

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

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 582/2023 (CoD)

In

Appeal on Diary No. 1493/2023

Between

Punam Kumari Singh & Ors.

... Appellant/s

V/s.

The South India Bank Ltd. & Ors.

... Respondent/s

Ms Payal S Kaware, Advocate for Appellants.

Mr Benny Joseph, i/b M/s BJ Law Offices LLP, Advocate for Respondent No. 1 Bank.

:- Order dated: 04/09/2023:-

This is an application filed by the Appellants to condone the delay of 368 days in filing the appeal which impugns the order dated 20.07.2023 in Interlocutory Application (I.A.) No. 1131 of 2022 in Securitisation Application (S.A.) Diary No. 1357 of 2022 on the files of the Debts Recovery Tribunal, Pune (D.R.T.) wherein the prayer to grant an interlocutory relief against the Sarfaesi measures, under Sec.17(1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interests Act, 2002 ('SARFAESI Act', for short) was declined.

2. The Appellants are the applicants in the S.A. which was filed challenging the Sarfaesi measures initiated against the property having plinth area No.56/A from the southern side area 1700 Sq. ft along with the construction out of the plinth 56, Sector No. 25, 374A, 3730

and D, final plot No. 302 situated in 'Ragvilas Sahakari Graharchna Sanstha Maryadit' in Koregaon Park (Ghorpadi) Tal-Haveli Dist, Pune, (subject property) which was allegedly offered as security by Defendants Nos. 3 to 5 to the first Defendant in the S.A., M/s South Indian Bank Ltd.(SIB) towards a cash credit facility availed by the second Defendant company named M/s Goodday Venture (India) Pvt. Ltd.

3. The Appellants claim that they were approached by Defendants Nos. 3 to 5 with an offer to sell the subject property to them for a sale consideration of ₹1,20,00,000/-. The Appellants held a joint meeting with the borrowers and the bank and the SIB agreed to come up with an OTS proposal for the borrowers to settle the debt on accepting the aforesaid amount which was clearly more than the market price the subject property would have fetched.

4. The Appellants being bona fide purchasers of the subject property did all due diligence and even published notice in the newspaper inviting objections with regard to the sale. No objections whatsoever were forthcoming from any quarters including SIB. The title deeds of the property held by the SIB were also subjected to inspection with their consent. The Appellants entered into an agreement to sell on 14.02.2020 and the deed was got registered with the Sub-Registrar, Haveli. A sum of ₹32,00,000/- was paid towards advance which was in turn handed over to SIB and accepted as payment towards the OTS scheme. Possession of the subject property was also taken by the Appellants after the pandemic and they expended huge sums to renovate the existing building which was in

disrepair. There were some corrections to the names of the Appellants required in the agreement dated 14.02.2020, and the agreement was cancelled and registered. The borrowers defaulted further payment and the Bank initiated Sarfaesi measures. A demand notice was issued and subsequently, symbolic possession of the subject property was taken on 30.11.2019 under the provision of Sec. 13(4) of the SARFAESI Act. Physical possession of the subject property was also taken on 21.07.2022. The subject property was thereafter put up for public auction and sold to the highest bidder M/s Vcreatek Consulting Services Pvt. Ltd. for a sale consideration of ₹2.04 crores. The entire amount was remitted by the auction purchaser and a Sale Certificate was issued.

5. The Appellants approached the D.R.T. with the S.A. and sought interim relief to protect their possession over the subject property of which they are the bona fide purchasers. The prayer was declined on the ground that the mortgage was created much prior to the purported agreement of sale in favour of the Appellants. Aggrieved by this order of the D.R.T., the Appellants have filed this appeal. However, there is a delay of 395 days and this application is filed to condone the delay. It is stated that the borrowers had tried their level best to negotiate with the Bank and settle the debt. Though the Bank Authorities initially assured that it would be settled, the Appellants were shocked to hear that a possession notice was issued to take possession of the property. In this process, there occurred a delay of 395 days in filing the appeal, which they sought to condone.

6. The Respondent Bank has filed a detailed reply stating that there is no provision to condone the delay in filing an appeal under Sec. 18 of the SARFAESI Act since the provisions of section 5 of the Limitation Act are not applicable to such proceedings. Hence, it is submitted that this Tribunal has no jurisdiction to condone delay.

7. It is also contended that the subject property has already been sold to the highest bidder who has deposited the entire sale consideration and the Sale Certificate has been issued. The Appellants are trying to set up a private transaction and that too when on their own showing they had consequent to the execution of the agreement to sell cancelled it because of some error that had occurred regarding the name of the Appellants. It is contended that such a contract is hit by the provisions of Sec. 23 of the Indian Contract Act. It is further submitted that after taking possession of the subject property, Appellants broke open the seal and trespassed onto the property on 21.08.2023. A police complaint has been filed against the Appellants and it has been registered as Crime No. 81/2022 for offences punishable under Sec. 448 read with Sec. 34 of the Indian Penal Code.

8. Heard the Ld. Counsel appearing for the Appellants and the Ld. Counsel appearing for the Respondent Bank. It is an admitted case that the Appellants had negotiated with the borrowers for purchasing the subject property knowing fully well that it is mortgaged in favour of the Respondent Bank for a debt availed by the borrowers. There is no sale deed executed in favour of the Appellants. It is stated that by virtue of an agreement to sell, some amount was paid as advance towards the sale consideration and the said amount was allegedly paid

to the Bank towards the debt due and payable by the borrowers. It is further stated that the agreement to sell dated 14.02.2022 was cancelled because of some error which had crept into the document. The Appellants are, therefore, admittedly not yet the owners in possession of the subject property. Even if the Appellants were given possession of the subject property by the borrowers at some point in time, and the Appellants had expended money for improving the subject property, it is something which transpired between the Appellants and the borrowers. The remedy of the Appellants against the borrowers would lie before a civil court of competent jurisdiction and not before the D.R.T. Prima facie, this Tribunal finds no defect in the impugned order of the D.R.T. which stands challenged in this appeal.

9. It is the contention of the Respondent Bank that an appeal cannot be entertained by this Tribunal under Sec. 18 of the SARFAESI Act after the stipulated time by condoning delay under Sec. 5 of the Limitation Act. It is submitted that there is no provision for condoning delay under the SARFAESI Act. I cannot agree with the submission made by the learned counsel for the Respondent Bank. The position is no longer *Res Integra*. The Hon'ble Supreme Court has in the decision *Baleshwar Dayal Jaiswal vs. Bank of India & Ors (2016) 1 SCC 444* held that even though no provision for condonation of delay is provided for in filing an appeal in the SARFAESI Act., 18(2) expressly adopts and incorporates the provisions of the Recovery of Debts & Bankruptcy Act, 1993 ('RDB Act', for short) which provides for condonation of delay in filing an appeal under the proviso to Sec.

20 (3). Thus, the Appellate Tribunal is empowered to entertain the appeal filed beyond a period of limitation on being satisfied that there is sufficient cause for not filing the appeal within the statutory period. It was also held by the Hon'ble Apex Court that even though section 5 of the Limitation Act may be impliedly inapplicable, the principle may be applied. Hence it is to be concluded that an appeal under Sec. 18 of the SARFAESI Act could be entertained by filing it with an application for condonation of delay.

10. The question that arises for consideration now is whether there is "sufficient cause" for condoning the delay in the instant case. The Appellants contend that the delay was caused because of the borrowers attempting to settle the debt due to the bank. What colour the expression "sufficient cause" in the factual matrix of the case the Tribunal finds, is the relevant point. If there is no negligence on the part of the Appellants and the cause shown for the delay does not lack bona fides, then the delay can be condoned. However, in the instant case, the Appellants want this Tribunal to believe that the Appellants waited for a favourable negotiation to take place between the bank and the borrowers for over a year, and when it did not succeed, filed this appeal with a delay. The court does not come to the assistance of those who sleep over their rights.

In the instant case, the Appellants have not come up with a "sufficient cause" with no bona fides and is not acceptable. The application for condonation lacks merits and is therefore dismissed.

Sd/-
Chairperson