

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

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

**I.A. No. 110/2023 (WoD)**

**In**

**Appeal on Diary No. 249/2023**

**Between**

Ramadevi R. Prajapati

... Appellant/s

V/s.

IDFC First Bank Ltd. & Ors.

...Respondent/s

Mr. Minesh K. Shah, Advocate for Appellant.

Mr R.L. Motwani, Advocate for Respondent.

**-: Order dated: 20/02/2023:-**

The matter is taken up for hearing by way of Praecipe filed by the Appellants seeking urgent relief.

The Appellant is in appeal impugning the order dated 03.02.2023 in I.A. No. 375/2023 in Securitisation Application (SA)No. 45/2020 on the files of Debts Recovery Tribunal-III, Vashi, Mumbai (D.R.T.) wherein the Ld. Presiding Officer declined to grant any interlocutory order stalling the taking over of possession of the secured assets for the reason that the Applicant/Appellant has not made out any prima facie case, and also for the reason the Applicant has not approached the Tribunal with clean hands and therefore, is not entitled to interlocutory relief of injunction.

2. The Appellant is the co-owner of the secured assets which is Room-105, 1<sup>st</sup> floor Jai Ambika Palace, CHS Navghar Road, Bhayander (East), Thane - 401105 together with her husband who is the 4th Respondent in the S.A. The Appellant claims to have no

knowledge whatsoever regarding the mortgaging of her property to any financial institution and was surprised to notice action being taken against her property by the 1<sup>st</sup> Respondent for recovery of the debt taken by her and her husband.

3. The Appellant, claim to have been defrauded by the 1<sup>st</sup> Respondent who has allegedly secured possession of the tiled deeds fraudulently. In the S.A. there is a faint allegation that the property was mortgaged to the State Bank of Patiala and that she does not know how it reach the hands of the 1<sup>st</sup> Respondent.

4. The 1<sup>st</sup> Respondent contends that the debt was originally granted by Capital First Limited which merged with the 1<sup>st</sup> Respondent and thus first Respondent became the secured creditor. The property which is the secured asset was mortgaged by deposit of the title deed. The sanction letter has not only to be signed by the Appellant and her husband but also by their son who is the 3<sup>rd</sup> Respondent in the S.A. as also in the Appeal. Notice u/s. 13 (2) was sent to the borrowers on 05.03.2019 a sum demanding a sum of ₹ 39,11,371/- together with further interest. Two financial facilities were advanced to the Appellant and her husband on 11.07.2016 for the total sum of ₹ 22,35,000/-.

5. The Appellant defaulted payment even after the demand was made and hence symbolic possession was taken u/s 13 (4) and notice was fixed on the property. Thereafter, the 1<sup>st</sup> Respondent moved the District Magistrate with the application u/s 14 of the SARFAESI Act and obtains an order of possession in the year 2019. It is submitted by the Ld. Counsel appearing for the 1<sup>st</sup> Respondent that despite getting the symbolic delivery by pasting of a notice on 11.06.2019

u/s 13 (4) and the order of the District Magistrate in 2019 the Appellant did not move the D.R.T. The S.A. was filed in the year 2020 after a long time.

6. It is contented by the Appellant that the notice u/s 13 (2) was never delivered. The Ld. Counsel appearing for the 1<sup>st</sup> Respondent points out that the notice was served on the very same address which is mentioned by the Appellant in the S.A. as also in the Appeal Memorandum and therefore, the presumption u/s 27 General Clauses Act would be attracted in this case regarding the service of the notice to the Appellant. The Appellant pleads that the secured asset is her residential flat and therefore, she may not be rendered homeless. She has no means of income and her husband is a popcorn hawker and has very limited means of income and therefore seeks the indulgence of this Tribunal to invoke discretionary power granted under 3<sup>rd</sup> proviso u/s 18 (1) of the SARFAESI Act to reduce the amount to 25%.

7. The Ld. Counsel appearing for the 1<sup>st</sup> Respondent Bank has pointed out that the Appellant has come up with a fictitious case of fraud and that even in the NC lodged by her before the police an offence u/s 504 and 509 of the IPC alone is attracted. There is no allegation of fraud. It is also pointed out that the Appellant has not made out any case to get the mandatory 50% pre-deposit reduced to 25%.

8. The counsel for the Respondent submits that as of date, the amount due from the Appellant is ₹ 47,77,000/- and therefore, she may be directed to deposit 50% of the amount. After having heard the rival contentions raised by the parties, I find that the Appellant

has been sleeping over her rights despite being aware of the Sarfaesi measures which have been taken by the 1<sup>st</sup> Respondent as early as in 2019. The fact that she did not receive the notice u/s 13 (2) does not appear since the note the address which has been sent by the Registered past as is claimed to be her address in the S.A. as also in the Appeal Memorandum.

9. Regarding the contention that Rule 3 of the Security Interest (Enforcement) Rules has not been complied with is inconsequential because the notice appears to have been served. Even if the notice is not served she is admittedly aware of the measures taken u/s 13 (4) of the SARFAESI Act during the month of June 2019 and has not challenged that within the time stipulated. The Civil Suit has been filed by the Appellant against Capital First Limited as early as 2017 seeking an injunction not to dispossess her from the property except by the due clause of the law. Even if the Civil Suit is decreed, it may not have any effect on the rights of the 1<sup>st</sup> Respondent because the relief sought in the suit is only to prevent the 1<sup>st</sup> Respondent from dispossessing the property except by due process of law. Sarfaesi measures are initiated as per the due process of law and therefore, cannot be challenged except u/s 17 of the SARFAESI Act, if there are grounds to show that the measures are defective for any reason. Prima facie, the contentions of the Appellant any reason sufficient to challenge any of the Sarfaesi measures which have been initiated by the 1<sup>st</sup> Respondent. Apart from that, the Appellant's impecunious condition is not established by any other evidence indicating her financial strain.

10. In view of the facts that the no prima facie case is made out, I find no reason to exercise jurisdiction of this Tribunal to reduce the amount of pre-deposit to 25%. However, considering the fact, that the demand includes certain amount that cannot be added to the demand, the Appellant is directed to deposit a sum of ₹ 20 lakhs as pre-deposit in two equal instalments. The Appellant is offering a deposit sum of ₹ 4.5 Lakhs today by way of a Demand Draft. The Appellant shall deposit a sum of ₹ 5.5 Lakhs within one week on or before 27.02.2023. The balance amount of ₹ 10 Lakhs shall be deposited within four weeks on or before 27.03.2023. The taking over of the possession shall stand extended till further orders. In default of payment, the Appeal shall stand dismissed without 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 28.02.2023 for reporting compliance of payment.

Sd/-  
Chairperson