

Ternate Hospitality Pvt. Ltd. & Anr. v. Piramal Capital and Housing Finance Ltd. & Anr.

Ternate Hospitality Pvt. Ltd. & Anr.

...Appellant

Piramal Capital and Housing Finance Ltd. & Anr.

...Respondent

Case No: Appeal on Diary No. 225/2023

Date of Judgement: 16/02/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Siddharth Samantray along with Mr Niket Harit and Ms Jigna, Mr Manoj Harit, Advocates.

For Respondent: Mr R. L. Motwani, Ms Rashmi D. Dhogde, Advocates.

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Facts:

This is an order passed in I.A. No. 90/2023(WoD) in Appeal on Diary No. 225/2023 by the Debts Recovery Appellate Tribunal, Mumbai. The appeal and application are against the order dated 09/02/2023 of the Debts Recovery Tribunal, Pune (DRT) in I.A. No. 109 of 2023 in Securitisation Application (S.A.) No. 292 of 2022. The DRT declined to grant interim relief of stalling the SARFAESI measures initiated by Piramal Capital and Housing Finance Ltd. (Respondent No. 1) against the borrower/mortgagor (Respondent No. 2) concerning the secured assets. The appellants, Ternate Hospitality Pvt. Ltd. & Anr., are licensees in occupation of the secured property under a leave and license agreement with Respondent No. 2. The appellants had filed

another application (I.A. No. 1695/2022), which was also dismissed by the DRT on 11/10/2022.

Court's Elaborate Opinions:

The court found that prima facie, the appellants are not 'aggrieved persons' coming within the purview of Section 17 of the SARFAESI Act, entitling them to move the DRT challenging the SARFAESI measures against Respondent No. 2. The court observed that the maintainability of the securitisation application filed by the appellants is to be determined by the DRT in the first instance, and the court did not want to influence the DRT's findings. The court dismissed the application and appeal, directing the DRT to consider the objection regarding the maintainability of the S.A. and the contention that the appellants are not 'aggrieved persons' under Section 17 of the SARFAESI Act.

Arguments by All Parties:

Appellants' Arguments: The appellants insisted on an urgent hearing of the application for waiver of mandatory pre-deposit, considering the impending dispossession of the subject property under SARFAESI measures. The appellants argued that they are 'aggrieved persons' entitled to challenge the SARFAESI measures and that their possession can be viewed as an oral lease or tenancy. The appellants challenged the entire SARFAESI measures, including the classification of debt as Non-Performing Assets and the order passed by the District Magistrate under Section 14. The appellants contended that the successor creditor (Respondent No. 1) cannot continue with the proceedings unless they get themselves impleaded or file a fresh application under Section 14.

Respondents' Arguments: The respondents vehemently opposed the application for waiver and sought time to file replies. The respondents submitted that the appellants do not have the locus to file an application under Section 17 of the SARFAESI Act before the DRT because they are in no way aggrieved by the SARFAESI measures initiated against Respondent No. 2 and the secured assets.

Cases Cited, Sections and Laws Referred:

Sections Referred: 15. Section 18(1) of the SARFAESI Act (appeal against DRT order)

Section 17 of the SARFAESI Act (application to DRT by aggrieved persons)

Section 13(2), 13(4), and 14 of the SARFAESI Act (SARFAESI measures)

No specific cases were cited in the order.