

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 741/2023(WoD)

In

Appeal on Diary No. 1731/2023

Between

Dakshata Singh & Anr.

... Appellant/s

V/s.

Kotak Mahindra Bank Ltd.

... Respondent/s

Mr Charles D'Souza along with Mr Shivam Laturiya, Mr Utkarsh Sanad & Ms Prachi Rungta, i/b M/s APS Law Associates, Advocate for Appellants.

Mr Rajesh Nagory along with Mr Vinay Deshpande & Mr Rupak Sawangikar, i/b M/s V. Deshpande & Co., Advocate for Respondent Bank.

:- Order dated: 07/11/2023:-

The matter is taken up for hearing by way of Praecipe filed on 02.11.2023 by the Appellants seeking urgent relief.

2. The Appellants are in appeal impugning the order dated 13.09.2023 in Securitisation Application (S.A.) No. 389 of 2023 on the files of the Debts Recovery Tribunal-III, Mumbai (D.R.T.) whereby the Ld. Presiding Officer declined to grant any interlocutory relief to the Appellants and disposed of I.A. No. 3068 of 2023 for the reason that the Appellants who had undertaken to deposit ₹15 lakhs for stalling the taking over possession of the property, paid only ₹10 lakhs and failed to pay ₹5 lakhs with the period of 10 days which was stipulated by the D.R.T. The Appellants are aggrieved and hence, in appeal.

3. The Appellants have challenged the Sarfaesi measures on various grounds. The demand notice was issued demanding a sum of ₹50,79,564/- as of 03.08.2020 to which the Appellants responded by sending an objection. There was no response from the Respondent as contemplated under Sec. 13(3A) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short). Thereafter, an application was filed under Sec. 14 of the SARFAESI Act before the District Magistrate and an order was obtained. It is contended that the 9-pointer affidavit is not proper since the fact regarding the Appellants responding to the demand notice under Sec. 13(2) is not mentioned in the said application. It is also contended that 13(2) notice were issued by an authorised officer who has not been named neither his designation mentioned. The Ld. Presiding Officer has also opined that there appears to be some discrepancy regarding the calculation made by Respondent regarding the outstanding amount as of date which has swelled to ₹96 lakhs within a period of three years. But no finding on merits has been entered into by the Ld. Presiding Officer. He directed payment of ₹15 lakhs in two instalments. The Appellants did comply by making a payment of ₹10 lakhs as the first instalment. But thereafter, failed to pay Rs.5 lakhs more. On that ground alone, the D.R.T. refused to grant any interlocutory relief to the Appellants and directed the Respondent to proceed with the Sarfaesi measures.

4. In view of the settled position, the Appellants will have to deposit an amount under Sec. 18(1) based on the demand made in the demand notice under Sec. 13(2) since steps till the measures taken

under Sec. 14 of the SARFAESI Act stand challenged.

5. The Ld. Counsel appearing for the Respondent has vehemently opposed the application for waiver of deposit on the ground that the Appellants do not require any indulgence by getting the amount reduced. The outstanding amount as of date is over ₹88 lakhs.

6. The Appellants have pleaded financial strain and have produced Income Tax Returns which would indicate that the total income of the Appellants is only around ₹6 lakhs per annum.

7. The Ld. Counsel appearing for the Respondent has pointed out the various sources of income derived by the Appellants which indicates that the Appellants have leased out properties and therefore, contends that the Appellants are the persons having sufficient means to raise the amount.

8. After taking the entire facts and circumstances into consideration, I find that the Appellants should be directed to pay a sum of ₹15 lakhs towards pre-deposit. The Ld. Counsel appearing for the Appellants submits that the demand draft of ₹2.50 lakhs is being produced today. The balance amount of ₹12.50 lakhs shall be paid on or before 04.12.2023. Default in payment of the said balance amount entails in dismissal of the appeal without any further reference to this Tribunal.

9. The Sarfaesi measures including taking over the possession of the secured asset shall stand deferred till the next date of hearing in case it is not already taken as of today.

10. The Ld. Counsel appearing for the Respondent sought time to file a detailed reply to the application but in view to controvert the

findings of the Ld. Presiding Officer and also the contentions raised in the application. However, in view of the fact that the possession intended to be taken today, the application is heard today and disposed of.

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 05.12.2023 for reporting compliance regarding the balance payment.

Sd/-
Chairperson

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