

Suresh Ramvilas Gupta v. Motilal Oswal Home Finance Ltd.

Suresh Ramvilas Gupta

...Appellant

Motilal Oswal Home Finance Ltd.

...Respondent

Case No: Appeal on Diary No. 1947/2023

Date of Judgement: 08/11/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Mr. Ramakant Yadav & Adiba Khan, Advocate.

For Respondent: Mr. Padmakar G., i/b M/s. SG Legal & Associates, Advocate.

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Facts:

Suresh Ramvilas Gupta (Appellant) is challenging the order dated 20.10.2023 passed by the Debts Recovery Tribunal-III, Mumbai (DRT) in I.A. No. 6031/2023 in Securitization Application (S.A.) No. 407/2023. The DRT had earlier granted protection to the Appellant regarding the SARFAESI measures initiated by Motilal Oswal Home Finance Ltd. (Respondent). However, in the impugned order, the DRT withdrew the interim protection and granted liberty to the Respondent to proceed with the SARFAESI measures. The impugned order does not delve into the merits of the contentions raised by the Appellant regarding the SARFAESI measures. It states that the Respondent has clarified the outstanding liabilities, and the Appellant did not comply with the

direction to approach the Respondent for a negotiated settlement. The Respondent issued a demand notice under Section 13(2) of the SARFAESI Act on 29.07.2019, demanding a sum of ₹4,00,718/-. The Appellant claims that he did not receive a notice under Section 13(2) or Section 13(4) of the SARFAESI Act. He only became aware of the SARFAESI action when an order was passed for taking physical possession of the secured asset under Section 14 by the Chief Metropolitan Magistrate (CMM). The Appellant has challenged the correctness of the amount claimed by the Respondent, stating that he had purchased the flat from the builder for ₹12 lakhs and had made a payment of ₹7.20 lakhs. Therefore, he argues that there was no need for him to borrow a larger amount from the Respondent. The Appellant has obtained a statement of account that shows a lesser amount due than what is now claimed by the Respondent. However, the Respondent contends that the account only reflects the overdue instalments and not the total amount due. According to the Respondent, the total amount due as of the date is ₹8,61,256/-.

Arguments by Parties:

Appellant's Arguments:

The Appellant has pleaded that he has a strong case for setting aside the impugned order. He claims to be a poor man driving an auto-rickshaw for a livelihood and is not in a position to deposit the 50% amount contemplated under Section 18(1) of the SARFAESI Act. The Appellant has challenged the SARFAESI measures up to the measures under Section 14 of the SARFAESI Act. He has pleaded that he has a hand-to-mouth existence and is the only earning member in his family, but there is no documentary evidence to support his claim of impecuniousness. The Appellant claims that he did not receive any notice under Sections 13(2) and 13(4) of the SARFAESI Act.

Respondent Bank's Arguments:

The Respondent Bank has vehemently opposed the application for waiver of pre-deposit, arguing that the Appellant has not stated any reasons for seeking a waiver. The Respondent contends that the account statement obtained by the Appellant only shows the overdue instalments

to be paid and does not reflect the total amount due. According to the Respondent, the total amount due as of the date is ₹8,61,256/-.

Court's Elaborate Opinions:

The Appellant is not entitled to a total exemption from the pre-deposit, as per the settled position. The only consideration before the Tribunal is whether the Appellant is entitled to get the 50% pre-deposit reduced to 25%. As per the latest decision of the Supreme Court in Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., the Appellant is required to make a payment of 50% of the amount due in the demand notice under Section 13(2) for the appeal to be entertained, under the second proviso to Section 18(1) of the SARFAESI Act. Considering the entire facts and circumstances of the case, the Appellant was directed to deposit a sum of ₹1.50 lakhs as a pre-deposit for the appeal to be entertained. The pre-deposit amount of ₹1.50 lakhs was to be paid in three equal instalments of ₹50,000 each, with specified due dates. On the payment of the first instalment, the Appellant shall be entitled to get the further SARFAESI measures stalled until the next date of hearing. Default in payment of any of the instalments shall entail the dismissal of the appeal without any further reference to the Tribunal. The amount deposited shall 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.

Cases Cited:

Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors. (Supreme Court)

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): Taking possession of secured assets
- Section 14: Taking possession of secured assets

- Section 18(1): Appeal to DRAT (second proviso on pre-deposit)