

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 160/2023 (CoD)

In

Appeal on Diary No. 364/2023

Between

Sampat Bhima Khalkar

... Appellant/s

V/s.

Kotak Mahindra Bank Ltd. & Ors.

... Respondent/s

Mr Gaurang Kinkhabwala i/b Mr Kushal Sawant, Advocate for Appellant.

Mr Rajesh Nagory along with Mr Nikhil Rajani, i/b M/s. V. Deshpande & Co., Advocate for Respondent No. 1.

:- Order dated: 27/04/2023:-

This is an application for condonation of delay in filing the appeal.

2. The Appellant has filed the appeal under Section 18 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short), challenging the order of the Debts Recovery Tribunal-III, Mumbai (D.R.T.) in Securitisation Application (S.A.) No. 305 of 2022, dated 30/11/2022.

3. The Appellant claims to be a tenant in possession of the secured asset bearing Municipal No. 811/3/52//003, index No. 8/111282, in Nasik, allegedly entrusted to him on a monthly lease of ₹15,000/- by the third Respondent who is the owner of the property. The fact regarding the tenancy was also informed to the first Respondent Kotak Mahindra Bank Ltd. on 02/09/2013 by the

landlord at the time it was mortgaged.

4. Respondent Nos. 2 to 7 mortgaged the secured asset to Respondent No. 1 and borrowed money. The loan was defaulted and classified as a non-performing asset (NPA) and consequently, a demand notice was issued under Section 13(2) of the SARFAESI Act on 24/03/2018, demanding an outstanding amount of ₹9,75,86,636.51, together with further interest. No notice was served on the Appellant, even though the first Respondent was aware of the Appellant being in possession of the property as a tenant.

5. The third Respondent wanted an enhancement of rent and even tried to forcibly dispossess the Appellant from the property. On 19/03/2018. The Appellant approached the local Police at the Bhadrakali Police Station with a complaint against forcible dispossession. On advice given by the Police, the Appellant filed a civil suit No. 195/2018, before the Court of the Civil Judge, Junior Division, Nasik and vide order dated 10/05/2018, an interim order of protection was granted restraining the third Respondent and his agents from dispossessing the Appellant from the property.

6. In the meanwhile, the first Respondent filed a petition before the District Magistrate under Section 14 of the SARFAESI Act as No. 264/2019 for taking over physical possession of the secured asset. The Appellant filed an objection to the proceedings before the District Magistrate and the petition was dismissed. Impugning that order, the first Respondent filed a Writ Petition No. 167/2022 before the Hon'ble Bombay High Court. The Writ Petition was dismissed, and the order has now become final. The first

Respondent also took steps to get impleaded as a party in the civil suit.

7. The first Respondent filed another petition under Section 14 before the District Magistrate as No. 277 of 2020 and without disclosing the fact regarding filing an earlier petition is also the dismissal of the Writ, obtained a favourable order on 30/09/2022 to take over physical possession of the property. Notice was issued by the Tahsildar informing the borrowers that the physical possession of the property would be taken on 01/12/2022. The Appellant, therefore, approaches the D.R.T. with the present S.A.

8. After hearing both sides, the Ld. Presiding Officer declined to accept the contention raised by the Appellant, against the Sarfaesi measures and concluded that the Appellant has not established his right of tenancy and dismissed the S.A. vide the impugned order. The Appellant is aggrieved and hence the appeal.

9. Mr Gaurang Khinkhabwala, the Ld. Counsel appearing for the Appellant argued with vehemence the propriety of the impugned order. It is submitted that the Appellant has produced a rent receipt for ₹15,000 dated 14/06/2013 to prove that he is a tenant on the premises. The Ld. Presiding Officer has observed that apart from the rent receipt. There is no other cogent proof of tenancy. It is also observed that had the Applicant been conducting business in the property, he would have got a rent agreement executed. That apart, he also would have a sales tax of GST registration or other evidence regarding his possession of the property as a tenant. It is also observed that the income tax returns of the balance sheet do not mention the payment of rent to the third

respondent. The Ld. Presiding Officer has also not accepted the contention that the first respondent was informed by the third Respondent on 02/09/2013 about the existence of a tenancy because the dispatching receipt of such communication by the Appellant is not proved. The allegation of the Appellant that the third respondent had demanded a hike in the rate of rent and on the Appellant refusing to oblige, threatened to dispossess him, according to the Ld. Presiding Officer, is a make-believe story. The plea regarding the application of principles of Res Judicata so far as the filing of the second application before the District Magistrate is also not accepted. According to the Ld. Presiding Officer, the dismissal of the Writ Petition by the Hon'ble High Court of Bombay is also not of much help to the applicant. The impugned order also concludes that while considering an application under Sec. 14 of the SARFAESI Act, the District Magistrate has very limited jurisdiction, and therefore, the dismissal of the earlier petition was found to be inappropriate. The S.A. was thus dismissed. The Appellant is aggrieved, and hence in appeal. The present application is for condonation of delay. There are 66 days delay in filing the appeal, which the Ld. Counsel appearing for the Appellant submits is well explained.

10. Mr Rajesh Nagori, the Ld. Counsel appearing for the first Respondent has vehemently opposed the application for condonation of delay stating that the reason stated for getting the delay condoned is not acceptable. It is stated that the only intention of the Appellant is to protract the proceedings. He has no prima facie case to establish his tenancy. It is also submitted that there is

collusion between the Appellant and the borrowers and that the petitioner's claim of tenancy has been put forth only to thwart the Sarfaesi measures initiated by the first Respondent.

Being a petition for condonation of delay, the merits of the case put forth by the Appellant need not be delved into in depth. The only question that needs to be considered is whether the Appellant has an arguable case. The Appellant states that there was a delay in getting the certified copy of the impugned order. This allegation does not appear to be true. The Appellant had not applied for a certified copy despite the order, being pronounced. The contention of the Appellant that the order was not pronounced on the date it was posted also is not acceptable. The sufficiency of the reasons stated for condonation of delay, though not entirely acceptable, this Tribunal is inclined to condone the delay allowing the Appellant to contest the appeal on merits. Hence, the application for condonation of delay is allowed, putting the Appellant to terms of payment of costs of ₹10,000/- to the DRT Bar Association, Mumbai, for the purchase of books and periodicals, within one week failing which, the application shall stand dismissed. Post the matter on 11.05.2023 before the Registrar for reporting compliance.

Sd/-
Chairperson