

Setting aside of DRT order due to lack of reasoning and remand back for fresh consideration: DRAT KOLKATA

M/s Vyom Infra

...Appellant

The Catholic Syrian Bank Ltd. and ors

...Respondent

Case No: Appeal No. 24 of 2023

Date of Judgement: 18.07.2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Nemani Srinivas, Advocate.

For Respondent: None.

Facts:

The appeal arises against the DRT order dated 24.06.2019 dismissing SARFAESI application no. 73 of 2019 filed by the appellant M/s Vyom Infra. The SARFAESI application was filed under Section 17 of SARFAESI Act challenging the action taken by the respondent bank under Section 13(2) and 13(4) of the Act. It was alleged that the notices were not properly served and there were violations of rules 8(5) and 8(6) of Security Interest Enforcement Rules 2002. Further, the property was sold for a very low price and was undervalued. The respondent bank filed objections refuting the allegations. The DRT framed issues on sustainability of sale notice, whether bank followed due procedure, and whether applicant is entitled to relief sought. However, the DRT dismissed the application without assigning any reasons by simply

stating that applicant failed to make out valid grounds.

Court's Opinion:

The DRT order is cryptic without any reasons which makes it unsustainable in law. The Supreme Court has held in State Bank of India v. Rajesh Agarwal that a reasoned order allows an aggrieved party to demonstrate that the reasons for the adverse order are extraneous or perverse. It also acts as a check on arbitrary exercise of power. The Supreme Court in Brijmani Devi v. Pappu Kumar has laid down principles regarding duty to provide reasoned decisions. An order without reasons is a nullity and has no legal force. Reasons reassure that discretion has been exercised properly without extraneous considerations. Reasons are indispensable for accountability, transparency and development of law through precedents. The said principles are applicable in the present case. The cryptic DRT order without reasons could not be sustained. Accordingly, the appeal is allowed, impugned order set aside and matter remanded back for fresh consideration after hearing parties. A detailed reasoned order has been directed to be passed.

Arguments by Appellant:

Notices under Section 13(2) and 13(4) were not properly served. There were violations of Rule 8(5) and 8(6) of Security Interest Enforcement Rules 2002. Property was sold for very low amount and was undervalued.

Arguments by Respondent:

Refuted the allegations made in the SARFAESI application.

Sections:

Appeal under Section 17 of SARFAESI Act

Section 13(2) and 13(4) of SARFAESI Act: Related to demand/possession/sale notices

Rule 8(5) and 8(6) of Security Interest Enforcement Rules 2002: Related to sale procedures

Cases Cited:

State Bank of India v. Rajesh Agarwal: On requirement of reasoned orders

Brijmani Devi v. Pappu Kumar: On duty to provide reasoned decisions

Referred Laws:

SARFAESI Act and Security Interest Enforcement Rules 2002 governing secured creditors and enforcement procedures.

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Court

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Full Text of Judgment:

Instant appeal has arisen against a judgment and order dated 24.06.2019 passed by Ld. DRT-1 Hyderabad dismissing the S.A. No. 73 of 2019.

Feeling aggrieved SARFAESI Applicant has preferred the Appeal.

As appears from the record the SARFAESI Application was filed by the Appellant under Section 17 the SARFAESI Act, 2002 challenging the action taken by the Respondent on different grounds to the effect that the notice under Section 13(2) as well as 13(4) of the SARFAESI Act were not legally tenable and were not legally served. Further, there are violation of Rule 8(5) and 8(6) of the Security Interest (Enforcement) Rules, 2002. Property was sold for very low amount. It was under-valued.

Respondent Bank filed its objections challenging the assertions made by the SARFAESI Applicant. Learned DRT framed following points for consideration which are as under :

- (i) Whether the Notice of Sale dated 29.01.2019 fixing the auction on 08.09.2019 under challenge is sustainable in law?
- (ii) Whether the respondent Bank has followed the procedure as contemplated under law?
- (iii) Whether the applicant is entitled to the relief sought for in the present SARFAESI Application.

Learned DRT simply without assigning any reason has arrived at a conclusion that the Applicant has failed to make out valid grounds.

Accordingly dismissed the SARFAESI Applications. It was held by the Hon'ble Apex Court in the case of State Bank of India Vs. Rajesh Agarwal & Ors. [(2023) 6 SCC 01]

(i) A reasoned order allows an aggrieved party to demonstrate that the reasons which persuaded the authority to pass an adverse order against the interests of the aggrieved party are extraneous or perverse; and
(ii) the obligation to record reasons acts as a check on the arbitrary exercise of the powers. In Brijmani Devi -vs- Pappu Kumar and Another, reported in (2022) 4 SCC 497, it was further held by the Hon'ble Apex Court which are as under:

(i) "22. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasi-judicial authority, it would be useful to refer to a judgment of this Court in Kranti Associates (P) Ltd., v. Masood Ahmed Khan, (2010) 9 SCC 496 wherein after referring to a number of judgments this Court summarised at para 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:

(ii) (a) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(iii) (b) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(iv) (c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(v) (d) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasijudicial and even by administrative bodies.

(vi) (e) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(vii) (f) Judicial or even quasi-judicial opinions these days can be as different as the Judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason

that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(viii) (g) Insistence on reason is a requirement for both judicial accountability and transparency.

(ix) (h) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(x) (i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(xi) (j). It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the Judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(xii) (k) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

"24. The Latin maxim "cessante ratione legis cessat lex" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself, is also apposite." Law laid down by the Hon'ble Supreme Court in Brijmani Devi case (supra) is squarely applicable to the facts of the present case. Order without reasons is nullity and has no legal force. In the present case Ld. DRT has not recorded any reason before arriving at a finding. A cryptic order was passed which could not sustain. Accordingly, Appeal is liable to be allowed.

Appeal is allowed. Impugned order dated 24.06.2019 is set aside. Matter is remanded back to the Ld. DRT to decide afresh after affording an opportunity of hearing to the parties. Needless to say that a detailed reasoned order should be passed.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

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

Order signed and pronounced by me in the open Court on this the 18th day of July, 2023.