

(2024) 07 DRAT CK 0021

Debts Recovery Appellate Tribunal, Mumbai Bench

Case No: I.A. No. 183 Of 2024 (WoD) In Appeal on Diary No. 509 Of 2024

Shri Samarth Paper and Board Mill
& Ors

APPELLANT

Vs

Bank of India through Authorised
Officer

RESPONDENT

Date of Decision: July 5, 2024

Acts Referred:

- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 17(1), 18, 18(1)
- Recovery of Debts Due to Banks & Financial Institutions Act, 1993 - Section 20, 21

Hon'ble Judges: Ashok Menon, Chairperson

Bench: Single Bench

Advocate: Manoj O Harit, M/s Manoj Harit & Co., O.A. Das, Sunita Rawat

Final Decision: Disposed Of

Judgement

Ashok Menon, Chairperson

1. The Appellants are in appeal impugning the order dated 20.02.2024 in Interlocutory Application (I.A.) No. 216 of 2024 in Securitisation Application (S.A.) No. 109 of 2017 on the files of the Debts Recovery Tribunal, Pune (D.R.T.). Though I.A. No. 1225 of 2023 was also taken up for hearing by the D.R.T. on that day, no order on merits was passed in that, and it was directed that it would be heard along with the main application for final disposal. The appeal cannot be filed challenging orders on two applications though pronounced on the same date. Two separate appeals will have to be filed. The Ld. Counsel appearing for the appellants fairly submits that he is not insisting on challenging the order in I.A. No. 1225 of 2023 and would confine his appeal to the challenge of the order in I.A. No. 216 of 2024 which is an application for amendment of

the S.A. which was filed. It was allowed in part. The impugned order states that certain paragraphs of the application for amendment sought to be incorporated were facts which were known earlier to the appellants and therefore, improvement to the pleadings will not be possible. Only that portion of the amendment which was sought which curtails the subsequent events were allowed by the impugned order. The appellants are aggrieved and hence, in appeal.

2. To entertain the appeal, the appellants will first have to cross the hurdle of making a pre-deposit under Sec. 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act", for short).

3. The Ld. Counsel appearing for the appellants seeks a total waiver of pre-deposit stating that being an interlocutory order, no pre-deposit needs to be made under Sec. 18(1). The Ld. Counsel also relies on the decision of the Hon'ble Madras High Court in Sree Jeya Soundharam Textiles Mills Ltd. rep. by its Managing Director vs. Canara Bank, rep. by its Manager & Ors. 2019 SCC OneLine Mad 30541 wherein, in a set of writ petitions filed, the Madras High Court held that orders on interlocutory applications which do not determine the amount which is due, no pre-deposit need to be made. The Ld. Counsel also submits that one set of applicants had preferred the SLP before the Hon'ble Supreme Court which was withdrawn and therefore, the decision is still good in law, submits the Ld. Counsel appearing for the appellants. The writ petition pertains to matters coming under the SARFAESI Act as well as matters coming under the RDB Act. Section 21 of the RDB Act is essentially different from Sec. 18 of the SARFAESI Act. Sec. 21 refers to the determination of the amount due and the pre-deposit under Sec. 21 is to be made by the amount that is determined. Therefore, so long as the amount is not determined, and in an appeal preferred under Sec. 20 of the RDB Act from the interlocutory order, no pre-deposit under Sec. 21 could be insisted. But at the same time, any appeal preferred from an order under Sec.17(1) of the SARFAESI Act, under Sec. 18 would require mandatory compliance of the second proviso to Sec. 18(1) which insists that pre-deposit has to be made by the borrower/guarantor/mortgagor on the threshold amount demanded or claimed or determined and therefore, there is no determination of the amount in the application filed under the SARFAESI Act. Any order which is passed by the D.R.T. would come within the purview of an order under Sec. 17(1), and essentially, compliance of the second proviso to Sec. 18(1) would be required for entertaining the appeal. Hence, the argument of the Ld. Counsel for appearing for the appellant that pre-deposit has not to be paid under Sec. 18(1), is not acceptable.

4. The Ld. Counsel for the appellants has pointed out the amendment which was sought. The impugned order does not go deep into the amendments which were sought to be incorporated. Certain paragraphs are clubbed together and it is stated that those are facts which were known to the appellants and therefore, no improvement of pleadings is possible by way of amendment. The Ld. Counsel has

succeeded in establishing that some of the facts which are sought to be incorporated by way of amendment are instances which happened after the filing of the S.A. I also agree with the Ld. Counsel appearing for the appellants that certain pleadings which have been left out to be incorporated in the plaint or the application can be incorporated by way of amendment, if there is proper explanation is forthcoming. The only embargo would be when the plea sought to be incorporated is hit by the provision of the limitation or there is a retraction from admissions made in the plaint or the application. The amendment sought in the case in hand does not fall within that categorically, and therefore, the appellants have a prima facie case in challenging the impugned order.

5. To get a waiver of 25% of the pre-deposit, the appellants will have to satisfy this Tribunal on two points, first is a prima facie case, and second on financial strain. Apart from the pleading that the appellant could not start their business and therefore are finding it difficult to proceed with their business, there is no material to indicate that they are under financial strain. The balance sheets or the income tax returns are not forthcoming. Hence, the appellants are not entitled to a waiver of 25% of the debt due as pre-deposit. Since the Sarfaesi measures are in the stage of 13(4) and no sale notice or the sale took place, the threshold amount would be the amount mentioned in the demand notice which is ₹10.27 crores. Therefore, the appellants will have to pay 50% of that amount since the appellants have a good prima facie case and I do not intend to non-suit the appellants at the threshold. They are directed to deposit a sum of ₹3 crores as a pre-deposit for entertaining the appeal. The said amount shall be paid in three equal instalments. The first instalment shall be paid within two weeks and the other two instalments shall be paid within three weeks therefrom as detailed herein under:

Number of Instalments	Payment on or before
1st Instalment of ₹1.00 crore	19.07.2024
2nd Instalment of ₹1.00 crore	09.08.2024

3rd Instalment of ₹1.00 crore	30.08.2024
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6. Failure to pay the instalment/amount within the time stipulated would entail in dismissal of the appeal without any reference to this Tribunal.

7. The amount shall be deposited in the form of a Demand Draft/RTGS with the Registrar of this Tribunal. Payment by RTGS shall be communicated to the Registry for verification

8. 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.

9. With these observations, the I.A. is disposed of. The respondent is at liberty to file a reply in this appeal with an advance copy to the other side.

Post on 22.07.2024 for reporting compliance regarding the payment of the first instalment.