

Shirish Lalaso Pawar v. The Karad Urban Co-operative Bank Ltd & Ors.

Shirish Lalaso Pawar

...Appellant

The Karad Urban Co-operative Bank Ltd & Ors.

...Respondent

Case No: Appeal on Diary No. 1480/2023

Date of Judgement: 06/09/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr.Kalpak Mainkar, along with Ms. Rutuja Kulkarni, Advocate.

For Respondent: Ms. Sonali Jain, Mr. Vallabh Tokekar, Advocate.

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Facts:

This case is an appeal before the Debts Recovery Appellate Tribunal (DRAT) in Mumbai. The appellant is Shirish Lalaso Pawar. The respondents are: a) The Karad Urban Co-operative Bank Ltd (Respondent No. 1) b) Other respondents (Respondent Nos. 2, 3, 7 & 8) On 01.11.2017, Respondent Bank issued a demand notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) demanding Rs. 1,93,00,000/- from the appellant for default in two loan facilities out of eight facilities availed by him from the bank. The appellant challenged the bank's actions under Sections 13(2), 13(4), and 14 of the SARFAESI Act before the Debt Recovery Tribunal (DRT), Pune. In

I.A. No. 145/2021, the DRT had initially granted interim relief to the appellant by restraining the bank from handing over possession of the secured property to the highest bidder, subject to the appellant depositing Rs. 15,00,000/-. However, as the appellant failed to comply with this condition, the said application was dismissed. An auction of the secured property was conducted on 12.04.2022, and Respondent Nos. 7 and 8 were the highest bidders, purchasing the property for Rs. 2,70,00,000/-. The sale has been confirmed. The bank has taken possession of the property but has not yet handed it over to the auction purchasers (Respondent Nos. 7 and 8), who have been waiting for more than a year to get possession. The appellant had also filed I.A. No. 423/2022, challenging the sale, which was dismissed by the DRT, and the order has become final as it was not challenged in appeal. In the present application (I.A. No. 562/2022), the appellant sought to restrain the bank from handing over possession of the secured property to the highest bidder, direct the bank to produce valuation reports from 2014 onwards, and appoint a court commissioner for proper valuation of the secured assets. The DRT dismissed this application, and the appellant has challenged this dismissal order before the DRAT in the present appeal.

Arguments by the Appellant:

The appellant has a strong prima facie case as the demand notice under Section 13(2) was only for two loan facilities, while the appellant had availed a total of eight facilities from the bank. SARFAESI measures against all properties are not possible for default in only two facilities. The appellant has challenged the bank's actions under Sections 13(4) and 14 of the SARFAESI Act. The auction purchasers (Respondent Nos. 7 and 8) have not taken steps to get possession of the property for more than a year, so no prejudice would be caused to them by not handing over possession immediately. The appellant seeks a total exemption from payment of the pre-deposit contemplated under Section 18(1) of the SARFAESI Act, citing that his business has run into losses. Alternatively, the appellant seeks a reduction in the pre-deposit amount to 25% of the amount mentioned in the demand notice.

Arguments by the Respondent Bank:

The appellant's contentions are untenable, and the only intention is to protract the matter.

As of 02.09.2023, an amount of Rs. 3,45,73,323/- is due and payable by the appellant towards the debt.

Arguments by the Auction Purchasers (Respondent Nos. 7 and 8):

They have been anxiously waiting to get possession of the property for more than a year, but the appellant has been filing applications one after the other to stall the handing over of possession.

Court's Observations and Order:

The court finds that the appellant has no prima facie case and has not produced any material or pleaded regarding financial strain, except claiming that his business has run into losses. Seeking a total exemption from payment of the pre-deposit under Section 18(1) of the SARFAESI Act is impossible to grant. The demand notice issued on 01.11.2017 was for an amount of Rs. 1,93,00,000/-. The court grants the appellant's alternative prayer to reduce the pre-deposit amount to 25% of the demand notice amount. However, as per settled law, where the appellant is challenging all SARFAESI measures, including the sale, the appellant is liable to deposit 50% of the amount mentioned in the demand notice, together with the accrued interest till date. The threshold amount for calculating the pre-deposit is determined as Rs. 3,45,73,323/-. The appellant is directed to deposit Rs. 1,72,85,000/- (50% of Rs. 3,45,73,323/-) as pre-deposit. The appellant is granted one month's time to pay the pre-deposit, i.e., on or before 06.10.2023. Failure to deposit the amount by this date will result in the dismissal of the appeal without any further reference to the Tribunal. If the pre-deposit amount is deposited within the stipulated time, the appellant shall be entitled to a stay on the handing over of possession of the property to the auction purchasers till the next date of hearing. The amount shall be deposited in the form of a Demand Draft with the Registrar of the DRAT, Mumbai, and invested in term deposits in the name of the Registrar, DRAT, Mumbai, with any

nationalized bank, initially for 13 months and thereafter renewed periodically. The respondents are at liberty to file a reply in the appeal with an advance copy to the appellant. The matter is posted on 09.10.2023 for reporting compliance regarding the payment of the pre-deposit.

Sections and Laws Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) a) Section 13(2) – Demand notice by secured creditor b) Section 13(4) – Secured creditor's right to take possession of secured assets c) Section 14 – Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset d) Section 18(1) – Deposit of amount of debt due for appeal against measures under Section 13(4)