

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 829/2023(WoD)

In

Appeal on Diary No. 1948/2023

Between

Santosh Laxman More & Anr. ... Appellant/s
V/s.
Bank of Baroda ... Respondent/s

And

I.A. No. 830/2023(WoD)

In

Appeal on Diary No. 1949/2023

Between

Santosh Laxman More & Anr. ... Appellant/s
V/s.
Bank of Baroda ... Respondent/s
Mr. Sunil Humbre, i/b Mr. Veer Shitore, Advocate for Appellant.

:- Common Order dated: 22/12/2023:-

The matter is taken up for hearing by way of a praecipe filed by the Appellants for seeking urgent relief.

The Appellants are in appeal challenging two identical orders dated 25.09.2023 in two Securitization Application (S.A.) filed by them as S.A. Nos. 62/2022 and 63/2022 before the Debts Recovery Tribunal, Pune (D.R.T).

2. I.A. Nos. 2254/2023 in 2255/2023 filed respectively in S.A. Nos.62/2022 and 63/2022 were both dismissed without granting any protection to the Appellants concerning the Sarfaesi measures initiated by the Respondent bank against the secured assets in these two cases for recovery of debts.

3. The Appellants have applied for a waiver of deposit under the provisions of Sec. 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act” for short) seeking the indulgence of this Tribunal to keep the mandatory pre-deposit to the minimum of 25%. The Respondents were served but none appeared.

4. The Appellants face the immediate threat of being dispossessed of the secured assets on 03.01.2024 and hence, the urgency. The Appellants had availed a loan from the Respondent bank and two separate flats were offered a security for the two financial assistance given to them. They defaulted payment and received a common 13(2) notice on 19.06.2018 demanding a sum of ₹ 47,96,023/- concerning the financial facility given in S.A. No.62/2022 and ₹ 44,39,677/- for the dues which is the subject matter of S.A. No. 63/2022. The Appellants had paid some amount as directed by the DRT to get the Sarfaesi measures stalled for some time, but thereafter, the protection was vacated and the bank is proceeding with the Sarfaesi measures.

5. The Appellants would contend that they have a good prima facie case in challenging the Sarfaesi measures. It is contended that the mandatory provisions of Sub Sec. 3 of Sec. 13 of the SARFAESI Act have not been complied with because what is demanded in the demand notice is the aggregate amount without giving a breakup of the principal and interest due.

6. It is further contended that the mortgage is not registered. The mortgage was purportedly created by deposit of title deeds but the memorandum of deposit of title deeds which is the agreement about the creation of the mortgage is compulsory registrable as per the Maharashtra amendment u/s. 17(1f) of the Registration Act has not been complied with, and hence, the mortgage is defective.

7. That apart it is also contended that the order u/s. 14 of the SARFAESI Act is not proper and hence stands challenged in the S.A. The classification of the account as NPA is also challenged by the Appellants. It is stated that there was no default for 90 days as contemplated under the guidelines of the RBI, and therefore, the account could never have been classified as NPA. Hence, the entire Sarfaesi measures would have to be declared as defective and quashed.

8. The Appellants submit that they are under financial strain the income certificates of both the Appellants who are husband and wife have been obtained from Tahsildar which would indicate that they have little income to comply with the mandatory provisions of Sec. 18(1) of the SARFAESI Act.

9. Under the circumstances, the Ld. Counsel appearing for the Appellants would seek the indulgence of this Tribunal by exercising the discretion available under the third proviso to Sec. 18(1) of the SARFAESI Act.

10. Since measures only up to Sec. 13 (4) and 14 are challenged by the Appellants, as per the latest decision of the Hon'ble Supreme

Court of India in *Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors.*, 2023 OnLine SC 12, what is to be considered as the threshold amount for deposit of pre-deposit is the amount mentioned in the demand notice u/s. 13(2).

11. Under the circumstances, I find that the Appellants had a good prima facie case and they have also proven that they are under financial strain. The Appellants had already paid to the bank around ₹ 6.5 lakhs each. Considering these facts, the Appellants are directed to deposit a sum of ₹ 12,00,000/- each in both appeals as mandatory pre-deposit for entertaining the appeal.

12. The Ld. Counsel appearing for the Appellants has produced a demand draft of ₹ 12,00,000/- in Appeal at Diary No. 1948/2023 and a demand draft of ₹ 11,25,000/- in Appeal at Diary No. 1949/2023.

13. Given such payment, the further Sarfaesi measures shall be stayed till the next date of hearing. The Appellants are directed to deposit the balance of ₹ 75,000/- in Appeal at Diary No. 1949/2023 within two weeks i.e. on or before 05.01.2024. In default, the Appeal shall stand dismissed, without any further reference to this Tribunal.

14. Since, the entire amount of pre-deposit has been paid as directed in Appeal at Diary No. 1948/2023 the said appeal shall be taken on file if there are no other defects to be cured.

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

16. 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.

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

List Appeal at Diary No. 1948/2023 before Registrar and Appeal at Diary No. 1949/2023 for reporting compliance before the bench on 08.01.2024.

Sd/-
Chairperson

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DRAT.MUMBAI