

Validity of notice under Section 13(2) of SARFAESI Act: DRAT KOLKATA

HDFC Bank Limited

...Appellant

Dipali Baidya

...Respondent

Case No: Appeal No. 54 of 2021

Date of Judgement: 22nd June, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Samik Basu, Advocate.

For Respondent: Mr. Kala Chand Das, Advocate.

Facts:

The appellants were the borrowers and guarantors who had taken a cash credit facility of Rs. 50 lacs from the respondent bank. The loan was secured by equitable mortgage of two immovable properties. The borrowers defaulted and their account was classified as NPA on 29th December 2016. A demand notice under Section 13(2) was issued on 13th November 2017 claiming Rs. 61,21,699. Symbolic possession of the secured assets was taken on 24th December 2018. The demand notice and symbolic possession were challenged before the DRT.

Court's Opinions:

The DRT held that the demand notice was not valid as it did not mention the rate of interest, principal amount and interest accrued. Hence all actions under SARFAESI Act were quashed. On appeal, the DRAT held that purpose of notice u/s 13(2) is to give an opportunity to the

borrower to discharge the liabilities within 60 days, failing which action can be taken u/s 13(4). There is no requirement under Section 13(2) to give details like rate of interest, principal amount, accrued interest etc. The amendment to add Section 13(3A) requiring giving reasons for not accepting objections shows that initial notice need not contain such details. Thus the DRT erred in setting aside the notice. The appeal deserves to be allowed.

Arguments by Bank:

The bank contended that the notice contained the required details. There is no requirement to mention rate of interest, principal amount, accrued interest etc. Hence the DRT order should be set aside.

Arguments by Borrowers:

The borrowers argued that purpose of notice u/s 13(2) is to inform details like rate of interest, principal, accrued interest etc. on which action is proposed. By not mentioning these, notice was defective.

Sections:

Notice under Section 13(2) of SARFAESI Act to discharge liabilities within 60 days, failing which action can be taken under Section 13(4). Amendment to add Section 13(3A) requiring giving reasons for not accepting objections to notice.

Cases Referred:

Mardia Chemicals v. Union of India (2004) 4 SCC 311 – held need to give reasons for not accepting objections to notice under Section 13(2).

Conclusion:

Notice under Section 13(2) need not contain details like rate of interest, principal amount, accrued interest etc. Purpose is to give 60 days to discharge liabilities, failing which action can be taken. Amendment adding Section 13(3A) shows initial notice need not contain such details. DRT erred in setting aside notice. Appeal allowed.

Order:

Appeal allowed, DRT order set aside. No order as to costs.

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Full Text of Judgment:

1. Instant appeal has arisen against judgment and order dated 11th November, 2021 passed by Learned DRT-III, Kolkata in SARFAESI Application 26 of 2019 (M/s. Joy Distributors & 4 Others -vs- The Authorised Officer, HDFC Limited) whereby the Learned DRT allowed the SARFAESI Application.

2. Feeling aggrieved, Respondent Bank has preferred the appeal.

3. SARFAESI Applicants No. 1 and 2, namely, Joy Distributors and Smt. Dipali Baidya, were the borrowers while Applicants No. 3 to 5, namely, Ms. Papiya Baidya, Mrs. Debi Rani Baidya and Subir Kumar Baidya, were the guarantors for a Cash Credit Facility of Rs.50.00 lac which was granted by the Appellant Bank. Equitable mortgage was created by mortgaging two immoveable properties. SARFAESI Applicant defaulted and loan account was classified as N.P.A. on 29th December, 2016. Demand Notice was issued on 13th November, 2017 claiming an amount of Rs.61,21,699.48p; symbolic possession was taken on 24th December, 2018. Both these notices were challenged before the Learned DRT. Learned DRT arrived at a conclusion that as per notice under Section 13 (2) of the SARFAESI Act, 2002, total amount of liability of Rs.61,29,699.48p was mentioned but neither the rate of interest nor the principal amount and interest accrued therein was mentioned. Accordingly, Learned DRT held that notice as unsustainable and set aside the notice. Consequently all the SARFAESI actions were quashed.

4. Feeling aggrieved Bank preferred the appeal.

5. I have heard the Learned Counsel for the parties and perused the record.

6. Main contention of the Learned Counsel for Appellant is that in the notice under Section 13 (2) of the SARFAESI Act, 2002, required details were furnished, there is no requirement of mentioning the rate

of interest or the principal amount or the accrued interest therein. Hence, the Learned DRT has failed to exercise its jurisdiction in accordance with law and the impugned order is liable to be set aside.

7. Per contra, Learned Counsel for Respondent submits that purpose of notice under Section 13 (2) of the SARFAESI Act, 2002, is to bring to the notice of the noticee all the details regarding which SARFAESI action has been initiated by the Bank which includes rate of interest along with principal amount and interest accrued therein, which should have been mentioned in the notice.

8. In the case of *Mardia Chemicals Limited -vs- Union of India* (2004) 4 SCC 311 in paragraph 46 it was held:

“46. We are holding that it is necessary to communicate the reasons for not accepting the objections raised by the borrower in reply to notice under Section 13(2) of the Act more particularly for the reason that normally in the event of non-compliance with notice, the party giving notice approaches the Court to seek redressal but in the present case, in view of Section 13(1) of the Act the creditor is empowered to enforce the security himself without intervention of the Court. Therefore, it goes with logic and reason that he may be checked to communicate the reason for not accepting the objections, if raised and before he takes the measures like taking over possession of the secured assets etc.”

9. As far as Section 13 (2) of the SARFAESI Act, 2002 is concerned it is clear from the language of the Act the purpose of the provision is that borrower is required to discharge in full its liability to its secured creditor. Section 13 (2) Rules reads as under :

“13 (2) – Where any borrower, who is under a liability to a secured creditor under a security agreement makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset then, the secured creditor may require the borrower by notice in writing to discharge in full the liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under subsection (4).”

10. Perusal of the provision will show that intent of the notice is to give notice to the Borrower to discharge his liabilities in full within sixty days failing which the secured creditor would be entitled for exercising its right under Section 13 (4) of the SARFAESI Act, 2002. Legislative intent for incorporating an amendment under Section 13 (3A) of the SARFAESI Act, 2002 by way of amendment was in compliance of the orders of the Hon'ble Supreme Court in Mardia Chemicals (supra) whereby the main purpose of notice under Section 13 (2) of the Act could be achieved if an opportunity is granted to the Borrower to make a representation to the secured creditor so that action by the secured creditor be taken after giving an opportunity of hearing to the Borrower. Hence, there is no need to incorporate the rate of interest or accrued interest or the principal amount in the notice under Section 13 (2) of the SARFAESI Act, 2002. Accordingly, I am of the view that Learned DRT erred in passing the impugned order and set aside the demand notice dated 13th November, 2017. Accordingly, the appeal deserves to be allowed.

The appeal, is allowed. Impugned order dated 11th November, 2021 passed by Learned DRT-III, Kolkata in SARFAESI Application 26 of 2019 (M/s. Joy Distributors & 4 Others -vs- The Authorised Officer, HDFC Limited) is set aside.

No order as to costs.

File be consigned to Record room.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

Order dictated, signed, dated and pronounced in open Court.