BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

Appeal No.48/2023

Between

Authorised Officer, Shriram City Union Finance Ltd. … Appellant/s

V/s.

Kamla Industries & Ors. …Respondent/s

Ms Uma Fadia, Advocate for Appellant.
Mr Anil B Chimnani, Advocate for Respondents Nos. 1 to 4.

-: Order dated: 19/12/2023:-

Shriram City Union Finance Ltd. is a financial institution(F.I.) which had lent money to Respondents Nos. 1 and 2 the sole proprietorships of Respondents Nos. 3 and 4 respectively. They also stood as guarantors for the debt incurred. The fourth Respondent has also mortgaged her property as collateral security. The borrowers defaulted payment and measures available to the Appellant under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act", for short) were initiated against the Respondents. The measures were challenged under Sec. 17(1) of the SARFAESI Act by the Respondents by filing Securitisation Application (S.A.) No. 101 of 2021 before the Debts Recovery Tribunal-I, Ahmedabad (D.R.T.).

2. On 13.08.2021, in the virtual hearing by the D.R.T., a settlement was arrived at between the parties and the applicants in the S.A.

offered to pay the total outstanding sum of ₹52 lakhs as proposed by the secured creditor, in instalments. It was also agreed by the applicants that in case of default of payment, as agreed, the possession of the secured asset would be handed over to the creditor without any demur and in case the applicants fail to hand over physical possession of the asset to the creditor, the secured creditor would be at liberty to take the assistance of police machinery to take over possession of the property. The Ld. Counsel for the applicants was directed to file an undertaking concerning the schedule of payment to be made, by 16.08.2021 and the Ld. Counsel appearing for the Appellant FI undertook to defer the taking over of physical possession of the secured asset until a default in payment was committed by the applicants. It was made clear by the D.R.T. that the statement made by the Counsel for the parties shall operate as the order of the Tribunal.

3. As agreed, an undertaking was filed by the applicants to the D.R.T. through email to the D.R.T.

4. It seems that the F.I. resiled from the undertaking to settle. Vide order dated 05.04.2023, the S.A. was disposed of imposing a compensation of ₹1 lakhs on the F.I. to be paid to the applicants, and a further sum of Rs.1 lakhs was directed to be paid as cost to the National Defence Fund.

5. The Appellant is aggrieved and hence, in appeal.

6. The only question that arises for consideration of this appeal is regarding the maintainability of the appeal.

7. The Ld. Counsel appearing for the Appellant Ms Uma Fadia argues with vehemence by submitting that the Appellant had never

accepted the terms of settlement. It was a unilateral act of submitting an undertaking to pay a sum of ₹52 lakhs toward the settlement of the entire debt made by the applicants in the S.A. The Appellant had never consented to such a proposal, though the payments were received. The amounts were paid in instalments by RTGS to the Appellant and it could not have been refused because the amounts were due and payable by the Respondents. It is also contended that the Appellant had made an endorsement on the undertaking that the proposal is not acceptable and an email was also sent on 13.08.2021 to the Respondents conveying the fact that the amount of instalments offered are not acceptable as they are not adequate and the institution cannot accept such low amount as instalments and that the institution intended to proceed to take physical possession of the secured asset by following due process of law.

8. The order of D.R.T. dated 13.08.2021 makes it adequately clear that the applicants therein had through their counsel offered to settle the debt by making payment of ₹52 lakhs proposed by the secured creditor, in instalments starting from 31.08.2021 and ending on 31.12.2021. The first instalment of ₹7 lakhs was payable on 31.08.2021. The Ld. Counsel appearing for the applicants had undertaken to surrender possession of the secured asset in case of default of payment on that date. The Ld. Counsel appearing for the Appellant had, apparently in acceptance of the offer, agreed to defer taking physical possession of the asset until default in payment was committed. The D.R.T. also made it clear that the statement made by the counsel for the parties is accepted and shall operate as the order of the Tribunal. Admittedly, there was no default of payment, and the

entire amount as mentioned in the undertaking was paid.

9. It is noted that on the undertaking dated 13.08.2021, there is an endorsement made for the Appellant that the copy of the undertaking was received but not acceptable. Such an endorsement was made only on 5.07 pm. on 13.08 2021. Thereafter, an email is also sent by the authorised officer of the Appellant to the Respondents stating that the instalments are low and not acceptable.

10. Nothing is stated regarding the inadequacy of ₹52 lakhs as the total amount offered for settlement. It was only the instalments which were found to be inadequate. The Ld. Counsel who was representing the Appellant before the D.R.T. had not submitted that the offer for settlement was not acceptable. On the other hand, the Ld. Counsel for the Appellant had agreed to defer taking over of possession of the property until default was committed by the applicants. Even subsequently, when the S.A. was taken up for consideration by the D.R.T., The Appellant's Counsel did not withdraw from the settlement arrived at between the parties.

11. Section 20(2) of the Recovery of the Debts and Bankruptcy Act, 1993 ('RDB Act, for short) specifically states that no appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

12. Hence, in the instant case, the appeal would not lie as the order was made on mutual consent of the parties. The Hon'ble Supreme Court has in *State of Maharashtra vs. Ramdas Srinivas Nayak & Ano. (1982) 2 SCC 463* wherein it is held thus:

> "Statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other

> evidence. If a party thinks that the happenings in the court have been wrongly recorded in a judgment, it is incumbent upon the parties, why the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with the regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course, a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of law and had laid to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

13. Moreover, in the impugned order, the Ld. Presiding Officer has further observed that the demand notice under Sec. 13(2) dated 08.09.2020 does not give a breakup of the principal and interest claimed. There is a demand of ₹57,90,756/- as of 07.09.2020. The notice is, therefore, in breach of Sub-Sec. (3) of Sec. 13, and therefore, the entire SARFAESI measures should fail.

The Appellant has not made out a case sufficient for interference and hence, the appeal is only to be dismissed and I do so. However, the compensation and costs of ₹2 lakhs imposed on the Appellant are modified and the order directing the payment of compensation of ₹1 lakh to the Respondents is set aside. The cost payable to the National Defence Fund is sustained, and the same shall be paid within two weeks.

Sd/-
Chairperson

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