

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 29/2012

Between

Smita Sushilchandra Narvekar ... Appellant/s
V/s.

Rajpur Urban Co-operative Bank Ltd. & Ors. ...Respondent/s
Mr Puneet Gogad, Advocate for Appellant.

:- Order dated: 17/10/2023:-

The Appellant is the Applicant in the Securitisation Application (S.A.) No. 24/2010 on the files of the Debts Recovery Tribunal-III, Mumbai (D.R.T.) and is aggrieved by the dismissal of the S.A. by the Ld. Presiding Officer vide judgment and order dated 27.09.2010. The Appellant is aggrieved and hence, in appeal.

2. The Appellant is the widow of the deceased borrower Sushilchandra S. Narvekar who had allegedly borrowed some money from the first Respondent Rajapur Urban Co-operative Bank Ltd. with Respondents Nos. 2 & 3 as guarantors for advancing the cause of the hotel business he was running. Property bearing Survey No. 14 A, Hissa No. 4 admeasuring 0.01 are in Mouje, Rajapur was mortgaged to secure the loan. Repayment of the loan was defaulted and the original borrower died. The first Respondent Bank had filed a claim before the Assistant Registrar of Co-operative Societies against the Appellant and Respondents Nos. 2 & 3. The said claim was dismissed for the reason that it was filed beyond the period of limitation.

3. Thereafter, the Bank filed a dispute before the Co-operative Court at Alibaug, Raigad Dist. as R.T.N. No. 261 of 2008 which was allowed by the Court on 30.09.2009, ex-parte.

4. The Applicant/Appellant states that the Bank has initiated Sarfaesi measures without even serving notice on the Appellant. Possession was taken on 06.10.2009 and therefore, the Appellant was constrained to file the S.A. described above praying for setting aside the demand notice dated 22.07.2009 and the measures including the demand notice and the auction notice under the SARFAESI Act are sought to be quashed.

5. The Respondent Bank contested the S.A. contending that there is a delay in filing the S.A. The Appellant was aware of the mortgaging of the property by her husband and the proceedings initiated by the Bank. It is stated that the order of the Assistant Registrar, Rajapur is being challenged in revision. The Appellant had deliberately failed to appear before the Co-operative Court resulting in an ex-parte decree.

6. After appreciation of the evidence, the Ld. Presiding Officer did not find favour with the averments raised in the application challenging the Sarfaesi measures and dismissed the S.A. The Appellant is aggrieved and hence, in appeal.

7. In the appeal, the Appellant contends that the infirmity in the demand notice issued under Sec. 13 (2) of the SARFAESI Act has not been considered by the D.R.T. The Appellant had subsequently amended the appeal memorandum by raising contentions with regard to the valuation of the property and the insufficiency of the notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002.

The fixing of the reserve price is contended to be much lesser than the market value and it is contended that the property was sold at a throwaway price. The auction purchaser is impleaded as the fourth Respondent. It is contended that the auction purchaser did not deposit the sale consideration in accordance with the Rules and therefore, it is prayed that the auction sale may be quashed and set aside.

8. The fourth Respondent has appeared and filed a reply stating that the first Respondent Bank had published an auction sale notice on 04.12.2009 and the auction was held on 04.01.2010. The fourth Respondent bid for the property and was successful. The sale consideration was deposited, the sale confirmed and a sale certificate was issued on 25.10.2010. Possession of the property has been handed over to the auction purchaser on 25.10.2010. The sale agreement was registered on 01.11.2010. The S.A. was dismissed consequent to the confirmation of the sale and the issuance of the sale certificate in favour of the fourth Respondent. Hence, the fourth Respondent prays that the appeal may be dismissed.

9. Heard the Ld. Counsel appearing for the Appellant and the Ld. Counsel for the Respondent. Records perused.

10. The main contention raised by the Appellant is regarding the challenge to the sale. It is stated that the reserve price for the property needed to be properly fixed based on appropriate valuation. The Appellant has also challenged that the sale amount was not deposited on time.

11. It is pertinent to note that the sale took place on 04.01.2010 and the S.A. was dismissed subsequently vide order dated 27.09.2010. No protection order was granted in favour of the Appellant. However, the Appellant had challenged the sale notice which was not upheld. The Appellant could have challenged the sufficiency of the reserve price but that is not challenged at any time. The valuation of the property was not challenged. Each Sarfaesi measure is a fresh cause of action which could have been challenged. In view of the fact that the Appellant had not challenged the measures pertaining to the sale of the property, reliefs with regard to the sale cannot be obtained in the appeal.

I do not find any error in the judgment and order of the D.R.T. The appeal is without any merits and requires to be dismissed.

Resultantly, the appeal is dismissed.

Sd/-
Chairperson

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