

Validity of directions by DRT for sale of secured assets by private treaty under SARFAESI Act: DRAT KOLKATA

HDFC Bank Ltd.

...Appellant

M/s. Shree Shyam Tech India Pvt. Ltd.

...Respondent

Case No: Appeal No. 19 of 2021

Date of Judgement: 18.07.2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Samik Basu, Advocate.

For Respondent: Mr. R. N. Das, Advocate.

Facts:

The respondent no. 1 is a private company who is the borrower of the appellant HDFC Bank and mortgaged two properties as security. The loan account became irregular and was classified as NPA. The Bank initiated SARFAESI action by issuing notice u/s 13(2) and 13(4). Two e-auction attempts did not get any bidders. The borrowers filed an application (M.A. 1703/2019) for sale of properties by private treaty, stating they can fetch higher prices. The DRT directed inspection of properties and actions for private treaty sale. The DRT by order dated 10.12.2019 directed sale via private treaty to two buyers – Amit Jana and Tanuj Patro for Rs. 83.5 lakhs and Rs. 28 lakhs respectively within 15 days. This was not complied. Another DRT order dated 11.02.2020 directed the borrowers to deposit sale consideration by

20.02.2020. This direction was also not adhered to. The impugned DRT order dated 27.02.2020 changed prospective buyers to Lipsa Swain and Manoj Patra, directing handing over of sale deed and issuance of letters by the Bank, and fixing registration by 12.03.2020 subject to deposit.

Arguments by Appellant Bank:

The conduct of the borrowers is malafide, intended to thwart and delay recovery under SARFAESI, and not bonafide for private treaty sale. DRT exceeded its jurisdiction in issuing contradictory directions changing prospective buyers and extending timelines, which amounted to delaying lawful recovery under the Act. Impugned order is liable to be set aside to prevent frustration of SARFAESI action.

Arguments by Borrowers:

No arguments of the borrowers have been recorded in the order.

Tribunal's Decision and Reasons:

Allowing the appeal, the Tribunal held that the borrowers have not acted bonafide as different directions for private treaty sale remained uncomplied and buyers were changed repeatedly with seeking further time, evidencing intention to delay recovery. The conduct was held not bonafide for sale via private treaty, DRT exceeded jurisdiction by allowing delays through new directions, hence impugned order set aside. Learned DRT directed to expeditiously dispose proceedings within 3 months to prevent frustration of recovery action under the SARFAESI Act.

Sections and Rules Referenced:

Section 13(2) and 13(4) of the SARFAESI Act relating to demand notices. Rule 8(5) of Security Interest (Enforcement) Rules, 2002 permitting sale via private treaty.

Cases Referred:

No cases have been referred in the order.

Conclusion:

The conduct of borrowers in seeking sale via private treaty was held as not bonafide by the DRAT, intended only to delay lawful recovery

under the SARFAESI Act. Directions by DRT facilitating delays were held as exceeding jurisdiction, hence set aside. DRT directed to expeditiously dispose the proceedings.

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Full Text of Judgment:

1. Instant appeal has arisen against the order dated 27.02.2020 passed by learned DRT Cuttack.

2. As far as facts of the matter are concerned as would appear from the record that respondent no.1 is a private company who is the borrower of the appellant bank and created mortgage of two properties in favour of the appellant bank. Repayment of loan was irregular and it was classified as NPA. SARFAESI actions were initiated by the bank by issuing notices u/s 13(2) and 13(4) of the Act. Respondent no.1 challenged the first sale notice dated 25.02.2018 as well as auction sale held on 29.03.2018. Auction could not be concluded for want of bidder. Subsequently, second sale notice was issued by the Bank on 22.01.2019, however, sale could not be materialized as no bidder appeared. Subsequently, respondent no.1 made a proposal for sale of the properties by way of private treaty by filing M.A. 1703 of 2019. Learned DRT has taken up the M.A. for hearing on 17.09.2019 and direction was issued to the bank for giving inspection of the properties. That order was sought to be recalled by the appellant bank which was dismissed. Subsequently, an order was passed by the learned DRT on 10.12.2019 wherein at Para-5 it was directed that:

“In view of the above, the respondent bank is directed to take steps under private treaty and register the two properties (as mentioned in para 2(b) and 2(c) i.e. Keshura Property and Raghunathpur Property within 15 days from the date of receipt of this order, in favour of Sri Amit Jana and Sri Tanuj Patro respectively after receipt of sale consideration of Rs.83.50 lakhs and Rs.28.00 lakhs to be deposited by the prospective purchasers and the respondent bank is directed to deliver the vacant possession of the property to both the buyers Sri

Amit Jain and Sri Tanuj Patro and receiving the entire sale consideration paid by the above prospective buyers and the respondent bank is also further directed to release those documents in respect of the properties sold and discharged the mortgages in respect of the flat in Kesura and duplex house in Raghunathpur. If the above intending purchasers fails to credit the sale consideration as agreed under Tripartite agreement under private treaty, within 15 days from the date of receipt of the order, the respondent bank is at liberty to proceed according to law.”

3. Thereafter, on 11.02.2020 another direction was issued by the learned DRT which is as under :

“In the above circumstances, the applicant is directed to prepare the draft sale deed and delivery the same to the respondent bank, authorised officer on or before 20.02.2020 and applicant further directed to take steps to deposit the sale consideration by way of Pay Order / DD before the Registry on 20.02.2020 and respondent bank is directed to registered the property in favour of the prospective purchaser after approval of the sale deed and after deposit of sale consideration before registrar on or before 20.02.2020 if it is otherwise on 25.02.2020.”

4. Subsequent thereto impugned order was passed by the learned DRT on 27.02.2020 wherein certain direction was issued, which are as under :

“Counsel for the applicant is present along with applicant Mr. Jadunath Mohanty husband of Lipsa Swain and submitted that he is ready to purchase the property from SBI. But SBI required one letter that after registration of the property connected with the documents i.e. sale deed etc. in favour of which are lying HDFC will return to the SBI and another purchaser Manoj Patra has gone to Delhi for medical treatment and he is arranging loan from Canara Bank. He also required letter from the HDFC that the documents will be delivered after registration in favour of the party to the concerned bank and counsel from the respondent bank and Senior Manager Recovery-cum-Authorised Officer are present and submitted that the applicant is not showing any interest only lingering the matter and huge public money is blocked and they are not complied the earlier order of the Tribunal

and they are not presented the DD before the Registrar. Submission of both the counsel are taken. Admittedly, the draft sale deed is given to the bank and matter is posted today 27.02.2020. The respondent bank is directed to handover the draft sale deed after verification to the counsel for the applicant and the bank is further directed to issue two letters to both the prospective purchaser that after receipt of the money they will return the original documents to the concerned branch and the respondent bank is directed to handover the draft sale deed and letter on or before 03.03.2020 and registration of the properties are fixed on 12.03.2020 subject to deposit of total sale amount before Registrar by way of DD in favour of the respondent bank.”

Feeling aggrieved by the impugned order appellant preferred the appeal.

5. Heard learned counsel for the parties and perused records.

6. As far as auction sales are concerned it is admitted that two e-auction sales could not be materialized as no bidder appeared. It is not in dispute that an application was filed by respondent no.1 for sale of the properties by private treaty on the ground that much amount can be fetched by sale on private treaty. Consequent thereto learned DRT passed different orders. Ultimately, impugned order was passed which aggrieved the appellant bank.

7. As far as issue of private treaty is concerned it is not resintegra that secured assets can be sold by private treaty as provided in Rule 8(5)(d) of the Security Interest (Enforcement) Rule, 2002, but it is to be looked into as to whether borrower is acting bona-fide by offering the proposal of private treaty. Record shows that conduct of the borrower in this case is not at all bona-fide rather they have taken all the steps to thwart the

SARFAESI proceedings initiated by the bank for realization of debt due. Perusal of the order dated 10.12.2019 referred to above will show that two persons, namely, Sri Amit Jana and Sri Tanuj Patro were shown as the prospective buyers. Specific direction was issued that respondent bank to take steps under private treaty and register the two properties i.e. Keshura property and Raghunathpur property within

15 days from the date of receipt of this order in favour of Sri Amit Jana and Sri Tanuj Patro respectively after receipt of sale consideration of Rs.83.50 lakhs and Rs.28.00 lakhs to be deposited by the prospective purchasers. This specific direction was not complied. Thereafter another effort was made to delay the payment of sale consideration. SARFAESI applicant was directed to prepare the draft sale deed and deliver the same to the respondent bank. There was also a direction to the SARFAESI applicant to take steps to deposit sale consideration on or before 20.02.2020. This direction too was not complied.

8. Thereafter on 27.02.2020 surprisingly prospective buyers were changed and two other persons namely, Lipsa Swain and Manoj Patra came into the picture and further time was sought on different ground for making deposit. Bank was directed to handover the draft sale deed after verification to the counsel for the appellant and the bank was further directed to issue two letters to both the prospective purchasers that after receipt of the money they will return the original documents to the concerned branch. This shows that effort was made to involve some other bank i.e. Canara Bank from where the prospective buyer namely Manoj Patra was trying to arrange loan for purchase of the property. This conduct of the SARFAESI applicants shows that they were not at all interested for sale of the properties by private treaty rather their intention was to keep the matter pending so that recovery proceeding can be deferred and recovery of debt due can be delayed.

9. Learned DRT had exceeded its jurisdiction in issuing all these directions which are itself contradicts its own order.

10. On the basis of the discussion made above, I am of the considered opinion that appellant has made the proposal for sale of the properties by private treaty for keeping the matter pending and to delay the SARFAESI proceeding for recovery of debt due. Accordingly, impugned order could not sustain and is liable to be set aside.

11. Appeal is allowed. Impugned order dated 27.02.2020 passed by learned DRT Cuttack is set aside. As it is an old matter 2018 learned

DRT Cuttack is hereby directed to dispose of the matter positively within three months from the date of receipt of the order. Registry is directed to communicate the order to DRT Cuttack forthwith for compliance. No order as to costs.

File be consigned to record room.

Copy of the order be supplied to the appellant and the respondents.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 18th day of July, 2023.