

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

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 373/2023 (WoD)

In

Misc. Appeal on Diary No. 944/2023

Between

Mr Amol Shivaji Rokade & Anr.

... Appellant/s

V/s.

Housing Development Finance Corporation Ltd. ... Respondent/s

Mr Herbert Noronha, i/b Mr Prafull Mahadik, Advocate for Appellants.

Mr Shreesh Oak, i/b M/s. SC Legal, Advocate for Respondent.

:- Order dated: 14/06/2023:-

I.A. No. 373/2023 is an application for waiver of deposit filed under Sec. 18 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short) for granting the concession of reducing the pre-deposit amount to minimum 25% for the reasons stated in the application. The appeal is directed against the order of the Debts Recovery Tribunal No. I, Mumbai (D.R.T.) dated 05.06.2023 in I.A. No. 2018/2023 in S.A. No. 102/2023 declining to grant any interlocutory order with regard to the Sarfaesi measures initiated by the Respondent Bank.

2. The aforesaid S.A. was filed challenging the Sarfaesi measures initiated by the Respondent Bank. The notice under Sec. 13(2) dated 16.04.2019 was received by the Appellants demanding a sum of

₹1,61,38,521/- together with interest within 60 days. The Appellants sent a reply seeking time to pay the amount but did not raise any contentions challenging the propriety of the notice that is issued. On defaulting payment of the amount within the stipulated time, the Respondent Bank initiated action under Sec. 14 of the SARFAESI Act before the Chief Metropolitan Magistrate. The Appellants now contend that the notice under Sec.13(2) is not proper because it has not been issued by an authorised officer as contemplated under Rules 2(a) of the Security Interest (Enforcement) Rules, 2002. It is pointed out that as per the resolution dated 15.07.2005 the authorised officer who has issued the notice under Sec. 13(2) as well as filed the application under Sec. 14 of the SARFAESI Act was only a manager recovery and therefore, he does not come within the definition of Rule 2(a) which insists that an authorised officer who should not be a person below the rank of the Chief Manager. The proceedings under Sec. 14 are also impugned for the reason that the 9-pointer affidavit and accompanying application are not proper because in the application nothing has been stated regarding the reply which has been sent by the Appellants to Sec. 13(2) notice and the rejoinder has been sent by the Bank and therefore, the proceedings under Sec. 14 is also defective.

3. The Ld. Counsel appearing for the Respondent submits that the application under Sec. 14 states regarding the reply that was sent to notice under Sec. 13(2) and also the rejoinder that was sent. Therefore, there is no need to mention it all over again in the accompanying affidavit. The application and affidavit are to be read together. It is

further contended by the Ld. Counsel for the Respondent that in the reply sent to the demand notice under Sec. 13(2) no contention whatsoever has been raised except for seeking time to pay the amount and therefore, it has to be taken that the Appellants have admitted their liability to the tune of ₹1,61,38,521/ together with interest demanded in the notice. That affidavit has to be read along with the application as stated in the application.

4. The Ld. Counsel appearing for the Appellants submits that the Appellants are under financial strain and the Income Tax Returns for the three years starting from 2020 to 2023 pertaining to both Appellants have been produced which indicate that they have meagre income. Under the circumstances, it is pointed out that the indulgence may be shown by this Tribunal to reduce the amount 25% exercising jurisdiction under the third provision to Sec. 18(1) of the SARFAESI Act.

5. The Ld. Counsel appearing for the Respondent submits that the Appellants are not entitled to any injunction also because of prima facie case, the balance of convenience and repairable injuries have not been sufficiently proved and established. It is also submitted that the conduct of the parties has not been proper because despite seeking time to pay the amount in 2019, they have not made any substantial payment towards the debt as undertaken. It is also submitted that criminal proceedings have been lodged against the Appellants for not complying with the supply of the flats which they had constructed for their clients.

6. The Ld. Counsel appearing for the Appellants would submit that

the Appellants have taken steps to quash the criminal cases registered against them exercising jurisdiction under Sec. 482 of the Code of Criminal Procedure and the same is still pending consideration.

7. The Appellants would further contend that they have subsequently received the notice under Sec. 13(2) a sum of ₹21 lakhs have been deposited in the Bank towards the debt. The Respondent would contend that after adjusting the amount which has been paid there is still an outstanding balance of ₹2.28 crores and therefore, the Ld. Counsel appearing for the Respondent insists on the Appellants depositing 50% of their amount for entertaining the appeal.

8. After having considered the rival submissions and the entire facts and circumstances of this case and also the decisions relied upon by the Respondent in *Narayan Chandra Ghosh vs. UCO Bank & Ors (2011) 4 SCC 548* as well as *ASREC (India) Ltd. vs. Fastgrowth Hospitality LLP, represented by its Designated partner Bhaven Parikh & Ors., 2023 SCC OnLine Bom 174*, I find that the Appellants do not have a very strong prima facie case because they have waived their contentions to Sec. 13(2) notice by sending a reply accepting the amount demanded and seeking time to pay. It is also pertinent to note that the reply was sent through counsel. The Ld. Counsel for the Respondent points out that at the time the resolution was passed appointing the authorised officer in 2005, the person may have been a manager but subsequently, he has been promoted and he was a chief manager when the Sarfaesi measures were taken. What we have concerned about is the status of the person when the notice was issued or steps under Sec. 14 were taken. The S.A. is pending, and the Respondent still has the

opportunity to provide evidence that the authorised officer was competent. And therefore, the objections to that effect cannot be taken seriously. I am also not enthused with the argument that the fact regarding sending of reply and rejoinder is not stated in the 9-pointer affidavit accompanying the application under Sec. 14 of the SARFAESI Act. I agree with the Ld. Counsel appearing for the Respondent that the affidavit has to be read together with the application. If there is a contention raised in the application which fulfils the requirement of the 9-pointer affidavit which is filed under the provisions under Sec. 14, that would be sufficient.

9. The total amount due as on the filing date of the appeal is ₹2.28 crores and the Appellants are, therefore, directed to deposit a sum of ₹1 crore towards pre-deposit for the appeal to be entertained. The Ld. Counsel for the Appellants submits that they would be depositing a sum of ₹14 lakhs by way of demand draft today and for the balance, time may be provided. The amount of ₹14 lakhs shall be accepted and the balance amount of ₹86 lakhs shall be deposited in two equal instalments of ₹ 43 lakhs each within a gap of three weeks each. Failure to pay any of the instalments shall entail in dismissal of the appeal without any further reference to this Tribunal.

10. In view of the payment made towards the pre-deposit, there shall be a stay of the further proceedings under the Sarfaesi measures till further orders.

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 06.07.2023 for reporting compliance concerning the first instalment.

Sd/-
Chairperson

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DRAT, MUMBAI