

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

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

**Misc. Appeal No. 96/2022**

**Between**

M/s Eco Tread Reclaimed Rubber (I) Pvt. Ltd. ... Appellant/s  
V/s.

State Bank of India & Anr. ... Respondent/s

Mr Puneet Gogad, Advocate for Appellant.

Mr Bidan C along with Ms Meenu P., i/b M/s M.V. Kini & Co.,  
Advocate for Respondent No. 1 Bank.

Mr Rajesh Nagory, Advocate for Respondent No.2

**:- Order dated: 20/11/2023:-**

The appeal impugns the judgment dated 25/05/2022 in Misc. Application (M.A.) No. 30 of 2021 on the files of the Debts Recovery Tribunal, Pune (D.R.T.).

2. The Appellant is the auction purchaser who is aggrieved by the rate of interest allowed by the D.R.T. while ordering a refund of the sale consideration deposited by the Appellant in consequence to the refund of the amount following the setting aside the sale.

3. M.A. 30/2021 was filed for refund of the sale consideration deposited by the Appellant together with interest at the rate of 18% per annum and the security as well as legal charges incurred by the Appellant. The impugned order directs a refund of the amount together with interest at the rate of 9% per annum with effect from the date of filing of the M.A. till the realisation. The claim for security and legal charges was declined.

4. The facts essential for the determination of this appeal, in brief, are thus:

The 2<sup>nd</sup> Respondent is a borrower who defaulted on repayment of the debt incurred from the 1<sup>st</sup> Respondent State Bank of India (SBI). The bank initiated Sarfaesi measures against the secured assets under the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (“SARFAESI Act”, for short) and sold the mortgaged property in a public auction conducted on 08/11/2011 to the Appellant for the sale consideration of ₹1,46,25,000/-and a further sum of ₹1,36,862/-was also realised for delayed payment of the sale consideration. A Sale Certificate was issued separately for movable and immovable properties sold to the Appellant. Possession of the mortgaged property sold to the Appellant was delivered on 23/02/2012. The Appellant continues to be in possession of the property.

5. The 2<sup>nd</sup> Respondent borrower filed Securitisation Application (S.A.) No. 26/2012 under section 17 (1) of the SARFAESI Act challenging the sale. Vide order dated 02/06/2018, the D.R.T. allowed the S.A. and the sale were set aside and the Sale Certificates declared invalid. The order however does not as an essential corollary, state anything regarding the refund of the sale consideration deposited by the auction purchaser or the rate of interest to be paid thereon. Nor does the order state anything regarding the restoration of possession of the property to the borrower/ creditor. The bank did not refund the amount deposited towards sale consideration to the Appellant. Requests made by the Appellant to the bank for a refund of the amount fell on deaf ears. The written notices were issued from 17/01/2022 to 08/04/2021 without any response. The bank preferred an appeal before the DRAT challenging the order in the S.A. belatedly

with an application for condonation of delay. The DRAT refused to condone the delay and in consequence the appeal was dismissed. The bank challenged the order of dismissal of appeal before the Hon'ble High Court by filing Writ Petition No. 1988/2022 in vain and got a dismissal on 03/02/2022.

6. Even after the dismissal of the appeal, the bank did not make any attempt to refund the amount and hence, the Appellant was constrained to file the M.A. for specific directions to get a refund of the amount together with interest. The Appellant is aggrieved that simple interest at the rate of 9% from the date of filing of the M.A. alone was allowed in place of interest claimed at the rate of 18% per annum.

7. The only question that arises for consideration in this appeal is regarding the rate of interest to be awarded to the Appellant on the refund of the sale consideration deposited by it.

8. The grievance of the Appellant is that while the bank had charged interest at the rate of 14.75% per annum for 10 days delay in depositing the sale consideration consequent to the auction by the Appellant, the same rule would apply to the bank also when there is delayed payment of the refund ordered. Hence, it is prayed that the impugned order may be interfered with and the Respondent bank be directed to refund the deposited amount to the Appellant together with interest at the rate of 18% per annum.

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

10. The Appellant had deposited the sale consideration on 24/12/2011 and a penalty of ₹1,36,862/- was also deposited for

delayed payment of 10 days on 02/02/2012. Physical possession of the movable and immovable properties was handed over to the Appellant on 23/02/2012. On filing S.A. No. 26/2012, the D.R.T. had directed the Appellant to maintain the status quo vis-a-vis the existing structures in the property. The Appellant could not therefore make use of the property which was lying idle all along. The sale consideration paid by the Appellant was appropriated towards the debt due from the borrower and utilised by the bank. The Appellant merely continued as a caretaker of the property without earning any profit therefrom. The Appellant admits having removed some scrap movables from the property prior to the order of status quo, the value of which is estimated as ₹2,69,000/-. The said amount is agreed to be deducted from the amount payable by the bank to the Appellant.

11. The Ld. Presiding Officer however allowed the M.A. only in part. The security charges and the legal expenses claimed by the Appellant were declined. Interest at the rate of 9% per annum was found to be appropriate considering the current rate of interest.

12. The Ld. Counsel appearing for the Appellant relies on a catena of decisions in support of his argument justifying the claim of an interest rate of 18% per annum from the date of deposit of the amount. The Division Bench of the High Court of Andhra Pradesh has in *Madhava Krishna Chaitanya vs. UCO Bank, Asset Management Branch 2018 SCC OnLine Hyd 196* directed the auction purchaser to refund the sale consideration with interest thereon 18% per annum from the date of deposit till the date of realisation within two weeks from the date of receipt of a copy of the order. It was observed that the bank is itself at fault for the entire imbroglio and the petitioner was made to

part with his valuable monies with no consequential benefit therefore and the bank enjoyed the custody of these monies all through and the rate of interest as applied by the Supreme Court in like circumstances and the decision *Mathew Verghese vs. M Amritha Kumar (2014) 5 SCC 610* was adopted. The Ld. Counsel submits that the aforesaid decision of the Andhra Pradesh High Court was not interfered with by the Hon'ble Supreme Court in the special leave appeal preferred against the said decision. The High Court of the State of Telangana has in *Shaik Janimiya vs. State Bank of India & Ors MANU/TL/0086/2020* relied upon the decision in *Madhava Krishna Chaitanya (supra)* and directed repayment of the sale price deposited by the auction purchaser together with interest at the rate of 12% per annum from the date of deposit. In *J Rajiv Subramaniyan & Ano vs. Pandiyas & Ors. (2014) 5 SCC 651* the Hon'ble Supreme Court ordered interest at the rate of 18% per annum from the date of deposit. The Hon'ble Supreme Court has in yet another decision, *Oasis Dealcom Private Limited vs. Khazana Dealcomm Private Limited & Ors (2016) 10 SCC 214* directed payment of simple interest at the rate of 10% per annum from the date of deposit to the auction purchaser.

13. It is pertinent to note that even though the Appellant was handed over possession of the property consequent to the sale, there was an order of status quo passed by the D.R.T. with regard to the structures situated in the property. The Appellant could not therefore make any alteration to the property nor could it be put to any profitable use. Consequent to the setting aside of the sale, the Respondent bank did not immediately file an appeal challenging the order of the D.R.T. in S.A. 26/2012. The bank was found to be at fault

for having delayed in filing the appeal before the DRAT. The Hon'ble High Court of Bombay also did not interfere with the order of the DRAT and even directed the Chairman of SBI to initiate an enquiry and take action regarding the negligence and carelessness which was found to be writ large in the matter. The auction purchaser therefore could not have been faulted as the sale was set aside due to the negligence of the bank and its authorities.

14. The Appellant is, therefore, entitled to a refund of the amount together with interest. The argument is that the rate of interest realised by the bank for the belated payment of the sale consideration should be accepted as the rate while the bank commits a similar delay in repayment. This argument is not acceptable for the simple reason that the auction purchaser is bound by the Rules and the Sale notice to comply with the mandate of payment within a stipulated time. There is no such compulsion on the part of the bank while refunding the amount on setting aside the sale. The interest is awarded by way of compensation to be determined while refunding the amount wrongfully retained. The rate of interest sanctioned by the D.R.T. in the impugned order is 9%. Considering the current rate of interest on deposits by banks, it cannot be considered to be too low. However, the Appellant is entitled to interest from the date of deposit and not from the date of filing of the M.A. as ordered by the D.R.T. The Appellant has appropriated some amount admittedly from the movable scraps which were removed, which according to the assessment made by the Appellant is worth ₹2,69,000/- and hence the said amount needs to be deducted from the refund amount. According to the Ld. Counsel appearing for the Respondent bank the value of

the movables as per the Sale Certificate is ₹65,56,000/-and therefore, the said amount would have to be deducted.

15. There is no evidence on record regarding the fact that the entire movables were removed. According to the Appellant, it was only the scrap worth ₹2,69,000/- that was removed. The refund amount of ₹1,47,61,862/-will has to be reduced by the value of the scrap which was admittedly appropriated by the Appellant. The Appellant has not substantiated by evidence the amount that was spent on the arrangement of Security. According to the Appellant, the property could not have been used for any purpose. On refunding the amount due to the Appellant, the possession of both movables and immovables (as assessed in the records) shall be restored.

Under the circumstances, the appeal is allowed in part and the Respondent bank is directed to refund a sum of ₹1,44,92,862/- together with interest at the rate of 9% per annum with effect from the date of deposit of the amount till realisation. The possession of the secured assets shall be restored after assessing the value of the movables. The amount of refund together with interest shall be deposited by the bank before the D.R.T. and shall be disbursed to the Appellant only after assessment of the value of movables to be restored in accordance with the valuation reports made at the time of the handing over of possession.

Sd/-  
Chairperson