

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

**Present: Mr Justice Ashok Menon, Chairperson**

**I.A. No.642/2023(WoD)**

**In**

**Appeal on Diary No. 1590/2023**

**Between**

Baljit Singh Amrik Singh Sethi & Ors.

... Appellant/s

V/s.

Axis Bank Ltd.

...Respondent/s

Mr Radhe Agrawal, Advocate for Appellants.

Mr Alok D. Mishra, Advocate for Respondent Bank.

**:- Order dated: 27/09/2023:-**

The Appellants are in appeal impugning order dated 24.08.2023 in Interlocutory Application (I.A.) No. 1567 of 2023 in Securitisation Application (S.A.) No. 121 of 2023 on the files of the Debts Recovery Tribunal, Nagpur wherein the Ld. Presiding Officer declined to grant any protection order to the Appellants against the Sarfaesi measures initiated by the respondent bank against their residential property. Aggrieved by that order, the Appellants are in appeal. The Appellants had admittedly borrowed some amount as borrowers/mortgagors. The Appellants are husband, wife and son and for the purpose of their business, they had borrowed the amount which they defaulted in repaying. The account was classified as a non-performing asset (NPA) and notice under Sec. 13(2) was issued on 28.10.2021 demanding a sum of ₹5,92,78,323/-. The Appellants did not pay the amount and hence, steps under Sec. 13(4) of the Securitisation and Reconstruction

of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short) were initiated and the order was obtained under Sec. 14 from the Chief Judicial Magistrate's Court for taking physical possession of the property. The Appellants filed the present S.A. challenging the Sarfaesi measures on various grounds. One of the grounds is that the notice under Sec. 13(2) has not been properly served. It is also contended that the third Appellant has been described as a co-borrower whereas documents would indicate that she is only a co-mortgagor. Hence, the Sarfaesi measures are defective and challenged.

2. The Ld. Counsel appearing for the Respondent Bank submits that the Appellants are chronic defaulters and as of 11.08.2023 the outstanding dues is ₹7,22,85,059.50. It is also submitted that even going by the pleadings it is seen that the Appellants had responded to the demand notice under Sec. 13(2) which would indicate that the allegation of non-receipt of the notice does not appear to be true. It is also stated that the description of the third Appellant as a co-borrower is only a typographical error and is not of grave consequence. The Respondent would, therefore, contend that no concession whatsoever may be given to the Appellants on the reduction of the amount from the mandatory 50% to 25% of the debt due.

3. The Ld. Counsel for the Appellants would submit that the Appellants are making an earnest attempt to clear the debt and if an opportunity is given to them to save their residential premises, they would definitely make an attempt to clear the debts.

4. After hearing the rival contentions and the records perused, I do

not find a strong prima facie case in favour of the Appellants. True, the Appellants have produced the Income Tax Returns of all the three Appellants which indicate that they do not have any substantial income but they have not produced Income Tax Returns pertaining to the previous years which would indicate that they are constantly under financial strain. Documents are also produced to indicate that the Appellants have other credits to be cleared. They are also due to get certain amounts from various debtors. Hence, the Appellants plead that they are under financial strain. Taking the facts regarding the financial strain, I find that the Appellants are not entitled to the concession of getting the amount of pre-deposit reduced to 25%. Taking the amount mentioned in the demand notice as the threshold amount for calculating the pre-deposit, the Appellants are directed to deposit a sum of ₹2 crores as a pre-deposit for entertaining the appeal. The Ld. Counsel appearing for the Appellants undertakes to deposit a sum of ₹50 lakhs upfront towards the first instalment and seeks time to deposit the balance. The balance of ₹1.50 crores shall be deposited in three equal instalments. The first instalment shall be payable within two weeks. The rest of the instalments shall be payable within a gap of two weeks each, as stated hereunder.

<b><u>Numbers of Instalments</u></b>	<b><u>Payment on or before</u></b>
1 <sup>st</sup> Instalment of ₹50 lakhs	11.10.2023
2 <sup>nd</sup> Instalment of ₹50 lakhs	25.10.2023
3 <sup>rd</sup> Instalment of ₹50 lakhs	08.11.2023
4 <sup>th</sup> Instalment of ₹50 lakhs	22.11.2023

5. In default of the payment of the instalments in time, the appeal

shall stand dismissed without any further reference to the Tribunal.

6. On the payment of the first instalment on time, the Appellants shall be entitled to the interim relief of getting the taking over of possession of the secured asset deferred till the next date of hearing.

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

8. 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.

9. 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 12.10.2023 for reporting compliance regarding the first instalment.

Sd/-

Chairperson

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