

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

Present: Mr. Justice Ashok Menon, Chairperson

I.A. No. 458/2023 (WoD)

In

Appeal on Diary No. 957/2023

Between

M/s. Sukhdham Residency & Ors.

... Appellant/s

V/s.

The Authorized Officer,

... Respondent/s

Asset Care and Reconstruction Enterprise Ltd.

Mr Puneet Gogad, Advocate for Appellants.

An Advocate for the Respondent is present.

:- Order dated: 08/08/2023:-

The Appellants are the borrowers/guarantors/mortgagers who are aggrieved by the Interlocutory order of Debts Recovery Tribunal-II, Ahmedabad (D.R.T.) dated 12.05.2023 in Securitization Application (S.A.) No. 227/2023 filed u/s 17 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act", for short) whereby the Id. Presiding Officer declined to grant any interlocutory reliefs to the Appellants with respect to Sarfaesi measures initiated by the Respondent ARC with regard to the debt due from the Appellants.

2. The Appellants have filed the aforesaid S.A. challenging the impropriety in the demand notice issued u/s 13(2) of the SARFAESI Act dated 18.10.2018 demanding a sum of ₹56,54,450/- on the ground that the notice does not comply with the mandatory requirement of sub-section 3 to section 13 and that the breakup of

the total amount that is demanded has not been given in the notice. That part it is also stated that the steps taken u/s 14 of the SARFAESI Act are also defective for the reason that the proceedings were initiated against a dead person since one of the debtors namely Hareshbhai Muljibhai Shah died on 18.12.2022 much before the filing of the application u/s 14 before the Chief Judicial Magistrate, Vadodara. Hence, the proceeding initiated u/s 14 is defective and cannot be proceeded with.

3. The Respondent Bank has objected to the application by contending that together with the demand notice u/s 13(2), the copy of the foreclosure letter and statement of account was also attached and therefore, there could not have been any ambiguity regarding the breakup of the amount that was demanded. It is also contended that the death of one of the debtors was not intimated to the bank and hence, the bank did not have an opportunity to make the representation incorporating the legal representative of the deceased borrowers in the application filed u/s 14 of the SARFAESI Act.

4. The Ld. Presiding Officer vide the impugned order declined to accept the contentions and allegation made in the application and found that the prima facie there is no reason to grant any interlocutory relief to the Applicants. The Ld. Presiding Officer relied upon the oral submission made across the bar by the Ld. Counsel appearing for the Respondent regarding the foreclosure letter and statement of account containing the details of the amount claimed is given together with the demand notice.

5. Heard the Ld. Counsel appearing for the Appellants and the Counsel appearing for the Respondent Bank. Records perused. On

going through the notice issued to the Appellants u/s 13(2) there is a demand made for ₹56,54,450/- as of 18.10.2018 but it does not give a breakup of the amount in the body of the notice. The notice runs in nine pages and nowhere is it mentioned regarding the breakup of the debt due. The notice also does not indicate that a detailed statement of account or a foreclosure notice has been enclosed or attached with the demand notice and therefore, prima facie, it cannot be believed that the separate addendum was attached to the demand notice giving the descriptions of the amount that is due from the Appellants. It is for Respondent Bank to prove that there were attachments to the notice issued under 13 (2) giving the breakup of the amount. Oral submission across the bar by the Ld. Counsel appearing for the Appellants is not evidence and prima facie it appears that the Ld. Presiding Officer faulted and accepted the oral submission made by the Ld. Counsel regarding the compliance of section 13 (3) of the SARFAESI Act. The notice would therefore be apparently defective in view of the settled positions as held by the Hon'ble High Court of Gujarat in *Punjab National Bank V/s M/s. Mithilanchal Industries Pvt. Ltd.* MANU/GJ/1069/2020. With regard to the inadequacy of the application u/s 14 of the SARFAESI Act, I do not intend to go into the details, since further inquiry into the said aspect will have to be gone into while determining the S.A.

6. The Ld. Counsel appearing for the Appellants submits that apart from the existence of a prima facie case, the Appellants are also undergoing financial strain. The 1st Appellant is a partnership firm and the main partner who is the 2nd Appellant has been in juridical custody since August 2022 and is without any income. The 3rd

Appellant is a widow, a housewife who is a senior citizen without any source of income. Under the circumstances, it is prayed that the Appellants are entitled to seek the indulgence of this Tribunal exercising jurisdiction under the 3rd proviso to section 18 (1) of the SARFAESI Act.

7. The Ld. Counsel appearing for the Respondent Bank sought further time for filing the reply but since there is an impending threat of the secured asset being put up for sale, the Ld. Counsel appearing for the Appellants insists on an urgent hearing. There is no statement of account available regarding the amount that is due from the Appellants as of date. However, the Ld. Counsel appearing for the Appellants submits that in view of the settled position in *Sidha Neelkanth Paper Industries Pvt. Ltd. & Anr V/s Prudent ARC Ltd & Ors 2023 SSC OnLine SC 12*, which has been followed by Hon'ble High Court, Gujarat in *M/s. Shree Rajmoti Industries V/s The Authorized Officer, Union Bank of India* Special Civil Application No. 9564/2023, the Appellants are liable to pay 25% to 50% of the debt due as demanded in the notice issued u/s 13 (2) of the SARFAESI Act. The Ld. Counsel appearing for Respondent would contend that the amount due from the Appellants would be the amount inclusive of interest to date because the definition of 'debt due' is inclusive of interest. The Ld. Counsel also realized on the decision of *Sidha Neelkanth Paper Industries Pvt. Ltd. & Anr (Supra)* wherein it is held that the borrowers have to deposit the 50% amount of the debt due as claimed by the Bank along with the interest as claim in the notice u/s 13(2) and therefore, the amount which is now due from the Appellants which has swelled to more than a crore of Rupees may be

taken for consideration, and the Appellants may be directed to deposit 50% of that amount.

8. On the perusal of the precedents relied upon by the Ld. Counsel appearing for the parties, it is adequately clear that the Hon'ble Supreme Court has specified that the threshold amount of debt due in cases where only the notice u/s 13 (2) and steps u/s 13 (4) are challenged, the debt due within the meaning of the proviso to section 18 of the SARFAESI Act would be the amount that is mentioned in the notice u/s 13 (2) and only where the further steps like the auction sale of the secured assets are also challenged would be the amount be inclusive of further interest. The Hon'ble High Court of Gujarat has also relied on the very same judgment to come to the conclusion that the future interest which has accrued consequent to issuing the demand notice u/s 13 (2) should not be added when the Appellants are challenging the Sarfaesi measures u/s 13 (2) and section 13 (4) alone. In the instant case, the Appellants are not challenging the sale because the sale has not taken place. The notice of sale is also not yet challenged and therefore, what is challenged in this case are the notice u/s 13 (2) and the steps taken u/s 14 which form part of the measures u/s 13 (4) of the SARFAESI Act.

9. The Appellants contend that one of the Appellants who is the mainstay of the firm has been incarcerated and is not in a position to earn any income. The rest of the Appellants are not filing any income tax returns. In view of the fact that the Appellants have succeeded in establishing a prima facie case, and have also succeeded to some extent in proving their financial strain, the Appellants are directed to

deposit a sum of ₹16 lakhs as pre-deposit u/s 18 (1) of the SARFAESI Act for the appeal to be entertained. The Appellants have already deposited a sum of ₹7.5 lakhs. The balance amount of ₹8.5 lakhs shall be deposited within a period of three weeks, i.e. on or before 29.08.2023, failing which the appeal shall stand dismissed without any further reference to this Tribunal. Since the Appellants have already deposited of ₹7.5 lakhs there shall be a stay of the further proceedings till the next date of hearing.

10. The amount shall be deposited as a Demand Draft with the Registrar of this Tribunal. 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 Respondents are at liberty to file a reply in the appeal with an advance copy to the other side.

Post on 30.08.2023 for reporting compliance.

Sd/-
Chairperson

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