancy. The Respondent contends that there is collusion between the Appellant and the borrowers and that the Appellant's claim of tenancy has been put forth only to thwart the SARFAESI measures initiated by the Respondent.

Court's Elaborate Opinions:

The DRAT acknowledges that, in an application for condonation of delay, the merits of the case need not be delved into in depth. The only question that needs to be considered is whether the Appellant has an arguable case. The DRAT finds the Appellant's allegation of delay in getting the certified copy of the impugned order unacceptable, as

the Appellant had not applied for a certified copy despite the order being pronounced. The DRAT also finds the Appellant's contention that the order was not pronounced on the date it was posted unacceptable. While the reasons stated for condonation of delay are not entirely acceptable, the DRAT is inclined to condone the delay, allowing the Appellant to contest the appeal on merits. The DRAT allows the application for condonation of delay, putting the Appellant to terms of payment of costs of ₹10,000/- to the DRT Bar Association, Mumbai, for the purchase of books and periodicals, within one week, failing which the application shall stand dismissed.

Cases Cited:

No specific cases were cited in this order.

Sections and Laws Referred:

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

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

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

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

In conclusion, the order summarizes the facts, arguments by both parties, and the DRAT's opinions on the application for condonation of delay. The DRAT ultimately allows the application for condonation of delay, subject to the Appellant paying costs of ₹10,000/- to the DRT Bar Association, Mumbai, within one week, failing which the application shall stand dismissed.