

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

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 152/2023 (CoD)

In

Appeal on Diary No. 347/2023

Between

Balkrishna Rama Tarale

(since deceased) through Lrs & Ors.

V/s.

Phoenix ARC Pvt. Ltd. & Ors.

Mr Gaurang Kinkhabwala i/b Mr Durgesh D. Rege, Advocate for Appellants.

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 Appellants have 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 (DRT) in Securitisation Application (S.A.) No. 219 of 2022, dated 28/11/2022.

3. The Appellants claim to be a tenant in possession of the secured asset bearing Gat No. 465 and 463, admeasuring 8500 sq. mtrs. in Mauje Madesanghvi, Tal Dist. Nasik, allegedly entrusted to the deceased first Appellant Balakrishna Rama Tarale and his sons

Appellants 2 to 4, on a monthly lease of ₹15,000/- in the year 2009, by the 8th Respondent who is the owner of the property and issued a rent receipt on 07/12/2009. The fact regarding the tenancy was also informed to Religare Finfest Pvt. Ltd. on 16/09/2014 by the landlady. The subject property was allegedly mortgaged on 10/12/2014, and the loan was availed by Respondents 2 to 10.

4. The loan was defaulted and classified as a non-performing asset (NPA) and consequently, a demand notice was issued by Religare Finfest Pvt. Ltd. under Section 13(2) of the SAREAFESI Act on 13/04/2018, demanding the outstanding amount together with further interest from Respondents 2 to 10. Thereafter, Religare Finfest Pvt. Ltd. assigned the debt to the first Respondent Phoenix ARC. Pvt. Ltd., on 29/09/2018, and a fresh notice under Sec. 13(2) was issued by the first Respondent on 21/05/2019. No notice was served on the Appellant, although the 1st Respondent was aware of the Appellants being in possession of the property as tenants.

5. The Appellants contended that the 1st Respondent published in public notice on 31/10/2019 for auction sale of the subject property and the Appellants came to know about it on seeing such notification. The deceased 1st Appellant objected to the public notice and also issued illegal of deceased Counsel the 1st Respondent informing about the tenancy right here subject property. The 1st Respondent responded to it by denying the claim put forth by the deceased 1st Appellant. It is also contended that due to the old age of the 1st Appellant, it was the 5th Appellant who was running the business on the subject premises. Consequent to

the demise of the 1st Appellant, the 5th Appellant continued the business as a tenant on the premises. The Respondent also continued to accept rent from the 5th Appellant.

6. The 1st Respondent thereafter applied to the District Magistrate under Sec. 14 of the SARFAESI Act for physical possession of the property. The deceased 1st Appellant had filed an objection before the District Magistrate and vide order dated 27/08/2021 the application was disposed of with a direction that the assistance for delivery of possession will be considered after the termination of tenancy right. A writ petition was filed by the 1st Respondent before the Hon'ble High Court of Bombay as Writ Petition No. 9749/2021 and vide judgment dated 03/08/2022, the Hon'ble High Court found that the District Magistrate has transgressed jurisdiction vested in him under section 14 of the SARFAESI Act, and accordingly, it was set aside and the matter was remanded with the direction that the application be heard and disposed of within a time limit. Subsequently remand, the District Magistrate vide order dated 05/09/2022 allowed the 1st Respondent to take possession of the subject property.

7. Aggrieved by the adverse orders of the District Magistrate and the Sarfaesi measures initiated by the 1st Respondent, the Appellants approached the D.R.T. with an application under Sec. 17 of the SARFAESI Act.

8. The 1st Respondent oppose the application and stated that the tenancy right setup by Late Balakrishna Rama Tarale was fictitious and unsustainable. The allegation that the tenancy right passed on

to the 1st Applicant/Appellant on the demise of the original tenant is also not true and disputed by the 1st Respondent. It is also pointed out that Late Balakrishna Rama Tarale had filed a civil suit before the Civil Judge Jr division to protect his tenancy right over the premises and obtained favourable orders protecting their possession. It is contended that the civil suit was collusive to protect the borrowers and that the first Respondent was not a party to it.

9. After hearing both sides, the Ld. Presiding Officer declined to accept the contention raised by the Appellants, against the Sarfaesi measures and concluded that the Appellants did not establish their right of tenancy, and hence, dismissed the S.A. vide the impugned order. The Appellants are aggrieved and hence the appeal.

10. Mr Gaurang Khinkhabwala, the Ld. Counsel appearing for the Appellants argued with vehemence the propriety of the impugned order. It is submitted that the Appellants had produced a rent receipt for ₹15,000 dated 07/12/2009 to prove that the deceased first Appellant was a tenant in the premises. The Ld. Presiding Officer has observed that apart from the rent receipt, is no other cogent proof of tenancy. It is also observed that had the Applicants been conducting business in the property as alleged, they would have got a rent agreement executed. That apart, they also would have a sales tax of GST Number or other evidence regarding their possession over 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 eighth Respondent. The Ld. Presiding

Officer has also not accepted the contention that the first respondent's assignor was informed by the third respondent on 16/09/2014 about the existence of a tenancy because the dispatching receipt of such communication is not proved. The S.A. was thus dismissed. The Appellant is aggrieved, and hence in appeal. The present application is for condonation of delay. There are 71 days delay in filing the appeal, which the Ld. Counsel appearing for the Appellant submits is well explained.

11. 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 Appellants is to protract the proceedings. They have no prima facie case to establish the tenancy. It is also submitted that there is collusion between the Appellants and the borrowers and that the petitioners' 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 Appellants need not be delved into in depth. The only question that needs to be considered is whether the Appellants have an arguable case. The Appellants state that there was a delay in getting the certified copy of the impugned order. This allegation does not appear to be true. The Appellants had not applied for a certified copy despite the order, being pronounced. The contention of the Appellants 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 Appellants to contest the appeal on merits. Hence, the application for condonation of delay is allowed, putting the Appellants to terms on payment of the cost 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

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