

Shree Balaji Homes Pvt. Ltd. & Ors. v. SICOM Ltd.

Shree Balaji Homes Pvt. Ltd. & Ors.

...Appellant

SICOM Ltd.

...Respondent

Case No: Appeal on Diary No. 1453/2023

Date of Judgement: 30/08/2023

Judges:

Mr Justice Ashok Menon, Chairperson

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For Appellant: Mr Gaurang Kinkhabwala along with Dhawani Patel, i/b Mr Tushar Goradia, Advocate.

For Respondent: Mr Rishabh Shah along with Mr Nikhil Gupta, i/b M/s Wadia Gandhi & Co., Advocate.

Facts:

The case involves an appeal filed by Shree Balaji Homes Pvt. Ltd. & Others (Appellants) against SICOM Ltd. (Respondent) regarding a loan account that was classified as a non-performing asset (NPA) on 09.12.2017. The Respondent issued a demand notice under Section 13(2) of the SARFAESI Act demanding payment of ₹7,35,12,005/-. The Appellants claimed that they had replied to the demand notice, pointing out its inadequacies, but the Respondent proceeded with further actions under Section 13(4) of the SARFAESI Act, including symbolic possession on 07.06.2019. The Respondent obtained an order under Section 14 of the SARFAESI Act from the Chief Metropolitan Magistrate (CMM) on 15.03.2022, and a notice was received for taking physical possession of the secured asset on

01.04.2023. The Appellants filed Securitisation Application (S.A.) No. 125 of 2023 challenging the Sarfaesi measures and Interlocutory Application (I.A.) No. 692 of 2023 for interim relief to stall the dispossession from the secured assets. During the pendency of I.A. No. 692 of 2023, the Appellants proposed a settlement by undertaking to pay ₹5.65 crores in installments and surrender possession of the first floor of the building, which was part of the secured assets, within a stipulated time. The Appellants did not comply with the undertaking, leading to the filing of I.A. No. 785 of 2023, seeking modification of the undertaking to enhance the total payable amount to ₹7 crores by July 2023. The Debts Recovery Tribunal-II, Mumbai (D.R.T.), in the impugned order dated 18.05.2023, rejected the Appellants' application (I.A. No. 785 of 2023) and permitted the Respondent to proceed with the Sarfaesi measures. The Appellants filed the present appeal challenging the order dated 18.05.2023 and sought a waiver of the mandatory pre-deposit under Section 18(1) of the SARFAESI Act.

Arguments by the Parties:

Appellants' Arguments:

The Appellants challenged the Sarfaesi measures on various grounds, including inadequacy of the notice under Section 13(2), impropriety regarding service of the notice, and measures taken under Section 14 of the SARFAESI Act. The Appellants' counsel, Mr. Gaurang Kinkhabwala, undertook to deposit ₹25 lakhs by 01.09.2023 and the remaining amount as directed by the Tribunal in installments. Mr. Kinkhabwala further undertook to surrender $\frac{2}{3}$ of the first floor of the building, claiming that it would be more than sufficient to discharge the entire debt, citing Rule 8(5) of the Security Interest (Enforcement) Rules and Order 21 Rule 64 of the Code of Civil Procedure.

Respondent's Arguments:

The Respondent's counsel, Mr. Rishabh Shah, argued that the

Appellants had been dishonest in their transactions and submissions, and they should not be entitled to any equity. Mr. Shah pointed out that the debt due from the Appellants had accumulated to ₹19.60 crores and requested that the Appellants be directed to deposit not less than 50% of that amount as pre-deposit. Alternatively, Mr. Shah argued that since the Appellants had undertaken to pay ₹7 crores before July 2023, they should be directed to deposit that amount as pre-deposit.

Court's Elaborate Opinions:

The Tribunal observed that in the order dated 31.03.2023 in I.A. No. 692 of 2023, the Presiding Officer had recorded the undertaking made by the Appellants' counsel and the submissions made by the Respondent's counsel but did not provide clear findings or directions. The Tribunal criticized the Presiding Officer for "fretting and fuming" over the non-compliance of the undertaking in the impugned order dated 18.05.2023, considering the lack of clear directions in the earlier order. Regarding the pre-deposit amount, the Tribunal referred to the decision of the Hon'ble Supreme Court in Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 OnLine SC 12, which established that in cases where the Appellants have challenged the notice under Section 13(2) and the measures under Section 13(4), the threshold amount for the payment of pre-deposit should be the amount demanded in the demand notice. The Tribunal found no reason to invoke the discretionary provisions of the third proviso to Section 18(1), as the Appellants did not plead or prove that they were under financial strain, which is an essential ingredient for reducing the amount from the mandatory 50%. The Tribunal directed the Appellants to deposit ₹3,67,56,000/- (50% of the demand amount of ₹7,35,12,005/-) as pre-deposit within two weeks, failing which the appeal would be dismissed without further reference. Upon depositing the pre-deposit amount, the Appellants would be entitled to an interlocutory relief of getting further Sarfaesi measures of taking over physical possession of the remaining secured assets by the Respondent under Section 14 of the SARFAESI

Act stalled until the disposal of the appeal.

Cases Cited:

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

Sections and Laws Referred:

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

- Section 13(2) (Demand Notice)
- Section 13(4) (Measures after issuing Demand Notice)
- Section 14 (Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset)
- Section 18(1) (Deposit of amount of debt due for entertaining an appeal)

Security Interest (Enforcement) Rules

- Rule 8(5)

Code of Civil Procedure

- Order 21 Rule 64