

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No.480/2023

In

Appeal on Dairy No.1203/2023

Between

Jyotsna Prashant Khandagle

... Appellant/s

V/s.

Abhudaya Co- Operative Bank Ltd.

...Respondent/s

Mr. S.S.Panchpor, Advocate for Appellant.

Merlyn Vasudeo Monteiro, along with Mr. R.S. Gaurav M, Advocate for Respondent.

:- Order dated: 17/07/2023:-

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

The Appellant is in appeal impugning the order dated 17.11.2022 in I.A. No. 1804/2022 in Securitisation Application(S.A.) No. 489/2022 on the files of Debts Recovery Tribunal, Pune (D.R.T) whereby the securitization measure of taking over possession of the secured flat was stalled on the condition that the Appellants deposits 25% amount mentioned in the demand notice. The Appellant did not pay the amount and he is now in appeal with a delay of 6 months and 26 days in filing this appeal.

2. The Appellant has challenged the Sarfaesi measures on various grounds including the contention that the nine-pointer affidavit required while filing the application u/s. 14 of Securitisation &

Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (“SARFAESI Act”, for short) before the District Magistrate has not been complied with and therefore the entire Sarfaesi measures to get possession of the secured assets should fail.

3. The Ld. Presiding Officer after considering the rival contentions came to the conclusion that the amount due from the Appellant is more than ₹ 1,99,00,000/- and therefore directed the Appellant to deposit at least 25% of the amount mentioned in the demand notice for a stay of the Sarfaesi measures. An OTS proposal intended to be made by the Appellant was also directed to be considered by the bank in accordance with their policy.

4. However, an OTS proposal failed. The Appellant deposited around ₹ 8,80,000/- with the bank but could not comply with the direction to deposit 25% of the demanded amount. Hence, the Appellant did not succeed in getting any favourable order from the D.R.T. Aggrieved, the Appellant is in appeal.

5. In order to entertain the appeal the Appellant will first have to cross the hurdle of complying with the mandatory provisions of pre-deposit contemplated under Sec. 18 (1) of the SARFAESI Act. The Ld. Counsel appearing for the Respondent Bank submits that as of date the outstanding amount after deduction of the payments made and the proceeds of the sale on the sale of the certain properties, which is not challenged, is ₹ 1,59,00,000/-.

6. The Appellant has submitted that his business failed and has sustained heavy losses during the covid but no evidence with regard to his income is produced so as to substantiate his claim of financial

strain.

7. Under the circumstances, I find that the Appellant is not entitled to any indulgence on the part of this Tribunal to get the amount reduced to the minimum of 25% as contemplated under the third proviso u/s 18 (1) of the SARFAESI Act. The Appellant shall deposit a sum of ₹ 77,00,000/- as pre-deposit.

8. The Ld. Counsel appearing for the Appellant submits that the Appellant will be depositing ₹ 2,00,000/- today by way of a Demand Draft in favour of the Registrar of this Tribunal. The balance amount of ₹ 75,00,000/- shall be payable in three equal instalments of ₹ 25,00,000/- each. The first instalment shall be payable within three weeks i.e. on or before 07.08.2023. The second instalment shall be payable within two weeks therefrom, i.e. on or before 21.08.2023 and the third instalment shall be payable within two weeks therefrom, i.e. on or before 04.09.2023. Since, the Appellant has agreed to deposit a Demand Draft of ₹ 2,00,000/- today, the possession intended to be taken today shall be deferred until further orders. In default, the Appeal shall stand dismissed, without any further reference to this Tribunal.

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

10. 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.

11. 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 08.08.2023 for reporting compliance of payment regarding the 1st instalment.

Sd/-
Chairperson

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