

Smita Sushilchandra Narvekar v. Rajpur Urban Co-operative Bank Ltd. & Ors.

Smita Sushilchandra Narvekar

...Appellant

Rajpur Urban Co-operative Bank Ltd. & Ors.

...Respondent

Case No: Appeal No. 29/2012

Date of Judgement: 17/10/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Puneet Gogad, Advocate.

For Respondent: None.

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Facts:

This is an order dated 17/10/2023 passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai in Appeal No. 29/2012. The appellant is Smita Sushilchandra Narvekar. The respondents are Rajpur Urban Co-operative Bank Ltd. & Others. The appellant had filed Securitisation Application (S.A.) No. 24/2010 before the Debts Recovery Tribunal-III (DRT), Mumbai, which was dismissed by the DRT vide order dated 27.09.2010. The appellant is the widow of the deceased borrower, Sushilchandra S. Narvekar, who had allegedly borrowed money from the first respondent bank with respondents nos. 2 & 3 as guarantors for his hotel business. A property bearing Survey No. 14 A, Hissa No. 4 admeasuring 0.01 are in Mouje, Rajapur was mortgaged to secure the loan. Repayment of the loan was defaulted, and the original borrower

(appellant's husband) died. The first respondent bank had filed a claim before the Assistant Registrar of Co-operative Societies against the appellant and respondents nos. 2 & 3, which was dismissed as being time-barred. Thereafter, the bank filed a dispute before the Co-operative Court at Alibaug (R.T.N. No. 261 of 2008), which was allowed ex-parte on 30.09.2009. The appellant claims that the bank initiated SARFAESI measures without serving notice on her. Possession of the mortgaged property was taken on 06.10.2009. The appellant filed the S.A. No. 24/2010 before the DRT, praying for setting aside the demand notice dated 22.07.2009 and quashing the SARFAESI measures, including the demand notice and auction notice. The respondent bank contested the S.A., contending delay in filing and that the appellant was aware of the mortgage and proceedings initiated by the bank. It was stated that the order of the Assistant Registrar, Rajapur is being challenged in revision, and the appellant deliberately failed to appear before the Co-operative Court, resulting in an ex-parte decree. After appreciating the evidence, the DRT dismissed the S.A., aggrieved by which the appellant filed the present appeal. In the appeal, the appellant contends that the infirmity in the demand notice issued under Section 13(2) of the SARFAESI Act has not been considered by the DRT. The appellant later amended the appeal to raise contentions regarding the valuation of the property, insufficiency of the notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, and that the reserve price was much lesser than the market value. It is also contended that the property was sold at a throwaway price, and the auction purchaser (impleaded as the fourth respondent) did not deposit the sale consideration in accordance with the Rules. The fourth respondent (auction purchaser) filed a reply stating that the auction sale notice was published on 04.12.2009, the auction was held on 04.01.2010, the fourth respondent was the successful bidder, and the sale consideration was deposited. The sale was confirmed, a sale certificate was issued on 25.10.2010, possession was handed over to the fourth respondent on 25.10.2010, and the sale agreement was registered on 01.11.2010. The S.A. was dismissed consequent to the confirmation of the sale and issuance of the sale certificate in favor of the fourth respondent.

Arguments by Appellant:

The main contention raised by the appellant is regarding the challenge to the auction sale of the mortgaged property. It is argued that the reserve price for the property needed to be properly fixed based on appropriate valuation. The appellant has also challenged that the sale amount was not deposited on time by the auction purchaser (fourth respondent). It is contended that the property was sold at a throwaway price. The appellant had earlier challenged the infirmity in the demand notice issued under Section 13(2) of the SARFAESI Act, which was not considered by the DRT. Subsequently, the appeal was amended to raise contentions regarding the valuation of the property, insufficiency of the notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, and that the reserve price was much lesser than the market value.

Arguments by Respondents:

The respondent bank had contested the S.A. before the DRT, contending that there was a delay in filing the S.A. and that the appellant was aware of the mortgage and proceedings initiated by the bank. It was stated that the order of the Assistant Registrar, Rajapur is being challenged in revision. The bank argued that the appellant had deliberately failed to appear before the Co-operative Court, resulting in an ex-parte decree. The fourth respondent (auction purchaser) filed a reply stating that the auction process was duly followed, the sale consideration was deposited, the sale was confirmed, a sale certificate was issued, possession was handed over, and the sale agreement was registered. The fourth respondent prayed for dismissal of the appeal.

Court's Elaborate Opinions:

The Court observed that the main contention raised by the appellant is regarding the challenge to the auction sale of the mortgaged property. It noted that the sale took place on 04.01.2010, and the S.A. was dismissed subsequently vide order dated 27.09.2010. No protection order was granted in favor of the appellant. The Court held that

although the appellant had challenged the sale notice, the sufficiency of the reserve price and the valuation of the property were not challenged at any time. It stated that each SARFAESI measure is a fresh cause of action, which could have been challenged by the appellant. However, since the appellant did not challenge the measures pertaining to the sale of the property, reliefs concerning the sale cannot be obtained in the appeal. The Court did not find any error in the judgment and order of the DRT and concluded that the appeal is without any merits, requiring dismissal. Consequently, the Court dismissed the appeal.

Sections and Laws Referred:

Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) – Issuance of demand notice by secured creditor.

Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 – Procedure for sale of immovable secured assets.

No specific cases were cited by the Court in this order.

The Court has dealt with the issue of challenging the auction sale of the mortgaged property under the SARFAESI Act. It has considered the relevant facts, arguments of the appellant and respondents, and the applicable legal provisions. The Court has given a reasoned order, dismissing the appeal as the appellant failed to challenge the specific SARFAESI measures related to the auction sale at the appropriate stage before the DRT.