



IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 1701/2023

Kotak Mahindra Bank Ltd., Branch Office at P-2, 9th Floor,
Rohtas Summit Building, Vibhuti Khand, Gomti Nagar,
Lucknow-226010 through Authorized Officer.

.....Appellant

Versus

1. M/s Prasunco Traders Pvt. Ltd. through its Director Mr. Praveen Kumar Sharma (Borrower), R/o House No. 78, Awasthi Vikas Colony, 122, Civil Lines, Bareilly-243001.
2. M/s Jindal Restaurants through its partners M/s Neetu Gupta & Ms. Mansi Gupta, having its registered office at Shop No. 19 & 20, Local Shopping Complex, Block-A, Preet Vihar, East Delhi, New Delhi-110092.
3. M/s Aditya Birla Finance Ltd. having registered office at Indian Rayon Compound, Veraval, Gujarat-362266.

.....Respondents

Advocates, who appeared in this case:

For the appellant-Bank Shri Rakesh Mishra, Advocate

For the respondent-borrowers Shri Shadab Alam, Advocate

For the respondent-auction purchaser Shri Arun Kumar, Advocate

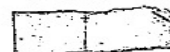
For the respondent-FI None

JUDGMENT

Date of Pronouncement: 15.04.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The present appeal has been filed under section 18 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") against the order dated 17.10.2023, whereby the Securitization Application No. 748/2022 filed by the respondent no. 1 has been allowed.
2. Brief facts of the matter are that the respondent no. 1 was granted various credit facilities by the appellant-Bank in the year 2016, which was later on renewed vide sanction letter dated 22.04.2021, to which Praveen



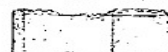
Kumar Sharma and Sunita Sharma stood as guarantors and created equitable mortgage over their properties by depositing original title deed with the appellant-Bank. Since the respondent-borrower did not maintain the financial discipline, therefore, the accounts were classified as NPA on 08.06.2022 and a demand notice dated 19.07.2022 u/s 13(2) of the SARFAESI Act was issued, but the borrowers did not pay any heed to the said demand, therefore, symbolic possession of the property in question was taken by the Bank by issuing possession notice u/s 13(4) of the said Act on 06.10.2022 and the same was published in two newspapers on 08.10.2022. Thereafter, the appellant-Bank issued sale notice dated 17.10.2022, which was sent to the respondent-borrower through speed post. The said sale notice was published in two newspapers on 18.10.2022 scheduling the auction of the property in question on 25.11.2022.

3. The respondent-borrower challenged the possession notice dated 06.10.2022 and auction sale notice dated 17.10.2022 by filing the S.A. No. 748/2022 before the Tribunal below.
4. It appears that the aforesaid auction sale could not materialize, therefore, the appellant-Bank issued another sale notice dated 16.12.2022 scheduling the auction of the property in question on 09.01.2023 and the same was published in the newspapers on 17.12.2022. The said sale was challenged by the respondent no. 1 by filing an Amendment Application before the Tribunal below, which was allowed and the aforesaid S.A. was accordingly amended.
5. It is averred that the appellant-Bank obtained an order dated 19.05.2023 from the ADM, Gautam Budh Nagar u/s 14 of the SARFAESI Act, which was challenged by filing



amendment application in the said pending S.A. and the same was allowed and S.A. was amended accordingly. The Tribunal below vide order impugned has set aside the demand notice, possession notice, sale notice and also the order dated 19.05.2023 passed by the ADM, Gautam Budh Nagar. Being aggrieved by the said order, the present appeal has been filed by the appellant-Bank.

6. Learned counsel for the appellant submitted that the Tribunal below vide order impugned has granted the relief in favour of the borrower, which was not sought by it in its S.A., therefore, the order impugned is not sustainable in the eye of law. It was further contended that the demand notice u/s 13(2) was issued to the borrowers, which was sent through registered post to the respondent no. 1 as well as guarantors/mortgagors. In support of his contention, learned counsel has referred to page no. 50 to 59, which are copies of demand notice dated 19.07.2022 and the postal receipts, by which the demand notice was sent to the borrowers.
7. Learned counsel further submitted that thereafter, possession notice was issued, affixed and published in the newspapers, copies of which are placed at page no. 62 to 71 of the memo of appeal, which prove that the possession notice was served upon the borrowers, affixed at the conspicuous place of the property in question and published in the newspapers in view of Rules 8(1) & 8(2) of the Rules, 2002. It was also contended that thereafter, the sale notice was issued on 17.10.2022, which was sent to the borrower and published in the newspapers, copies of which are placed at page no. 72 to 79 of the paper book, but the said sale could not materialize, therefore, the appellant-Bank issued another sale notice on 16.12.2022 scheduling the auction sale on 09.01.2023



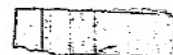
and the said sale notice was served upon the borrowers and published in newspapers, copies of postal receipts and newspapers are placed at page no. 176-183 of the paper book.

8. Learned counsel also submitted that the respondent no. 1 has filed an Amendment Application dated 28.08.2023 along with Stay Application dated 28.08.2023 before the Tribunal below in S.A. No. 748/2022 challenging the auction sale notice dated 16.12.2022 issued by the appellant-bank, by which the auction sale was scheduled on 09.01.2023.
9. Learned counsel further submitted that the aforesaid Amendment Application dated 28.08.2023 filed by the respondent no. 1 challenging the auction sale notice dated 16.12.2022 was highly time barred, as the same was filed by the respondent-borrower after more than 8 months, but no delay condonation application was filed. It was further contended that the case was fixed on 18.09.2023 before the Tribunal below and counsel for the respondent no. 1 pressed his amendment application and counsel for the respondent no. 3-Auction Purchaser pressed his impleadment application, but the case was adjourned to 25.09.2023 for hearing. It was further contended that on 25.09.2023, the Tribunal below without considering the objection of the appellant-Bank with regard to delay has allowed the same vide order dated 25.09.2023 and rejected the impleadment application filed by the respondent no. 3, which was challenged by the Bank before this Tribunal by filing Appeal Dy. No. 1302/2023, which was disposed off vide order dated 23.04.2024.
10. It was also contended on behalf of the appellant-Bank that after being informed by the appellant-Bank to the



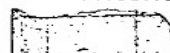
Tribunal below about filing the Appeal Dy. No. 1302/2023 before this Tribunal, which was fixed on 18.10.2023 for admission, Tribunal below in a hurriedly manner has preponed the date of delivery of judgment from 19.10.2023 to 17.10.2023 and delivered the impugned judgment/order dated 17.10.2023 on grounds, which has never been pleaded in the SA, as such the impugned judgment/order is nonest in the eyes of law, therefore, it was prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed.

11. Learned counsel for the respondents-borrowers submitted that the appellant-Bank has taken ground that the Tribunal below had preponed the date of delivery of judgment from 19.10.2023 to 17.10.2023, but the same has no illegality with regard to the merit of the case and the same cannot be a ground for obscuring the illegality committed in proceeding under the SARFAESI Act by the appellant-Bank.
12. It was further contended that the Tribunal below has rightly held that there is violation of Rule 3(1) of the SARFAESI Act, as the appellant-Bank failed to bring on record any substantial evidence to show that the notice under Section 13(2) was pasted on the conspicuous part of the property in question and the same can be depicted from the perusal of para 7 of the impugned order, copy of which is placed at page 46 of the paper book.
13. It was also contended that the appellant bank has not affixed the possession notice on the conspicuous place of the property in question, as in this regard it had not filed any evidence before the Tribunal below while filing the reply to the S.A., as well as with the present appeal, hence the Tribunal below has rightly held that there is



violation of Rule 8(1), which is transcribed in para 8 of the order impugned.

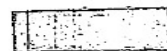
14. It was further contended that the appellant has a specific case with regard to violation of Rule 8(5) of Rules, 2002, but the appellant-bank had not placed on record any evidence with regard to valuation of the property in question before the Tribunal below.
15. Learned counsel further submitted that the ground taken by the bank that the judgment is perverse, as the amendment application dated 28.08.2023 was time barred, but the Tribunal below did not consider it. In this regard, learned counsel contended that the amendment application was not time barred in light of the judgment of *Vimlakasyab*, as the auction under challenge vide amendment application is subsequent action and the same is in continuation of the SARFAESI proceedings, hence the same was not time barred. Further, it was submitted that the Bank has not raised this objection before the Tribunal below, when the amendment was allowed despite being present and the same is depicted from the perusal of the order dated 25.09.2023 at page 253 of the appeal, therefore, the said ground is not sustainable in the eye of law. It was further submitted that the Bank was free to file 2nd counter affidavit/objection, yet they chose not to file the same. It was further submitted that the Bank has no legal ground to put away with the infirmity done in the SARFAESI proceedings.
16. Learned counsel also submitted that the Bank has taken a ground that for the 2nd sale, no 30 days' notice is required to be served upon the borrowers, but the bank failed to appreciate the fact that as per the Rule 8(6), the notice has to be of 30 days. It was thus contended that



the Bank has failed to bring on record the compliance of Rule 8(5), 8(6) & 8(7) before the Tribunal below and the same is depicted from the perusal of para 10 at page 48 of the appeal. It was lastly submitted that the conduct of the Bank was contemptuous and the same is depicted from the perusal of para no. 1 of the order impugned and as such, the order impugned is not required to be interfered with by this Tribunal. It was, therefore, prayed that the appeal filed by the appellant may be dismissed with heavy costs.

17. In rejoinder, learned counsel for the appellant has referred to para 5.12 at page no. 86 of the memo of appeal and has argued that the borrower have admitted that the demand notice and possession notice both were served upon the borrowers.
18. Learned counsel for the respondent-Auction Purchaser has adopted the arguments of the learned counsel for the appellant-Bank adding further that the Auction Purchaser has deposited the entire sale consideration in accordance with the Act and Rules made thereunder. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed.
19. I have considered the rival contentions of the learned counsels for the parties and perused the material available on record.
20. With regard to service of demand notice, para 5.5 and para 5.12 of the S.A. filed by the respondent-borrower before the Tribunal below are relevant. The relevant portion of the said paras are as under:

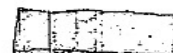
"Para 5.5 -the applicant declares that he has been served with the notice u/s 13(2) and not served any demand notice.



Para 5.12 – *In the instant case, Bank has served notice under Section 13(2) of the Act.*

From the above, it is clear that the demand notice u/s 13(2) dated 19.07.2022 was served upon the respondent-borrower. If the demand notice has been served by the Bank upon the borrower, the same is not required to be published in the newspaper and affixed on the conspicuous place of the property in question. If the publication of the same is made, it is a precautionary measure, therefore, the same is not required to be affixed at the conspicuous place of the property in question, in view of Rule 3(1) of the Rules, 2002, as the said Rules says "*where authorized officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer road or some other conspicuous part of the House or building, in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.*"

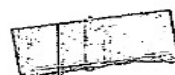
From the above proviso, it is clear that in case of failure of service of demand notice through post or by courier, the same is required to be affixed or published in the newspapers. In the present case, the respondent-borrower itself has admitted the receipt of demand notice, therefore, affixation of the same was not required to be made by the Bank, on the basis of which the demand notice has been quashed by the Tribunal below vide order impugned, which is not sustainable in the eye of law, as there is no violation of Rule 3(1) of the Rules, 2002.



21. So far as the possession notice is concerned, the same was issued on 06.10.2022, which was dispatched on the same day i.e. 06.10.2022. Copies of possession notice and postal receipts and its publications are placed at page no. 62 to 71 of the memo of appeal filed by the appellant-Bank. From the said copies of the possession notices, it is clear that the properties mortgaged with the bank are situated at Noida and Bareilly, for which two separate possession notices were issued by the Bank, copies of which are at page no. 62 to 65 and 67 to 69 and postal receipts by which these notices were sent are at page no. 66 and 69 and copies of publications are at page no. 70 & 71 of the paper book, but no copy/document of affixation of the said notice are on record as it is evident from para no. 5.5 of the memo of appeal, wherein it is mentioned "*A copy of possession notice dated 06.10.2022 along with postal receipt and newspaper publication dated 08.10.2022 are attached herewith as annexure no. 4.*" Thus it is clear that the said notices were never affixed at the conspicuous place of the properties in question, which is violation of Rule 8(1) of the Rules, 2002. Therefore, the Tribunal below vide order impugned has rightly quashed the possession notices of the appellant-Bank holding that there is violation of Rule 8(1) of the Rules, 2002.

22. With regard to the auction sale, it is stated that the subsequent sale notice was issued on 16.12.2022 scheduling the auction of the property in question on 09.01.2023, which was sent to the borrowers through registered post on 16.12.2022, postal receipts of which is at page no. 182 of the paper book. The said notice was also published in newspaper namely "Financial Express" on 17.12.2022, copy of which is at page no. 183 of the paper book, but the bank has not filed any copy of paper

publication, which may show that the said notice was also published in vernacular language as required under the Act and Rules made thereunder, which prima facie appears to be a first lacuna in the auction sale dated 09.01.2023. The property was sold for an amount of Rs.5.63 crores to respondent no. 2-Auction Purchaser. The appellant-Bank was directed by the Tribunal below vide order dated 09.02.2023 for providing the details of Auction Purchaser to the respondent no. 1-borrower and next date was fixed for 14.02.2023 for hearing on interim relief with regard to the auction sale, but on the said date, instead of providing the same, the appellant-Bank sought adjournment and the case was adjourned for 27.04.2023 for further arguments and the status quo was directed to be maintained by the parties. On 27.04.2023 the order dated 14.02.2023, by which the status quo was granted, was extended till next date. It appears that both the orders were challenged by the appellant-Bank by filing Appeal Dy. No. 674/2023 before this Tribunal, which was disposed of vide order dated 31.05.2023, wherein it was held that the said orders did not warrant any interference by this Tribunal and as such the same had attained finality. Thus the Bank could not accept the remaining auction amount from the Auction Purchaser on 28.03.2023, therefore, the Tribunal below vide order impugned has rightly held that the confirmation of sale and issuance of sale certificate in favour of the Auction Purchaser is totally in disregard of the order dated 14.02.2023. Since the confirmation of sale and issuance of sale certificate had been held to be in disregard of the status quo order dated 14.02.2023, therefore, the Tribunal below has rightly rejected the impleadment application filed by the Auction Purchaser vide order



dated 25.09.2023, copy of which is placed at page no. 253 of the memo of appeal.

23. It has been contended on behalf of the appellant that the Bank was not given any opportunity by the Tribunal below for filing reply to the amendment application filed by the S.A. applicant-borrower. It is to be seen that the amendment application was allowed by the Tribunal below vide order dated 25.09.2023, which was challenged by the appellant-Bank before this Tribunal by filing Appeal Dy. No. 1302/2023, which was dismissed as having become infructuous vide order dated 23.04.2024. While going through the order dated 25.09.2023, it is found that the amendment application was filed on 28.08.2023 and the same was allowed vide order dated 25.09.2023, thus there was ample opportunity for the appellant-Bank to file its counter/reply, hence the contention of the appellant that the Bank was not provided any opportunity by the Tribunal below to file reply is not tenable.
24. So far as the contention of the appellant-Bank that the amendment application filed by the borrower was highly barred by time, but the same was not considered by the Tribunal below, is concerned, it is stated that the same might have been barred by time, but it is not required to be dealt with by this Tribunal because the possession notice has already been held to be defective and on the basis of the same, the Bank has issued the sale notice and conducted the auction sale on 09.01.2023. It is settled principle of law that if the initial action is found to be contrary to law, the subsequent actions would automatically go away.
25. The another contention of the appellant that the case was fixed for delivery of judgment on 19.10.2023, but it was



preponed to 17.10.2023, which is nonest in the eye of law, is not tenable because preponement of the date of delivery of judgment does not affect the merits of the case. It is not case of the appellant that he was not heard on merits of the case. If it was the case of the appellant that he was not heard on merits by the Tribunal below, then the matter could have been otherwise, but it is not so.

26. Since the possession notice is found to be defective, therefore, the order passed by the District Authority u/s 14 of the SARFAESI Act is also not sustainable because the same was obtained by the Bank on the basis of the said notice.
27. In view of the aforesaid and the reasons recorded above, the order impugned is set aside to the extent of demand notice and the rest part of the same shall remain intact. Consequently, the appeal filed by the appellant is allowed only to the extent of demand notice, but the same is dismissed to the extent of possession notice and sale notice as well as the order passed by the District Magistrate u/s 14 of the SARFAESI Act. No order as to costs.
28. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.


CHAIRPERSON

VN GIRI,PS