

Santosh Laxman More & Anr. v. Bank of Baroda

Santosh Laxman More & Anr.

...Appellant

Bank of Baroda

...Respondent

Case No: Appeal on Diary No. 1948/2023

Date of Judgement: 22/12/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Sunil Humbre, i/b Mr. Veer Shitore, Advocate.

For Respondent: None.

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Facts:

The case involves two appeals (Appeal on Diary No. 1948/2023 and Appeal on Diary No. 1949/2023) filed by Santosh Laxman More & Anr. (Appellants) against Bank of Baroda (Respondent). The Appellants had availed loans from the Respondent bank, and two separate flats were offered as security for the two financial assistances. The Appellants defaulted on the loan repayments, and the Respondent bank issued a common notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) on 19.06.2018, demanding ₹47,96,023/- for the dues in Appeal on Diary No. 1948/2023 and ₹44,39,677/- for the dues in Appeal on Diary No. 1949/2023. The Appellants had paid some amount as directed by the Debts Recovery Tribunal (DRT) to stall the SARFAESI measures temporarily, but the protection was later vacated, and the bank proceeded with the SARFAESI

measures. The Appellants filed Securitization Application (S.A.) Nos. 62/2022 and 63/2022 before the Debts Recovery Tribunal, Pune (D.R.T.), challenging the SARFAESI measures. The D.R.T. dismissed the Appellants' interim applications (I.A. Nos. 2254/2023 and 2255/2023) without granting any protection to the Appellants concerning the SARFAESI measures initiated by the Respondent bank against the secured assets. The Appellants faced the immediate threat of being dispossessed of the secured assets on 03.01.2024, prompting them to seek urgent relief from the Debts Recovery Appellate Tribunal (DRAT), Mumbai.

Arguments by the Parties:

Appellants' Arguments:

The Appellants contended that they have a good prima facie case in challenging the SARFAESI measures. They argued that the mandatory provisions of Sub-Section 3 of Section 13 of the SARFAESI Act were not complied with because the demand notice did not provide a breakup of the principal and interest due, only stating the aggregate amount. The Appellants further contended that the mortgage was not registered. They claimed that the mortgage was purportedly created by the deposit of title deeds, but the memorandum of the deposit of title deeds, which is the agreement about the creation of the mortgage, is compulsorily registrable under Section 17(1f) of the Registration Act, as per the Maharashtra amendment. Since this was not complied with, the mortgage is defective. Additionally, the Appellants argued that the order under Section 14 of the SARFAESI Act is improper and challenged it in the S.A. They also challenged the classification of the account as a Non-Performing Asset (NPA), stating that there was no default for 90 days as contemplated under the Reserve Bank of India (RBI) guidelines, and therefore, the account could never have been classified as an NPA. The Appellants submitted that they are under financial strain, and income certificates of both Appellants (husband and wife) were obtained from the Tahsildar to demonstrate their limited income, making it difficult to comply with the mandatory provisions of Section 18(1) of the SARFAESI Act. The Appellants sought the indulgence of the Tribunal by exercising the discretion available

under the third proviso to Section 18(1) of the SARFAESI Act, which allows for a reduction in the mandatory pre-deposit amount.

Respondent's Arguments:

The Respondent bank did not appear before the Tribunal, and no arguments were presented on their behalf.

Court's Elaborate Opinions:

The court noted that since the Appellants were challenging measures only up to Sections 13(4) and 14 of the SARFAESI Act, as per the Hon'ble Supreme Court's decision in Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 OnLine SC 12, the threshold amount for the pre-deposit should be the amount mentioned in the demand notice under Section 13(2). The court found that the Appellants had a good prima facie case and had proven that they were under financial strain. The Appellants had already paid around ₹6.5 lakhs each to the bank. Considering these facts, the court directed the Appellants to deposit a sum of ₹12,00,000/- each in both appeals as the mandatory pre-deposit for entertaining the appeals. The court observed that the Appellants had produced a demand draft of ₹12,00,000/- in Appeal on Diary No. 1948/2023 and a demand draft of ₹11,25,000/- in Appeal on Diary No. 1949/2023. Given the payment, the court ordered a stay on further SARFAESI measures until the next date of hearing. The Appellants were directed to deposit the balance of ₹75,000/- in Appeal on Diary No. 1949/2023 within two weeks (on or before 05.01.2024). Failure to do so would result in the dismissal of the appeal without any further reference to the Tribunal. The court ordered that the pre-deposit amounts be 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 was granted liberty to file a reply in the appeals with an advance copy to the other side.

Cases Cited:

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

Sections and Laws Referred:

Section 13(2), Section 13(3), Section 13(4), and Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Section 18(1) of the SARFAESI Act (regarding mandatory pre-deposit)

Section 17(1f) of the Registration Act (regarding the compulsory registration of the memorandum of the deposit of title deeds)

Reserve Bank of India (RBI) guidelines (regarding the classification of Non-Performing Assets)

The court disposed of the Interim Applications (I.A. Nos. 829/2023(WoD) and 830/2023(WoD)) with the above directions and observations. The Appeal on Diary No. 1948/2023 was listed before the Registrar, and the Appeal on Diary No. 1949/2023 was listed for reporting compliance before the bench on 08.01.2024.