

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 612/2023 (WoD)

In

Appeal on Diary No. 1480/2023

Between

Shirish Lalaso Pawar
V/s.

... Appellant/s

The Karad Urban Co-operative Bank Ltd & Ors. ... Respondent/s
Mr.Kalpak Mainkar, along with Ms. Rutuja Kulkarni, Advocate for
the Appellant.

Ms. Sonali Jain, Advocate for Respondent Nos. 1, 2 & 3.

Mr. Vallabh Tokekar, Advocate for Respondent No. 7 & 8.

:- Order dated: 06/09/2023:-

The matter is taken up for hearing by way of a praecipe filed by the Appellant for seeking urgent relief.

The Appellant is in appeal impugning the order dated 09.08.2023 in I.A. No. 562/2022 in S.A No. 33/2021 on the files of Debts Recovery Tribunal, Pune wherein the prayer of the Appellant to restrain the Respondent Bank from handing over possession of the secured property to the highest bidder was sought to be stayed that apart the Appellant had also directed Defendant Nos. 1 to 3 to produced the valuation reports obtained from authorized valuer from 2014 onwards and also to appoint a court commissioner for the proper valuation of the secured assets. The Ld. Presiding Officer after considering the rival contentions in the material on record dismissed the application. The Appellants is aggrieved and hence, in appeal.

2. The Ld. Counsel appearing for the Appellant submits that the

Appellants has a very strong prima facie case for the reason that the demand notice issued u/s. 13 (2) demanding a sum of ₹ 1,93,00,000/- as on 01.11.2017 was only for two facilities of debt incurred by the Appellant. All together there are eight facilities under which the Appellant had obtained the loan from the Respondent Bank. The Appellant contends that for the default of two facilities, Sarfaesi measures against all the properties are not possible. The Appellant has also challenged the steps taken by the Respondent Bank u/s. 13 (4) and also the order obtained from the District Magistrate u/s. 14 of the SARFAESI Act.

3. It is pertinent to note as revealed from the impugned order that the Appellant had earlier filed an application challenging the possession notice and sought interim reliefs by filing I.A. No. 145/2021 which was allowed by the Debts Recovery Tribunal, (D.R.T) on condition that he deposits ₹ 15,00,000/-. The Appellant failed to comply with that order and resultantly the said application was dismissed. The auction was conducted on 12.04.2022 and Respondent Nos. 7 and 8 are the highest bidder who purchased the property for a sum of ₹ 2,70,00,000/- and the sale has been confirmed. The possession which has already been taken over by the bank is yet to be handed over to the auction purchasers and they have been waiting for more than a year to get possession.

4. The Appellant had also filed I.A. No. 423/2022 challenging the sale which was dismissed by the D.R.T. and stands unchallenged in appeal as a result, the said order challenging the sale has become final. By means of the present application, the Appellant is again

attempting to get the sale set aside for reasons of undervaluation which by any means is not possible at this stage.

5. It is also contended by the Appellant that the auction purchasers who purchased the property more than a year ago have not taken any steps to get possession of the property and therefore no prejudice would be made to them by not handing over the property immediately. The Ld. Counsel appearing for the Respondent Bank submits that the contentions are all untenable and the only intention of the Appellant is to protract the matter.

6. The Ld. Counsel appearing for the Auction Purchasers has stated that they have been anxiously waiting to get possession of the property but the Appellant has been filing applications one after the other to get the sale and the handing over the possession of the property stalled.

7. On going through the entire facts and circumstances, I find that the Appellant has no prima facie case. The Appellant has not produced any material nor has he pleaded regarding any financial strain. The only contention is that the Appellant's business has run into loss. He has sought a total exemption of payment of pre-deposit contemplated u/s. 18(1) of the SARFAESI Act which by any means is impossible to grant. The demand notice issued on 01.11.2017 was a sum of ₹ 1,93,00,000/-.

8. The Ld. Counsel appearing for the Appellant submits that he may be granted relief to the extent of reducing the pre-deposit to 25% of the said amount mentioned in the demand notice. The Ld. Counsel appearing for the Respondent Bank submits that as of

02.09.2023 an amount of ₹ 3,45,73,323 is due payable by the Appellant towards the debt.

9. It is settled law that in the case where the Appellant is challenging all Sarfaesi measures including the sale, he is liable to deposit 50% of the amount which is mentioned in the demand notice together with the accrued interest till date.

10. Hence, the threshold amount for the calculation of pre-deposit is determined as ₹ 3,45,73,323. The Appellant is therefore directed to deposit ₹ 1,72,85,000/- as pre-deposit. The Ld. Counsel seeks a month's time to pay the pre-deposit. The prayer is granted hence, the amount shall be deposited within a period of one month i.e. on or before 06.10.2023 failing which the appeal shall be dismissed without any further reference to the Tribunal. In case of deposit of the amount within the time stipulated the Appellant shall be entitled to stay of handing over the possession of the property to the auction purchasers till the next date of hearing.

11. The amount shall be deposited in the form of a Demand Draft with the Registrar of this Tribunal.

12. 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.

13. With these observations, the I.A. is disposed of. The Respondent is at liberty to file a reply in the Appeal with an advance copy to the other side.

Post on 09.10.2023 for reporting regarding the payment of compliance concerning the payment.

Sd/-
Chairperson

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DRAFT MUMBAI