

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr. Justice Ashok Menon, Chairperson

I.A. No. 744/2023 (WoD)

In

Appeal on Diary No. 1947/2023

Between

Suresh Ramvilas Gupta
V/s.

... Appellant/s

Motilal Oswal Home Finance Ltd.

... Respondent/s

Mr. Ramakant Yadav & Adiba Khan, Advocate for Appellant.

Mr. Padmakar G., i/b M/s. SG Legal & Associates, Advocate for Respondent.

:- Order dated: 08/11/2023:-

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 20.10.2023 in Interlocutory Application (I.A.) No. 6031/2023 in Securitization Application (S.A.) No. 407/2023 on the files of the Debts Recovery Tribunal-III, Mumbai (D.R.T.) whereby the earlier protection was granted to the Appellant with regards to the Sarfaesi measures initiated by the Respondent Financial Institution has been withdrawn and the Respondent has been granted liberty to proceed with the Sarfaesi measures.

2. The impugned order does not hold the merits of the contentions raised regarding the Sarfaesi measures. The order states that the Respondent has clarified regarding the outstanding liabilities and that the direction given to the Appellant to approach the

Respondent for negotiated settlement has not been complied with and therefore, the interim protection was withdrawn.

3. The Ld. Counsel appearing for the Respondent has vehemently opposed the application of waiver of pre-deposit filed as I.A. No. 744/2023 on the grounds that the Appellant has not stated anything regarding the waiver of pre-deposit is sought. The Appellant has pleaded that he has a strong case in setting aside the impugned order. He also submits that he is a poor man who is driving an Auto-rickshaw to earn a livelihood and therefore, he is not in a position to deposit the 50% amount contemplated under section 18 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act", for short).

4. The Appellant however is not entitled to a total exemption of the pre-deposit as is the settled position. The only consideration before this Tribunal to whether he is entitled to get the 50% pre-deposit reduced to 25%. The Appellant has pleaded that he has not received a notice u/s 13 (2) nor was he served any notice of taking possession u/s 13 (4) of the SARFAESI Act. Only when the order was passed for taking physical possession of the secured asset u/s 14 by the Chief Metropolitan Magistrate (CMM) did the Appellant know about the Sarfaesi action against him, and hence, he approached the D.R.T. with a aforesaid S.A. The Appellant has also challenged the correctness of the amount that is claimed by the Respondent stating that he had purchased the flat from the builder for a sum of ₹12 lakhs and had made the payment of ₹7.20 lakhs and therefore, there was no need for him to borrow the larger amount

from the 1st Respondent. The statement of account obtained by the Appellant shows a much lesser amount than what is now claimed. The Ld. Counsel appearing for the Respondent submits that the account only shows the overdue to be paid by way of instalments and does not reflect the total amount that is due to be paid. According to the Respondent as of this date, the total amount that is due to be paid is ₹8,61,256/-. The demand notice issued u/s 13 (2) on 29.07.2019 demanded a sum of ₹4,00,718/-.

5. The Appellant has only challenged the Sarfaesi measures up to the measures u/s 14 of the SARFAESI Act. Hence, as per the latest decision of the Hon'ble Supreme Court of India *Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 SCC OnLine SC 12*, the Appellant is to make the payment of 50% that is due in the demand notice u/s 13 (2) for the appeal to be entertained, under the 2nd proviso to section 18 (1) of the SARFAESI Act. The Appellant has pleaded that he has a hand-to-mouth existence and is the only earning member in his family. There is no documentary evidence to support his pleading of impecuniousness. There is also no material to indicate that the Appellant has not received any notice u/s 13 (2) and 13 (4).

6. Considering the entire facts and circumstances of the case, the Appellant is directed to deposit a sum of ₹1.50 lakhs as pre-deposit for the appeal to be entertained. The amount shall be paid in three equal instalments of ₹50,000 each, as hereunder.

<u>Numbers of Instalments</u>	<u>Payment on or before</u>
1 st Instalment of ₹ 50,000/-	22.11.2023
2 nd Instalment of ₹ 50,000/-	06.12.2023
3 rd Instalment of ₹ 50,000/-	20.12.2023

7. On the payment of the 1st instalment, the Appellant shall be entitled to get the further Sarfaesi measures stalled till the next date of hearing.

8. Default in payment of any of the instalments shall entail in dismissal of the appeal without any further reference to this Tribunal.

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

10. 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.

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

Post on 23.11.2023 for reporting compliance regarding the payment of the 1st instalment.

Sd/-
Chairperson