

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

(Appeal No. 38 of 2020)
(Arising out of S.A. No. 254 of 2018 in DRT Visakhapatnam)

**THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

1. M/s Sri Sai Bhargavi Cotton Trading Company represented by M. Saraswathi Door No. 2-14-143/B, ½ Shyamala Nagar, Guntur, Guntur District Andhra Pradesh
2. M. Brahma Reddy, son of Late Linga Reddy Door No. 2-14-143/B, ½ Shyamala Nagar, Guntur, -06 Guntur District Andhra Pradesh
3. Smt. Tiyyaguru Sri Devi, daughter of Sri Veera Reddy Door No. 2-14-143/B, 1/23 Shyamala Nagar, Guntur Guntur District Andhra Pradesh - 522006

...Appellants

-Versus-

1. State Bank of India represented by Authorised Officer, Guntur Branch, Kannavarithota, 26-1-52, Guntur -522004
2. Mr. Sadiq Ahmed Jilani Syed, son of Mr. SJA Jeelani, D.No. 6-13-70, Arundalpet 13/2, Guntur, Guntur 522004
- 3/ Smt. Dakkumall Japamma, wife of Sri Sunil Kumar, D No. 5-269, C.R. Nagar, Chilakaluripet, Guntur District -522616

... Respondent

Counsel for the Appellants

Mr. Nemani Srinivas,
Learned Counsel for the
Appellant.

Counsel for Respondent

Mr. S. Pal Chowdhury,
Learned Counsel with Ms.
Saswati Sikder, Learned
Counsel for the
Respondent

JUDGMENT : On 18th April, 2023

THE APPELLATE TRIBUNAL

Instant Appeal has arisen against an order dated 31st August of 2018 passed by Ld. DRT Visakhapatnam in I.A. No. 1119 of 2018 arising out of S.A. No. 254 of 2018 whereby the Ld. DRT held that the auction of the scheduled property was made in accordance with law and accordingly dismissed the SARFAESI Application.

2. Feeling aggrieved, SARFAESI Applicant preferred the Appeal.

3. Heard the Learned Counsel for the parties and perused the record.

4. As far as facts of the matter are concerned, a loan was taken by the Appellant from the Respondent Bank which was classified as NPA on 31.05.2017. Consequent thereto, SARFAESI action was initiated by the Bank. Notice under Section 13(2), 13(4) of the SARFAESI Act were issued. Property was put to auction on 22nd June, 2018 and it was sold to Respondent No. 2. Mr. Sadiq Ahmed Jilani Syed. Respondent No. 3 Smt. Dakumalla also participated in the auction. But as per the sale certificate dated 1st October, 2018, sale certificate was not issued in her favour. Appellant herein filed a SARFAESI Application u/s 17 of the SARFAESI Act on 25.06.2018 challenging the actions taken by the Bank. Particularly non compliance of Rule 8(6) and 9(1) of the Security Interest (Enforcement) Rules 2002

along with violation of Rule 8(7). Violation of Rule 8(1) and 8 (2) were also pleaded by the Appellant.

5. Respondent Bank filed the opposition before the Ld. DRT wherein it is stated that notice under Rule 8(6) of the Security Interest (Enforcement) Rules 2002 was issued by the Bank and it was served. Thereafter, e-auction sale notice dated 21.05.2018 was issued which were published on 22.05.2018 in two newspapers and sale was conducted on 26.02.2018 in accordance with law. It is further pleaded that the Respondent No. 2, Mr. Sadiq Ahmed Jilani Syed was the highest bidder for an amount of Rs.94 lacs who paid 25% of the amount on the date of auction and sale was confirmed in his favour. Accordingly, Ld. DRT passed the impugned order.

6. Prima facie, it would appear that Ld. DRT has passed a very sketchy, unreasoned order which could not be sustained. It is settled legal proposition that an order should be a reasoned order. An order bereft of reasons is nothing but an arbitrary exercise of jurisdiction vested in the DRT. I am constrained to observe that the Ld. Presiding Officer has not looked into the pleadings of the parties and not recorded any categorical findings on the issue involved.

7. A specific plea is taken regarding non compliance of Rule 8(6), 9(1), 8(1) and 8(2) of the Security Interest (Enforcement) Rules 2002. Ld. DRT in generalized manner recorded in the findings that all the proposition of laws and Rules are followed by the Bank. When specific plea is taken

which was not specifically denied, rather a general statement is made by the Bank that a notice under Rule 8 (6) was issued which was served upon the borrower. There is no description as to when the notice was issued, when it was served. All these facts should have been looked into by the Ld. DRT which is not done.

8. A further plea is taken by the Learned Counsel for the Appellant in the Appeal regarding non compliance of Rule 9(4) of the Security Interest (Enforcement) Rules 2002 stating that an interim order for not confirming the sale was passed by the Ld. DRT on 4th July, 2018. Ultimately SARFAESI Application was decided and dismissed on 31.08.2018. As per the Respondent, copy of the judgement was received on 4th September, 2018 and the Learned Counsel for the Bank informed the Bank on 15th September, 2018. Thereafter, a fresh notice was issued to the purchaser i.e. Respondent No. 2 on 17.09.2018 asking to deposit the amount within 15 days. The sale certificate was issued on 01.10.2018 in favour of Respondent No. 2. This plea is taken in the Appeal which can also be looked into by the Ld. DRT. However, the SARFAESI Applicant would be at liberty to add the plea by moving an amendment application before the Ld. DRT.

9. In view of the discussion made above, I am of the view that the judgment and order passed by the Ld. DRT could not sustain and is liable to be set aside. The matter to be remanded back to the Ld. DRT to dispose of afresh in

accordance with law after giving an opportunity of hearing to the parties keeping in view the observations made in the body of the judgement.

Order

Appeal is allowed. Impugned order and judgment dated 31.08.2018 passed by Ld. DRT Visakhapatnam is set aside. The matter is remanded back to the Ld. DRT Visakhapatnam to decide afresh after affording an opportunity of hearing to the parties in accordance with law keeping in view the observations made in the body of the judgment. Ld. DRT shall give an opportunity to the SARFAESI Applicant to implead the auction purchaser as a party in the SARFAESI Application. It is expected that the Ld. DRT shall decide the matter afresh expeditiously.

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.

Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

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

(Anil Kumar Srivastava,J)
Chairperson

Dated 18th April, 2023
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