

Shree Pharma Engineering Works & Ors. vs Indian Bank & Ors.

Shree Pharma Engineering Works & Ors.

...Appellant

Indian Bank & Ors.

...Respondent

Case No: Misc. Appeal No. 39/2023

Date of Judgement: 15/06/2023

Judge:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Alok D. Mishra, Advocate.

For Respondent: Mr Ajikumar, Advocate.

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Facts:

This is an order passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai in an Interim Application (I.A.) No. 394/2023 filed by the Appellant (Shree Pharma Engineering Works & Ors.) in a disposed Miscellaneous Appeal No. 39/2023. The Appellant had deposited Rs. 46,00,000/- as a pre-deposit for entertaining the appeal. After the appeal was disposed of on 09.06.2023, the Appellant filed the present application seeking a refund of the pre-deposit amount.

Arguments by the Respondent Bank (Indian Bank & Ors.):

The Respondent Bank vehemently opposed the application for a refund, stating that an outstanding amount of Rs. 52,00,000/- was due to be

paid to the Bank. The Bank also stated that O.A. No. 323/2021 was pending before the Debts Recovery Tribunal (DRT)-I, Ahmedabad for the recovery of the said amount. Additionally, the Bank had filed an application at Diary No. 894/2023 for the attachment of the pre-deposit amount lying with the DRAT.

Arguments by the Appellant:

The Appellant sought a refund of the pre-deposit amount, as the appeal had been disposed of.

Court's Elaborate Opinions:

The court referred to the Hon'ble Supreme Court's decision in Axis Bank Vs SBS Organics Pvt Ltd & Anr (2016) 12 SCC 18, which held that the only exception for rejecting an application for withdrawal of the pre-deposit amount by the borrower is when there is an attachment of the pre-deposit in any proceedings either under Section 13(10) of the SARFAESI Act or Section 11 of the Security Interest (Enforcement) Rules, 2002, or in any other proceedings known to law.

In the present case, the Appellant had filed an application for attachment before the Debts Recovery Tribunal, but no order had been passed yet. Therefore, there was no attachment of the pre-deposit amount at present.

The court observed that sufficient time was available to the Bank to get the amount attached, but it had failed to do so. The court found no merits in the reply opposing the application for a refund of the amount.

The Respondent Bank's counsel relied on the Supreme Court's decision in Central Bank of India Vs State of Gujarat & Ors. LAWS(SC-1987-9-31, which held that the amount deposited by the judgment debtor could be directed by the court to be paid to the decree-holder. However, the court distinguished the facts of that case, as it involved a civil suit before a Civil Court and the execution of a decree, which was not analogous to the present case.

Cases Cited:

Axis Bank Vs SBS Organics Pvt Ltd & Anr (2016) 12 SCC 18

Central Bank of India Vs State of Gujarat & Ors. LAWS(SC- 1987-9-31)

Sections and Laws Referred:

Section 13(10) of the SARFAESI Act

Section 11 of the Security Interest (Enforcement) Rules, 2002

Order:

The court allowed the application and directed that the pre-deposit amount, together with the accrued interest, be refunded to the Appellant/Applicant on proper acknowledgment. The Respondent Bank's counsel requested a stay on the order until appropriate action was taken for challenging the order. However, the court did not find any merits in that submission.