

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present : Mr. Justice Ashok Menon, Chairperson**

**I.A. No. 470/2023 (WoD)**

**In**

**Appeal on Diary No. 1174/2023**

**Between**

Dr. Santosh Uttam Sawane & Ors.

... Appellant/s

V/s.

Indodstar Capital Finance Ltd. & Anr.

... Respondent/s

Ms. Aarti Suvarna, Advocate for Appellants.

**:- Order dated: 14/07/2023:-**

The matter is taken up for hearing by way of a praecipe filed by the Appellant for seeking urgent relief. The Appellants are in Appeal impugning the order dated 08.03.2023 dismissing the Securitization Application (S.A.) No. 100/2022 on files of Debts Recovery Tribunal, Pune (D.R.T.).

2. The Appellants Nos.1 and 2 are a doctor couple conducting a nursing home which is the 3<sup>rd</sup> Respondent, a proprietorship, owned by the 1<sup>st</sup> Appellant. The Appellants admittedly took a term loan of ₹ 1.92 Crores from the 1<sup>st</sup> Respondent. Thereafter another top-up loan of ₹ 30 lakhs was also taken by them. In all, the Appellants had taken a loan of ₹ 2.26 Crores from the 1<sup>st</sup> Respondent. They defaulted payment, and in consequence, the account was classified as Non-Performing Assets (NPA). A demand notice was issued on 24.05.2019 u/s 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act", for short) demanding the sum of ₹

1,78,31,551/-

3. The Appellants have allegedly mortgaged three flats and two shop rooms as security for the loans. It is contended that with the consent of the 1<sup>st</sup> Respondent, two flats were sold in 2018 for a sum of ₹ 74,76,000/- and thereafter a 3<sup>rd</sup> flat was also sold with the consent of the 1<sup>st</sup> Respondent but a 3<sup>rd</sup> party has allegedly filed a civil suit challenging the right of the bank over that flat and the said litigation is pending consideration.

4. The Appellants would contend that the memorandum of deposit of title deed relied upon by the 1<sup>st</sup> Respondent is forged and fabricated and therefore, the mortgage is not valid. A police complaint was filed by the Appellants regarding the forgery and fabrication. The police refused to register a crime. The Appellants approached the Magistrate with a private complaint u/s 156 CRPC. After a preliminary inquiry, the complaint was dismissed and the Appellants have filed a revision before the Sessions Court and the same is pending considerations. The Appellants thereafter filed the S.A. and also filed the application for a stay of the Sarfaesi measures. The D.R.T. while considering the I.A. No. 366/2022 granted an interlocutory order of stay in favour of the Appellants on conditions to deposit a sum of ₹ 40 lakhs. In compliance, the amount was deposited with the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent challenged the order in Appeal before this Tribunal and the said Appeal was disposed of with the direction to expedite disposal of the S.A. and OTS proposal if any submitted by the Appellants for settling the dues was also directed to be considered by the 1<sup>st</sup> Respondent.

5. The Appellants allegedly submitted an OTS proposal which was rejected by the 1<sup>st</sup> Respondent. Subsequently, the S.A. was also dismissed by the D.R.T. vide order dated 08.03.2023. The Appellants are aggrieved and hence in an Appeal.

6. In order to entertain the Appeal, the Appellants will have to comply with the mandatory provision of making a pre-deposit as contemplated under the 2<sup>nd</sup> proviso to section 18 (1) of the SARFAESI Act. The Appellants would contend that they are under financial strain. The 2<sup>nd</sup> Appellant is suffering from cancer and is therefore not in a position to work as a doctor and the entire burden has now come up on the 1<sup>st</sup> Appellant as the sole earning member of the family. The Appellants would contend that they have a strong prima facie case, in view of the fact the memorandum of mortgaged deposited a title deed is forged and they would therefore be able to establish that there was no mortgaged.

7. The Respondents, though served, have not appeared to date. The Ld. Counsel appearing for the Appellants submits that the notice for taking possession of the secured assets has been received and the possession is intended to be taken on 17.07.2023 at 9:00 Am. The notice was received only on 08.07.2023 and therefore, that is also defective, according to the Ld. Counsel appearing for the Appellants.

8. After anxious consideration of the submissions of the Appellants, and on perusal of the records available, this Tribunal finds that the Appellants had despite challenging the validity of the mortgaged sold the two flats, admittedly with the consent of the 1<sup>st</sup> Respondent. If there was no mortgage, there was no need to obtain

the consent of the 1<sup>st</sup> Respondent for the sale of those flats. The police had in the first instance refused to register a criminal case despite the allegation of forgery. The Ld. Magistrate has also refused to proceed with the private complaint that is preferred by the Appellants.

9. Under the circumstance, there is no prima facie evidence of any fabrication of documents pertaining to the mortgage. The Appellants have not produced any documents pertaining to their income so has to establish that they are under financial strain. Under the circumstance, the Appellants are not entitled to any indulgence on the part of this Tribunal to invoke the 3<sup>rd</sup> proviso to u/s 18 (1) of the SARFAESI Act to get the amount reduced to a minimum of 25%.

10. After having paid ₹ 40 lakhs towards the amount demanded u/s 13 (2) the outstanding balance would approximately come to ₹ 1,38,31,551/-. Subsequent interest would also become due. Since the Respondents have not appeared to contest the matter, I would fix the threshold amount at around ₹ 1.40 Crores. The Appellants are directed to deposit a sum of ₹ 60 lakhs toward the pre-deposit into two equal instalments of ₹ 30 lakhs each for entertaining the Appeal. The 1<sup>st</sup> instalment of ₹ 30 lakhs shall be payable within a period of two weeks, i.e. on or before 28.07.2023. The 2<sup>nd</sup> instalment of ₹ 30 lakhs shall be payable within a period of three weeks therefrom, i.e. on or before 18.08.2023. Failure to pay the amount within the stipulated time shall entail in dismissal of the Appeal within any further reference to this Tribunal.

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 amounts are 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 Respondent is at liberty to file a reply in the Appeal with an advance copy to the other side.

Post on 31.07.2023 for reporting compliance regarding the payment of the 1<sup>st</sup> instalment.

Sd/-  
Chairperson

psa-14

DRAFT MUMBAI