

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

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 573/2023 (WoD)

In

Appeal on Diary No. 1465/2023

Between

Mahesh Tannaya Kotiyan & Anr.

... Appellant/s

V/s.

Punjab National Bank & Anr.

... Respondent/s

Mukesh Dongare, Advocate for Appellants.

Mr Vinod N., i/b M/s Law Focus, Advocate for Respondent No. 1.

Mr Rishabh Shah, i/b Mr. Manmohan Rao, Advocate for Respondent
No. 2 (Auction Purchaser).

:- Order dated: 31/08/2023:-

This is an application filed by the Appellants for waiver of deposit under Sec. 18(1) of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short). The appeal impugns the order dated 01.08.2023 in Interlocutory Application (I.A.) No. 2498 of 2023 in Securitisation Application (S.A.) No. 23 of 2023 on the files of the Debts Recovery Tribunal-I, Mumbai (D.R.T.). The Appellants are the borrowers and had filed the aforesaid S.A. challenging the Sarfaesi measures initiated by the first Respondent Bank. The Appellants had sought the details of the auction purchaser who had allegedly purchased the property in a public auction. On 11.03.2022, the Appellants filed I.A. No. 261 of 2022 for amendment and an interim order of stay of the order passed

by the District Magistrate under Sec. 14 of the SARFAESI Act. The auction purchaser has appeared and sought time to file a reply to the said application and thereafter, the reply was filed on 20.04.2022. In the meanwhile, the Applicants received a notice from the Tahsildar for taking possession of the secured assets on or before 23.06.2022. On receiving that notice, the Applicants filed I.A. No. 722 of 2022 for amendment of the S.A. based on subsequent events and an application for stay was also filed as I.A. No. 723 of 2022. The Ld. Presiding Officer posted the application for hearing on 20.06.2022. The Applicants would state that on 21.06.2022 they had deposited the entire dues along with interest in the Bank. I.A. No. 261 of 2022 for amendment was not listed for hearing before the D.R.T. However, when the I.A. was taken, the application for amendment was allowed to the extent of impleading the auction purchaser since he has to be heard. The I.A. in its entirety was not disposed of. Since the Appellants wanted a clarification of whether I.A. No. 261 of 2022 was allowed in its entirety or not, they filed I.A. No. 2498 of 2023. However, the Ld. Presiding Officer vide the impugned order dated 01.08.2023 dismissed the application describing it as a dilatory tactic deployed by the Appellants to protract the matter. A cost of ₹5,000/- was also imposed. The S.A. was posted for hearing.

2. In the impugned order, the Ld. Presiding Officer did not clarify whether I.A. No. 261 of 2022 was disposed of in its entirety or not. In that application, the Appellants had not only sought impleadment of the auction purchaser but also challenged the sale by way of amendment. When there is an application for amendment, the D.R.T

is expected to dispose of that application before considering the S.A. In the order dated 21.06.2022, the Ld. Presiding Officer had made it clear that the matter is listed for orders on I.A. No. 723/2022. It is observed that since the Appellants had already filed an application as I.A. No. 261 of 2023 for impleadment of the auction purchaser, the said application up to the extent of impleadment of the auction purchaser was allowed. It does not in any way state that the rest of the amendment was disallowed. Hence, the Appellants were forced to file an application for clarification. The Ld. Presiding Officer not only did not clarify the order but also dismissed the application with cost. An application for amendment cannot be disposed of in a perfunctory manner. It is because the Ld. Presiding Officer wanted the auction purchaser to be on record and heard, that portion of the amendment was allowed. The rest of the amendment was not considered or allowed.

3. The Ld. Counsel appearing for the Respondents would contend that allowing a portion of an application assumes that the rest of the prayers are disallowed. There cannot be such an assumption because on 21.06.2022 it was I.A. No. 723 of 2022 which was posted for orders and I.A. No. 261/2022 had not come up for consideration. Nevertheless, the Ld. Presiding Officer allowed the application with regard to the impleading of the auction purchaser. The Appellants, under the impression that the application was allowed, carried out the entire amendment including the impleadment of the auction purchaser. This was realised to be improper, and hence, the clarification application was filed. The Ld. Presiding Officer could

have clarified that I.A. No. 261/2022 was allowed only in part or that the rest of the prayers were disallowed. That was not done. A prayer for amendment cannot be dismissed without going into the merits of the amendment sought and a speaking order is essential. Hence, it cannot be assumed that the rest of the prayers in I.A. No. 261/2022 were disallowed. The Appellants have therefore made out a prima facie case for maintaining the appeal.

4. Admittedly, this application is for determining the pre-deposit to be made. The Appellants have contended that the entire amount due in the bank has been paid. Hence there is no outstanding amount to be paid. The amount in deposit with the Bank has not been appropriated towards the debt due because the auction purchaser has already deposited the entire amount. However, deposits in the Bank cannot be considered to be deposited with this Tribunal under Sec. 18(1). Hence, the amount deposited by the Appellants on 12.07.2022 before the Bank together with the accrued interest is directed to be produced before this Tribunal to be retained as pre-deposit for entertaining the appeal.

5. The amount shall be produced by the Respondent Bank within a week i.e. on or before 07.09.2023 and shall be invested and fixed in deposit in the name of Registrar, DRAT, Mumbai.

6. The handing over of possession of the secured asset to the auction purchaser shall await further orders from the Tribunal.

7. 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.

8. 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 08.09.2023 for reporting compliance concerning the payment.

Sd/-
Chairperson

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DRAFT MUMBAI