

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 450/2023 (WoD)

In

Appeal on Diary No. 986/2023

Between

Ajitsinh Kumarsinh Sisodia

... Appellant/s

V/s.

Bank of India & Anr.

... Respondent/s

Mr Sandeep Bhat, Advocate for Appellant.

Mr O.A. Das, Advocate for Respondent No.1 Bank.

Mr Dharmendra Tiwary, i/b Mr Santosh Thakur, Advocate for Respondent No.2.

:- Order dated: 10/07/2023:-

The matter is taken up for hearing by way of praecipe dated 27.06.2023 filed by Appellant for seeking urgent relief.

2. The Appellant is in appeal challenging the judgment in Appeal No. 03 of 2023 dated 15.05.2023 on the files of the Debts Recovery Tribunal No. I, Ahmedabad (D.R.T.) wherein the Ld. Presiding Officer dismissed the appeal challenging the order of the Recovery Officer to set aside the sale in the Recovery Proceedings No. 482 of 2018. The Appellant is the borrower and Original Application (O.A.) No. 347 of 2017 was decreed by the D.R.T. vide judgment and order dated 14.08.2018 for a sum of ₹18,95,569/- together with interest @11.15% per annum from the Defendants jointly and severally from out of the secured assets and personally and also from the hypothecated goods. The case of the Appellant is that the demand

notice issued by the Recovery Officer directing the certified debtors to appear was served on him after the date fixed for appearance and the attachment and proclamation of the sale notices were also served belatedly. Consequent to the sale, the Appellant moved before the Recovery Officer for setting aside sale on the various grounds including the ground that the notices were not served.

3. It is also contended that as per order in the O.A. ₹6,99,256/- alone was to be recovered from the charged property and ₹11,96,313/- was to be recovered from the hypothecated car and therefore, the recovery of the entire amount together with interest from out of the mortgaged property was not permissible. For that reason also, the sale needs to be set aside. The Ld. Recovery Officer disregarded the objections and proceeded with the confirmation of the sale. The sale certificate has been issued to the second Respondent and it is also registered. The Appellant approached the Ld. Presiding Officer, D.R.T.-I, Ahmedabad with the prayer to set aside the order of the Recovery Officer under the provisions of Sec. 30 of the Recovery of Debts and Bankruptcy Act, 1993 ("RDB Act" for short). Vide the impugned order, the Ld. Presiding Officer dismissed the appeal stating that the sale cannot be set aside on the grounds raised by the Appellant. Aggrieved by that, the Appellant is in appeal. To entertain an appeal, the Appellant needs to comply with the mandatory provision under Sec. 21 of the RDB Act. The amount has been determined as ₹18,95,569/- as of 19.09.2018 and interest @11.15% per annum is also due thereon. According to the Ld. Counsel appearing for the Respondent Bank, the amount would be

approximately ₹35 lakhs and therefore, insists that the Appellant may be directed to deposit 50% of that amount as pre-deposit for entertaining the appeal. The Ld. Counsel appearing for the Appellant has submitted that the Appellant is entitled to complete waiver of pre-deposit because there is no amount due from the Appellant.

5. It is settled law that when the Appellant is challenging the sale, the proceeds of the sale cannot be deducted from the amount that is due from the borrower and therefore, the sale amount has to be disregarded for the purpose of calculating the amount due from the borrower. If that is so, the amount due is approximately is ₹35 lakhs.

6. The Ld. Counsel appearing for the Respondent wanted to file a detailed reply to the application for a waiver but the Ld. Counsel appearing for the Appellant insisted on hearing for fear of being dispossessed of the property and therefore, the hearing proceeded without affording an opportunity to the first Respondent to file a reply and it is only on oral submissions that the matter was heard.

7. The Ld. Counsel appearing for the Respondent Bank submitted that to get the sale set aside, the Appellant will have to comply with the mandatory provisions of Rules 60 and 61 of the Income Tax Rules which has not been complied with but the Ld. Counsel appearing for the Appellant submits that it is borne out from the orders of the Recovery Officer that a sum of ₹32,68,000/- was deposited by way of demand draft by the Appellant.

8. The Ld. Presiding Officer has considered the objections raised regarding non-service of notice but it is pointed out that even though the notice was served belatedly, the Appellant did not appear before

the Recovery Officer till he applied setting aside the sale after much delay. Hence, the mere fact that the Appellant was not served with the notice or belatedly served with notice could not be grounds for setting aside the sale unless there are other grounds available to him.

9. All these matters of contention will have to be decided in the appeal after allowing the Respondent Bank to file a detailed reply. At the movement, they are only concerned with the pre-deposit. Considering the entire facts and circumstances of this case, I direct the Appellant to deposit a sum of ₹15 lakhs as pre-deposit within a week, on or before 17.07.2023. Failure to pay the said amount shall entail in dismissal of the appeal without any further reference to this Tribunal.

10. On deposit of the aforesaid amount, the Appellant shall be entitled to ad-interim stay from being dispossessed unless already dispossessed. Since the auction purchaser is already in the party array, it is also directed that he shall not create any third-party interest in the property.

11. The amount shall be deposited in the form of a Demand Draft with the Registrar of this Tribunal.

12. As and when the said amount is deposited, they shall be invested in term deposits in the name of Registrar, DRAT, Mumbai, with any nationalised bank, initially for 13 months, and thereafter to be renewed periodically.

13. With these observations, the I.A. is disposed of. The Respondents are at liberty to file a reply in the Appeal with an advance copy to the other side.

Post on 18.07.2023 for reporting compliance concerning the payment as pre-deposit.

Sd/-
Chairperson

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DRAFT MUMBAI