

Shri Shakti Cement Products and Ors. v. Rajkot Nagrik Sahakari Bank Ltd & Ors.

Shri Shakti Cement Products and Ors.

...Appellant

Rajkot Nagrik Sahakari Bank Ltd & Ors.

...Respondent

Case No: Appeal on Diary No. 1693/2023

Date of Judgement: 04/10/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: A.R. Gupta, along with Ms. N. Pandit and Mr. Aditya Bhatt, Advocate.

For Respondent: Mr. Janak S, Advocate.

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Facts:

The case involves an appeal filed by Shri Shakti Cement Products and others (Appellants) against Rajkot Nagrik Sahakari Bank Ltd & Others (Respondents). The appeal challenges an order dated 12.09.2023 passed by the Debts Recovery Tribunal (DRT) – II, Ahmedabad, in I.A. No. 2794/2023 in S.A. No. 321/2019. The Appellants had earlier sought interim relief from the DRT to protect their secured assets from being taken over by the bank under Section 14 of the SARFAESI Act. This relief was declined by the DRT vide order dated 04.09.2020. The Appellants then filed I.A. No. 2794/2023, seeking an expeditious hearing of the main S.A. No. 321/2019 and interim relief to protect their possession of the secured assets till the disposal of the main

appeal. The DRT, through the impugned order, refused to entertain the prayer for interim relief and early hearing, citing the pendency of older matters before the Tribunal. The Appellants are aggrieved by this order and have filed the present appeal before the Debts Recovery Appellate Tribunal (DRAT). The first Appellant is a proprietorship registered as an MSME, and the classification of the account as a Non-Performing Asset (NPA) by the bank is challenged. A demand notice under Section 13(2) of the SARFAESI Act was issued by the bank to the original borrower (proprietor), his two sons (guarantors), and the present Appellants 2 and 3, demanding an amount of ₹1,82,73,318/- as of 31.07.2018. The Appellants challenged the validity of the notice under Section 13(2), stating that there was no bifurcation of the principal amount and interest, which rendered the notice invalid under Section 13(3) of the SARFAESI Act. The original borrower (proprietor) and his sons (guarantors) had earlier filed S.A. No. 202/2019, challenging the NPA classification, the validity of the notice under Section 13(2), and the steps taken under Section 13(4). However, this appeal was dismissed due to a delay in filing the application under Section 17 of the SARFAESI Act. Subsequently, steps were taken by the bank to dispossess the Appellants of the secured assets, and a notice was received from the Mamlatdar pursuant to an order passed by the District Magistrate under Section 14 of the SARFAESI Act. The Appellants, including the deceased proprietor, then approached the DRT with the present S.A. No. 321/2019 but suffered an adverse order denying interim relief to protect their possession. The original borrower (proprietor) passed away on 14.08.2022, and an application was filed to bring his legal representatives on record, including his wife (Appellant No. 1.3).

Arguments by Appellants:

The Appellants contend that they have a good prima facie case due to the wrongful classification of the debt as an NPA by the bank, without considering that the first Appellant is an MSME. They argue that the notice under Section 13(2) is defective for want of bifurcation of the demanded amount into principal and interest, as required under Section 13(3) of the SARFAESI Act. The Appellants assert that consequent to

the demise of the original borrower (proprietor), a fresh notice under Section 13(2) needs to be issued to the legal representatives of the deceased borrower. The Appellants rely on a decision of the Madras High Court in Writ Petition No. 27230/2009, which held that a notice under Section 13(2) issued to the original borrower becomes invalid upon their death, and no steps can be initiated against the legal representatives based on that notice. The Appellants claim to have limited financial means for the last three years and are under financial strain, as evidenced by their income tax returns. They request that the mandatory pre-deposit amount be kept at a minimum of 25% of the demanded amount. The Appellants' counsel offers to deposit ₹20,00,000/- towards the pre-deposit by way of a demand draft on the same day.

Arguments by Respondents:

The Respondents' counsel vehemently opposes the application and contends that the contentions regarding the challenge to the demand notice under Section 13(2) and the classification of the account as an NPA cannot be re-agitated, as these issues were already raised in the earlier S.A. No. 202/2019, which stood dismissed. The Respondents argue that the principle of res judicata would apply, as the earlier dismissal order was never challenged in an appeal. The Respondents submit that the prayer for interim relief against dispossession of the property was also declined by the DRT vide order dated 04.09.2020, which was never challenged in an appeal. The Respondents assert that the present application is a reiteration of the interim reliefs sought by the Appellants and was rightly declined by the Presiding Officer in the impugned order. The Respondents contend that the Appellants do not have a case to maintain this appeal and suggest that the Appellants be directed to deposit 50% of the demanded amount as a pre-deposit.

Court's Elaborate Opinions:

The DRAT observes that the Appellants had already suffered an order of dismissal in S.A. No. 202/2019 regarding the challenge to the notice under Section 13(2), the steps under Section 13(4), and the classification of the debt as an NPA. Whether these issues can be re-

agitated in the present S.A. No. 321/2019 is to be determined by the DRT while disposing of the appeal. The DRAT notes that the Appellants had also suffered an earlier order of dismissal of the interlocutory relief, which was never challenged. The DRAT acknowledges that the Appellants are under financial strain, as evidenced by their income tax returns, but finds that the existence of a prima facie case is not established beyond doubt. Considering the financial strain of the Appellants, the DRAT grants them some concession in the mandatory pre-deposit amount. The DRAT directs the Appellants to deposit a sum of ₹70,00,000/- as a pre-deposit for entertaining the appeal. The DRAT accepts the demand draft of ₹20,00,000/- submitted by the Appellants' counsel on the same day as part payment towards the pre-deposit. The DRAT orders the balance amount of ₹50,00,000/- to be deposited in two equal installments of ₹25,00,000/- each, with specified due dates. In view of the Appellants' deposit of ₹20,00,000/- on the same day, the DRAT defers the taking of physical possession of the subject property until the next date of hearing. The DRAT warns that in default of payment of the installments, the Appeal shall stand dismissed without any further reference to the Tribunal. The DRAT directs the deposited amounts to 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 DRAT grants liberty to the Respondents to file a reply in the Appeal with an advance copy to the other side.

Cases Cited:

Writ Petition No. 27230/2009 (Madras High Court)

- This case was cited by the Appellants to support their contention that a notice under Section 13(2) issued to the original borrower becomes invalid upon their death, and no steps can be initiated against the legal representatives based on that notice.

Sections and Laws Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002 (SARFAESI Act):

- Section 13(2) – Issuance of demand notice by the secured creditor
- Section 13(3) – Requirements for the demand notice, including bifurcation of principal and interest
- Section 13(4) – Steps that can be taken by the secured creditor in case of non-compliance with the demand notice
- Section 14 – Taking possession of secured assets by the secured creditor
- Section 17 – Filing of an appeal before the Debts Recovery Tribunal (DRT)
- Section 18(1) – Mandatory pre-deposit requirement for entertaining an appeal before the Debts Recovery Appellate Tribunal (DRAT)

The Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act)

- The first Appellant is registered as an MSME under this Act, which is relevant to their challenge regarding the classification of the account as a Non-Performing Asset (NPA).

Principles of res judicata and the finality of judicial orders were also discussed in the context of the earlier dismissal orders and the scope of re-agitating the same issues.