

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 477/2023

In

Appeal Dairy No.1089/2023

Between

M/s. Express Hotel and Ors

... Appellant/s

V/s.

Bank Of Baroda & Anr.

...Respondent/s

Mr. Rishabh Shah, i/b Mr. Rahul M., Advocate for Appellant.

Mr. Sunil Humbre, 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 Appellants are in appeal impugning the dismissal of the S.A. No. 88/2021 by the Debts Recovery Tribunal- III, Mumbai (D.R.T). The Appellants are borrowers/guarantors/mortgagers who had borrowed money from the 1st Respondent Bank. On failing to repay the amount, the account was classified as a non-performing account (NPA) and the notice u/s. 13 (2) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ("SARFAESI Act", for short) was issued on 06.10.2017 claiming a sum of ₹ 59,20,000/-.

2. The Appellants did not pay the amount within the stipulated time as a result of which steps u/s. 13 (4) of the SARFAESI Act were initiated and thereafter an order for taking physical possession

was obtained u/s. 14 from the District Magistrate, Nashik on 11.01.2022. The property was auctioned as a consequence to Respondent No. 2 for a sale consideration of ₹ 69,79,000/- and the sale has been confirmed and the sale certificate issued on 04.08.2021. It is alleged that the property was undervalued and sold for a pittance.

3. The physical possession of the property is yet to be handed over to the auction purchaser. Soon after the sale, the Appellant filed the present S.A. challenging the Sarfaesi measures right from the issuance of the notice u/s. 13 (2) the subsequent measures u/s. 13 (4) Sec. 14 as also the sale can be challenged.

4. The Ld. Presiding Officer, however, found that the contentions raised in the S.A. are not sustainable and consequently the S.A. was dismissed. The Appellants are aggrieved and hence, this appeal. The Appellants would contend that they have a very strong prima facie case and that they are under financial strain because the 3rd Appellant is suffering from neurological disease and he is under treatment. Their business has failed and they have not been able to pick up their business consequent to the pandemic. The Appellants, therefore, pray that they may be granted a complete waiver of the pre-deposit.

5. The Ld. Counsel appearing for the Appellants however conceded that a complete waiver of the pre-deposit may not be possible and therefore, requested that the amount may be limited to the minimum of 25% of the amount due and payable. As per the notice u/s. 13 (2) the amount that is claimed is ₹ 59,20,000/- and

the sale notice mentioned the very same amount together with the interest and cost but it has not been specified as to what exactly is the amount that is due on that day.

6. It is also pointed out by the Ld. Counsel appearing for the Appellant that the Respondent Bank has subsequently filed an O.A. 338/2020 before the Tribunal seeking recovery of a sum of ₹ 54,48,207.97 as of 18.06.2020. It is also pointed out that the Appellants had subsequently paid a sum of ₹ 27,50,000/- and therefore, going by the calculation the amount should not be ₹ 80,16,022/- as now claimed by the Respondent. It is pointed out that the calculation has gone wrong and therefore pre-deposit may be calculated at the rate of what is claimed mentioned in the auction notice and the demand notice u/s. 13 (2).

7. The Ld. Counsel appearing for the Respondents would submit that the Appellant has not come up with clean hands and that there is absolutely no infirmity in any of the procedures which have been initiated under the SARFAESI Act. Notice has been properly served there is no undervaluation as alleged, and that the property was sold for the best price that was available and that it would not have fetched more than the amount for which it was sold. It is also stated that three attempts were made earlier to sell the property and that, only on the third attempt the sale was accomplished. Therefore, the plea of undervaluation is not proper.

8. The Appellants have not produced any documents to prove their financial strain. Income tax returns are not forthcoming and the mere fact that one of the Appellants is suffering from some disease

which requires to be treated and money expended would not exempt them from getting the amount of pre-deposit reduced. Considering the points regarding the maintainability of the S.A. I find that the Appellants may probably have an arguable case which would definitely be gone into while deciding the appeal.

9. The Appellants definitely will not be entitled to get the amount reduced to 25% taking the threshold amount at ₹ 80,00,000/-. I direct the Appellants to deposit a sum of ₹ 30,00,000/- as pre-deposit. The Ld. Counsel appearing for the Appellants undertakes to produce a demand draft for ₹ 5,00,000/- tomorrow i.e. on 18.07.2023. The balance of ₹ 25,00,000/- shall be paid in two equal instalments. The first instalment shall be payable within three weeks i.e. on or before 07.08.2023 and the second instalment shall be payable within two weeks therefrom i.e. on or before 21.08.2023. On producing a demand draft for ₹ 5,00,000/- as of tomorrow, handing over the possession schedule for tomorrow i.e. on 18.07.2023 shall stand deferred till the next date of hearing. In default, the Appeal shall stand dismissed, without any further reference to this Tribunal.

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

11. 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.

12. 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 regarding the payment of 1st instalment.

Sd/-
Chairperson

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