

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

Ternate Hospitality Pvt. Ltd. & Anr.

...Appellant

Piramal Capital & Housing Finance Ltd. & Anr.

...Respondent

Case No: Appeal on Diary No729/2023

Date of Judgement: 10/07/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Raffeeque Peer Mohiddin along with Mr Manoj Harit and Neel Shetty, i/b M/s. Manoj Harit & Co., Advocate.

For Respondent: Mr R. L. Motwani, Advocate.

Download Court Copy [CLICK HERE](#)

Facts:

The matter relates to an appeal filed by Ternate Hospitality Pvt. Ltd. & Anr. (Appellants) challenging the order dated 13.04.2023 passed by the Debts Recovery Tribunal (DRT), Pune, in I.A. No. 708 of 2023 in Securitisation Application (S.A.) No. 292 of 2019. The Appellants had previously filed two similar applications (I.A. No. 1695 of 2022 and I.A. No. 109 of 2023) before the DRT, seeking relief against the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) measures initiated by Piramal Capital & Housing Finance Ltd. (Respondent No. 1) concerning the secured asset. Both these applications were dismissed by the DRT. Aggrieved by the dismissal of I.A. No. 109 of 2023, the Appellants filed an appeal

at Diary No. 225 of 2022 before the Debts Recovery Appellate Tribunal (DRAT), along with an application for waiver of deposit (I.A. No. 90 of 2023). The DRAT observed that there was no prima facie case but directed the DRT to determine the maintainability of the S.A. and dispose of it expeditiously. After the disposal of the earlier appeal, the Appellants filed an application for amendment of the S.A., which was dismissed and not challenged in appeal. Subsequently, the Appellants filed the present application (I.A. No. 708 of 2023) before the DRT to stall the SARFAESI measures initiated by the Respondent No. 1. The DRT dismissed this application, stating no grounds for granting interim relief, and posted the S.A. for disposal. The Appellants are now in appeal before the DRAT, seeking waiver of the mandatory pre-deposit of 25% of the amount due. The Respondent No. 1 has not filed a reply but orally opposed the application for waiver. According to the demand notice under Section 13(2) of the SARFAESI Act dated 23.04.2018, the amount demanded was ₹3,84,50,000/-, and interest thereon was also due. The Appellants have paid ₹85 lakhs, which needs to be deducted from the claimed amount. The counsel for Respondent No. 1 claims that after adjusting the paid amount, ₹6,70,00,000/- is still due. However, the statement of account is not available, so this amount cannot be readily accepted. The Appellants are not the owners of the property but licensees conducting a restaurant and hospitality business on the premises owned by Respondent No. 2. The original leave and license agreement was for five years and has expired without extension. Civil suits were pending between the Appellants and Respondent No. 2, which have been dismissed, and the Appellants have filed an appeal. The Appellants claim to have an irrevocable power of attorney executed by Respondent No. 2, which Respondent No. 2 claims to have rescinded for breach of agreement terms. The Appellants claim to be in exclusive possession of the property as licensees, but there is no document to indicate that they are tenants entitled to protection under the SARFAESI Act.

Court's Elaborate Opinions:

The DRAT had previously observed in its order dated 16.02.2023 in Appeal at Diary No. 225 of 2023 that the Appellants had failed to

establish a prima facie case of right over the property. The matter was remanded to the DRT to consider whether the Appellants have locus standi to maintain an application under Section 17(1) of the SARFAESI Act, but this point has not yet been answered by the DRT. Considering the threshold amount due (approximately ₹5 crores), the DRAT directs the Appellants to deposit a sum of ₹2.50 crores as pre-deposit. The Appellants undertake to deposit ₹1.50 crores before 14.07.2023 and the balance amount of ₹1 crore within four weeks, i.e., on or before 07.08.2023. Failure to pay any of the amounts shall result in the dismissal of the appeal without further reference to the DRAT. On deposit of ₹1.50 crores before 14.07.2023, the Appellants shall be entitled to an interlocutory relief of stay on taking over possession of the secured asset. The amounts shall be deposited in the form of a Demand Draft with the Registrar of the DRAT and 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.

Arguments by All Parties:

Appellants' Arguments:

The Appellants have challenged the order dated 13.04.2023 passed by the DRT, Pune, in I.A. No. 708 of 2023, wherein the DRT refused to grant any relief against the SARFAESI measures initiated by Respondent No. 1. The Appellants have filed two similar applications (I.A. No. 1695 of 2022 and I.A. No. 109 of 2023) before the DRT, seeking relief against the SARFAESI measures, which were dismissed. The Appellants have undertaken to deposit 25% of the amount due as pre-deposit. The Appellants claim to be in exclusive possession of the property as licensees and assert the existence of an irrevocable power of attorney executed by Respondent No. 2 in their favor.

Respondent No. 1's Arguments:

Respondent No. 1 has orally opposed the application for waiver of pre-deposit filed by the Appellants. According to the counsel for Respondent No. 1, after adjusting the amount paid by the Appellants,

₹6,70,00,000/- is still due from them.

Respondent No. 2's Arguments:

Respondent No. 2 is the owner of the property, and the Appellants are licensees conducting a restaurant and hospitality business on the premises.

Respondent No. 2 claims to have rescinded the irrevocable power of attorney purportedly executed in favor of the Appellants due to a breach of the terms of the agreement between them.

Cases Cited:

No specific cases have been cited in the order.

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 17(1) (Appellants' locus standi to maintain an application)

The provisions of the SARFAESI Act regarding the protection of tenants have been referred to, though no specific sections have been mentioned.