

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 538/2023 (WoD)

In

Appeal on Diary No.1211/2023

Between

Sagar Kirana and Dhanya Bhandar & Ors. ... Appellant/s
V/s.

Gandhibagh Sahakari Bank Ltd., Nagpur

...Respondent/s

Mr Dujendra Kumar H. Sharma along with Ms Bhavika S Hodar, Mr Pradyumna D Sharma and Mr Randhir Kumar Mandal, i/b M/s Sharma & Sharma Legal Solution, Advocate for Appellants.

Mr Vikas D.Bemarker, Advocate for Respondent Bank.

:- Order dated: 13/10/2023:-

The Appellants are in appeal impugning the order dated 19.06.2023 in Securitisation Application (S.A.) No. 167 of 2023 on the files of the Debts Recovery Tribunal, Nagpur (D.R.T.) wherein the protection granted to the Appellants against Respondent's proceedings with Sarfaesi measures was vacated in consequence to the Appellants not complying with the undertaking given by them to pay a sum of ₹40 lakhs and also settle the debt by coming up with an OTS proposal which was submitted in the pursis filed by them before D.R.T. on 19.06.2023. The Appellants are aggrieved by the order withdrawing the protection granted to them, and hence, in appeal.

2. In order to entertain the appeal, the Appellants will first have to cross the hurdle of making a pre-deposit under Sec. 18(1) of the

Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short). The Appellants are challenging the Sarfaesi measures on various grounds. It is stated that the notice issued under Sec. 13(2) does not give the details of the rate of interest and therefore, there is a lack of clarity and non-compliance of Sec. 13(3) of the SARFAESI Act. An objection has been filed by the Appellants to which the Bank has sent a reply and in that reply, there is no clarification regarding the rate of interest which is charged on the loan. It is also pointed out that in the loan sanction letter, nothing is stated about the rate of interest. That apart, it is further pointed out that the security has not been registered and therefore, makes it invalid.

3. The Ld. Counsel appearing for the Appellants submits that consequent to receipt of the demand notice for a sum of ₹87,00,710/- on 05.09.2022, the S.A. was filed on 05.01.2023 and subsequently, the Appellants paid a sum of ₹30 lakhs on 09.06.2023 and further a sum of ₹10 lakhs on 19.06.2023. It is, therefore, argued that nearly 50% of the amount due has already been paid to the bank and therefore, a complete waiver of the pre-deposit may be granted.

4. The Ld. Counsel appearing for the Respondent bank has vehemently opposed the application stating that as of date, after adjusting the amount which is paid, there is an outstanding due of ₹58.45 lakhs and that the Appellants have not come up with any substantial payment thereafter and therefore, the intention of the Appellants in filing the appeal is only to protract the matter and stall the Sarfaesi measures. It is also pointed out that an order of taking

physical possession has already been obtained under Sec. 14 of the SARFAESI Act from the District Magistrate but the said action has not been challenged in the S.A. What is challenged in the S.A. is the notice issued for taking symbolic possession of the property and that particular notice which is sought to be proceeded against has not even been produced in the S.A. by the Appellant, submits the Ld. Counsel appearing for the Respondent. Under the circumstances, it is pointed out that no prima facie case is made out. The Appellants have not pleaded anything regarding financial strain in the application for waiver and the amount that is paid, is directly to the bank, and therefore, it cannot be countenanced that 50% amount has been paid in compliance with Sec. 18(1) of the SARFAESI Act.

5. It is a settled position that a complete waiver of the pre-deposit cannot be granted to the Appellants on filing the appeal. Any amount paid by the Appellants directly to the bank is not a payment or pre-deposit towards the compliance of Sec. 18(1). In the latest decision of the Hon'ble Supreme Court in *Sidha Neelkanth Paper Industries Pvt. Ltd. & Anos. vs. Prudent ARC Ltd & Ors., 2023 SSC OnLine SC 12*, it is stated that when the Appellants are challenging the Sarfaesi measures up to the action under Sec. 13(4), the amount mentioned in the demand notice is the threshold amount on the basis of which the pre-deposit has to be made. The property has not been sold and that is also no action challenging the sale. It is true that some amount has been paid but subsequent interest has also accrued and the balance as of date is more than ₹58 lakhs and therefore, I would take the said amount of ₹58.45 lakhs as the threshold amount on the basis of which

the pre-deposit has to be made. The Appellants are directed to deposit a sum of ₹25 lakhs as pre-deposit. The Ld. Counsel for the Appellants seeks four weeks' time to deposit. The said amount shall be paid within the period of four weeks i.e. on or before 10.11.2023.

6. In default of the payment of the instalments in time, the appeal shall stand dismissed without any further reference to the Tribunal.

7. On payment of the amount, the further Sarfaesi measures intended to be taken by Respondent shall be stalled or deferred till the next date of hearing.

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

9. 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.

10. 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 13.11.2023 for reporting compliance regarding payment.

Sd/-
Chairperson