

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI
Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 52/2019

Between

M/s Shekhar Enterprises,
Through its Proprietor Shekhar Laxmanrao
Khodke & Ors. ... Appellant/s

V/s.
Authorised Officer/CEO,
Tirupati Urban Co-op. Bank Ltd. ... Respondent/s

Mr S. N. Fuladi and Mr. S.D. Fuladi, i/b M/s. N.K. Fuladi &
Associate, Advocate for Appellants.

Mr. P. D. Meghe, Advocate for Respondent Bank.

:- Order dated: 01/03/2023:-

The Applicants in Securitisation Application (S.A.) No. 29/2013 on the files of the Debts Recovery Tribunal (D.R.T.), Nagpur are the Appellants who impugn the order dated 12/04/2019 in the aforesaid S.A. The Applicants had filed the application under Sec. 17 (1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short). The 1st Appellant is a proprietorship belonging to Shekhar, and the original borrower. Appellant Nos. 2, 6 and 7 are guarantors and Appellants 3 to 5 are the legal representatives of deceased Pravin Khodke, the brother of the 1st Appellant, who was also a guarantor. Appellant No. 8 is a guarantor/ mortgagor whose property was provided as collateral security and mortgaged with the Respondent bank. The proprietor/ principal borrower namely

Shekhar is also the power of attorney holder of the rest of the Appellants.

2. The facts and brief are that a cash credit facility of ₹75 lakhs was provided by the Respondent bank to the proprietorship with the deceased brother of the proprietor Shekhar and Appellants Nos. 2, and 6 to 8 as guarantors/mortgagors. The credit limit was enhanced by ₹25 lakhs to ₹1 crore which was further enhanced to ₹1.4 crores. Four items of properties were mortgaged as security. The Appellants defaulted on payment and the account was classified as Non-Performing Assets (NPA) effective from 01/07/2010. After that, 3 items of mortgaged properties were sold with the consent of the borrowers, and the proceeds were appropriated towards the debt. On 18/01/2011, Respondent bank issued a demand notice under Sec. 13 (2) of the SARFAESI Act demanding payment of a sum of ₹42,89,820/-together with interest outstanding as of 13/11/2010. The Appellants defaulted on payment and hence, notice was issued under Sec.13 (4) of the SARFAESI Act on 13/08/2007, seeking possession of the property on default of payment of the outstanding amount of ₹41,50,030/- as of 30/07/2011. The bank thereafter approached the District Magistrate with an application under Sec. 14 of the SARFAESI Act.

3. The Appellants would contend that a sum of ₹21 lakhs was paid by them towards the outstanding dues after receipt of notice under Sec. 13 (2) is not accounted for. Before the D.R.T., the 1st Appellant appeared in person and was willing to deposit ₹10 lakhs in two instalments of ₹5 lakhs each, offering to deposit ₹5 lakhs

immediately and seeking 10 to 12 days to pay the balance. The Appellants contended that the notices under Sections 13 (2) and 13 (4) of the SARFAESI Act are not proper and that Sub-Section 3 to Sec. 13 has been violated. Moreover, Sarfaesi measures could not have been initiated because the amount due was less than 20% of the principal amount.

4. The Respondent Bank objected to the maintainability of the S.A. mainly on the ground of limitation. It is pointed out that the demand notice under Sec. 13(2) was issued on 18.01.2011 and the possession notice under Sec. 13(4) was issued on 13.08.2011. The S.A. was filed only on 09.04.2013 and not within 45 days contemplated under Sec. 17(1) of the SARFAESI Act.

5. After considering the contentions raised by both sides, the Ld. Presiding Officer came to the conclusion that the S.A. was not filed within 45 days of taking symbolic possession of the secured assets under Sec. 13(4). Certain properties are also sold. It is pointed out that the Applicants did not challenge the correctness of the notice under Sec. 13(2) or the action under Sec. 13(4). Since the notice under Sec. 13(2) is not challenged it would amount to a waiver and cannot be challenged at a later stage. The S.A. was, therefore, dismissed. The Appellants are aggrieved and hence in the appeal.

6. The only question arises for consideration is whether the Appellants can maintain the action against the notices issued under Sections 13(2) and 13(4) filed beyond the statutory period. The Ld. Counsel for the Appellants would contend that the period of limitation would begin to run only from 19.03.2013 when the notice

under Sec. 14 was received. There are absolutely no grounds for challenging the notice under Sec. 14. The thrust of the challenge raised in the S.A. is regarding the Sarfaesi measures taken under Secs. 13(2) and 13(4). The said action is undoubtedly barred by waiver and limitation. In fact, the Appellants had offered to settle the amount by making payment after receipt of notice under Sec. 13(2). This indicates that there was no challenge to the demand notice. It is true that a Securitisation Application cannot be filed on receipt of notice under Sec. 13(2) unless further steps are taken under Sec. 13(4). The instant case notice under Sec. 13(4) was issued on 13.08.2011 and the appeal is definitely not filed within 45 days therefrom. The findings of the Ld. Presiding Officer in the impugned order cannot, therefore, be challenged.

In the result, The Appeal has no merits and requires to be dismissed.

Sd/-
Chairperson

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