

(2024) 02 DRAT CK 0011

Debts Recovery Appellate Tribunal, Mumbai Bench

Case No: I.A. No. 78 Of 2024(WoD) In Appeal on Diary No. 203 Of 2024

Jai Ambika Ginning and Pressing
Factory & Ors

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision: Feb. 5, 2024

Acts Referred:

- Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 - Section 13(2), 13(3A), 13(4), 14, 17(1)

Hon'ble Judges: Ashok Menon, Chairperson

Bench: Single Bench

Advocate: Puneet Gogad, Sanjay Anabhawane, N. Bakali

Final Decision: Disposed Of

Judgement

Ashok Menon, Chairperson

1. The matter is taken up for hearing by way of a praecipe filed by Appellants for seeking urgent relief.
2. The Appellants are in appeal impugning the order dated 21. 11.2023 in I.A. No. 1948/2023 in S.A. No. 06/2023 on the files of Debts Recovery Tribunal, Aurangabad (D.R.T) wherein the direction vide order dated 06.10.2023 given to the Appellants to deposit a sum of ₹ 50 lakhs to the Respondent was found not complied with, and the prayer for extension of time for payment of the balance of ₹ 40 lakhs on part payment of ₹ 10 lakhs, was refused to be extended and thus the status quo order which was granted earlier vide order dated 11.01.2023 on payment of ₹ 50 lakhs was recalled. The Appellants are aggrieved and hence, in appeal.

3. On 11.01.2023 when the matter came up for consideration for the first time, the Ld. Presiding Officer passed an order, directing the Appellants to deposit a sum of ₹ 50 lakhs and on complying with that, an order of status quo was granted. Thereafter the bank issued a possession notice which was deprecated by the D.R.T. stating that during the pendency of an order of status quo the bank could not have issued a possession notice, and action was taken against the concerned officer of the bank vide order dated 12.06.2023. Thereafter, the Respondent bank filed an application as I.A. No. 1439/2023 for vacating the order of status quo and some other applications were also filed by the borrowers.

4. On 06.10.2023, the Ld. Presiding Officer while considering the said applications directed the Appellants to pay a further sum of ₹ 50 lakhs for the interlocutory order to continue towards which the Appellants could pay only ₹ 10 lakhs and there was a default of payment of the balance ₹ 40 lakhs and therefore, they filed application I.A. No. 1948/2023 seeking extension of time to pay the balance of ₹ 40 lakhs, which was declined on 21.11.2023. Against the said order 22.11.2023, the Appellants have come up with an appeal.

5. The contention for the Ld. Counsel appearing for the Appellants is that none of these orders, the D.R.T. has considered the merits of the case and it is submitted that the Appellants have a very good case on merits. It is stated that the notice u/s. 13(2) demanding the payment of ₹ 1,40,11,054.31 was issued on 29. 06.2018 and thereafter, symbolic possession was taken.

6. The Appellants had filed S.A. No. 61/2019 challenging the Sarfaesi action u/s. 13(4) by taking symbolic possession. Subsequently an order u/s. 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. ("SARFAESI Act" for short) was also obtained from the District Magistrate and the Appellants had also taken steps for putting up the property for sale in consequence of which the present S.A. No. 06/2023 was filed and the impugned order was made.

7. The Appellants contend that they are under financial strain and the income tax returns of Appellant Nos. 2 to 5 and 8 are produced which indicate that they have very little income. The Appellant Nos. 1, 6 and 7 have not produced any ITR for the reasons that they don't have any income and therefore no tax is being paid. Considering these aspects the Ld. Counsel appearing for the Appellants submits that the Appellants may be granted a concession of reducing the mandatory deposit to 25% of the amount demanded.

8. The Ld. Counsel appearing for the Appellants has also submitted that there were two different accounts by which loans were granted to the Appellants and concerning the present demand only an extent of 5 acres were mortgaged but in the proceedings u/s. 13(4) onwards a larger extent of property comprising more than 6 acres have been

included as a property which was mortgage which is not mortgage for the present loan with which the demand is concerned.

9. The Ld. Counsel appearing for the Respondent Bank submits that the Appellants do not have any substantial case to sustain an application u/s. 17 (1) of the SARFAESI Act. It is pointed out that the Appellants had sent a reply consequent to receipt of demand notice therein they have not disputed any of the Sarfaesi measures. On the other hand, they had expressed their willingness to pay off the amount and also requested for restructuring of the loan so that they get time to pay the amount.

10. Given this letter, it is argued by the Ld. Counsel appearing for the Respondent that the Appellants have waived their right to challenge the Sarfaesi measures relying upon the decision of the Hon'ble Supreme Court in **ARCE Polymers Pvt Ltd Vs M/s. Alphine Pharmaceuticals Pvt Ltd and Ors (2021) 11 S.C.R 1059.**

11. The Ld. Counsel appearing for the Appellants replied to that by relying on the decision of **Vasu P. Shetty Vs Hotel Vandana Palace and Ors (2014) 5 SCC 660** wherein it is held that the borrower not responding to the notice u/s. 13(2) would not amount to a waiver of his rights to challenge the Sarfaesi measures.

12. In the instant case it is pointed out by the Ld. Counsel for the Appellants that the Appellants did not send any reply and the letter which is referred by the Ld. Counsel appearing for the Respondent and that it is not a reply to the demand notice but is only an offer with a request to restructure the debt. And even if that letter is considered as a reply, the Respondent bank did not respond to that letter as required u/s. 13(3-A) of the SARFAESI Act and that would make the entire Sarfaesi measures illegal. The Ld. Counsel, therefore, prays that maximum indulgence may be shown in reducing the amount of pre-deposit.

13. After having heard both sides, I find that the Appellants had certain contentions which had not been considered in any of the orders by the Ld. Presiding Officer and the Ld. Presiding Officer had already directed payments of certain amounts which were at the first instance compiled by the Appellants, but the subsequent order after having granted an order of status quo to pay a further amount of ₹ 50 lakhs based on an application filed by the Respondent bank is not sufficiently explained in the order. If at all, such a further order has to be made, it ought to have been after going into the merits of the case but unfortunately, there is no such discussion on merits in the order dated 06.10.2023, wherein a further amount of ₹ 50 lakhs was directed to be paid.

14. The orders passed by the Ld. Presiding Officer therefore does not seem to be on sound grounds. Considering the peculiar situation of the Appellants and the entire facts and circumstances of this case, I find that the Appellants have an arguable case they are also under financial strain to some extent. Even though they are not entitled to

the relief of getting the amount reduced to 25%, they are entitled to get some concession, because they have already deposited some amounts as per directions of the DRT.

15. The Appellants are therefore directed to deposit a sum of ₹ 40 lakhs as pre-deposit for entertaining this appeal. The Ld. Counsel appearing for the Appellants is producing a demand draft for ₹ 10 lakhs today. Given that payment into consideration, the taking over possession of the secured assets scheduled on 07.02.2024 instant shall stand deferred till the next date of hearing. The balance of ₹ 30 lakhs shall be paid in two equal instalments within a gap of three weeks and two weeks each respectively, as stated hereunder.

<u>Numbers of Instalments</u>	<u>Payment on or before</u>
1 st Instalment ₹ 15,00,000/-	26.02.2024
2 nd Instalment ₹ 15,00,000/-	11.03.2024

16. In default, the Appeal shall stand dismissed, without any further reference to this Tribunal.

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

18. 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.

19. 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 27.02.2024 for reporting compliance regarding 1st instalments.