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DEBT RECOVERY

Supreme Court | Borrower Has To Pre-Deposit 50% Of The “Debt Due” In Appeal Under Section 18 Of The Sarfaesi Act Before DRAT

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The Hon'ble [Supreme Court](#), comprising Justice M.R. Shah and Justice B.V. Nagarathna in *M/s Sidha Neelkanth Paper Industries Pvt. Ltd. & Anr. V Prudent ARC Limited & Ors* vide judgement dated 05.01.2023 observed that the borrower has to deposit 50% of the amount of "debt due" as claimed by the bank/ financial Institution/ assignee along with interest as claimed in the notice under section 13(2) of the SARFAESI Act and borrower is not entitled to claim adjustment/ appropriation of the amount realized by selling secured properties and deposited by auction purchaser when the auction sale is under challenge:

FACTS:

The appellant i.e. M/s Sidha Neelkanth Paper Industries Pvt. Ltd approached Andhra Bank for credit facilities and immovable properties were mortgaged by guarantors and borrower to secure the cash credit facility. The principal borrower failed to make repayment to Andhra Bank, hence the account was declared as NPA. Andhra Bank issued notice u/s.13(2) of the SARFAESI Act, demanding the borrower to pay an outstanding amount. Since the borrower failed to comply, the bank proceeded u/s.13(4) of SARFAESI Act and took possession of one of the mortgaged properties. Thereafter several appeals were filed to challenge the steps taken by Andhra Bank in taking possession and auctioning the mortgaged property which all were dismissed. The auction therein was successful and the amount received from the auction i.e. Rs.12.5 crores were deposited. The borrower challenged the said auction in DRAT which was again dismissed as the directions to pre-deposit 50% of the debt due as mentioned u/s. 18 of SARFAESI Act was not complied with.

The said appeal was then challenged before the Hon'ble Delhi High Court and Hon'ble High Court observed that the amount which was deposited by the auction purchaser i.e. Rs. 12.5 crores can be adjusted as pre-deposit required u/s.18 of SARFAESI as the amount deposited for a debt of Rs.16.61 crores is said to be more than 50% and therefore the requirement of making a pre-deposit under the second proviso to Section 18 of the SARFAESI Act is said to be met. Following the order passed by the High Court, DRAT disposed the appeal.

Relying on the order of the High Court, an appeal filed by the borrower of the mortgaged property requested waiver of statutory pre-deposit u/s.18 of the SARFAESI, The DRAT considering that, adjusted the pre-deposit requirement u/s.18 of SARFAESI with the amount deposited by the auction purchaser in sale of the mortgaged property.

Being aggrieved and dissatisfied with the order of DRAT, the secured creditor filed Writ Petition before Hon'ble Delhi High Court. The Hon'ble High Court partly-allowed the Writ Petition directing the borrower to deposit 50% of the remaining Rs. 4.1 crores being debt due (after deducting/adjusting Rs. 12.5 crores realised/recovered by selling the mortgaged property).

Being aggrieved by the few impugned Judgements of Hon'ble High Court, both the parties preferred Civil Appeal before the Hon'ble Supreme Court.

ISSUES OBSERVED AND ADDRESSED:

1. Whether The "Debt-Due" u/s.18 Of [SARFAESI Act](#) would include the Liability + Interest?

Supreme Court observed that debt as mentioned under clause (g) of Section 2 of the Act, that debt includes liability inclusive of interest as claimed by bank/financial institution. The Hon'ble High Court, Delhi has erred in excluding the interest part while considering the "debt-due" payable.

2. Whether the amount deposited by auction purchaser on purchase of secured assets can be adjusted towards the amount of pre-deposit to be deposited by the borrower u/s 18 of the SARFAESI Act?

The Hon'ble Supreme Court observed that the amount deposited by the auction purchaser on purchase of the secured assets cannot be adjusted and/ or appropriated towards the amount of pre-deposit required by the borrower u/s 18 of SARFAESI Act.

The court further observed that if the borrower wants to appropriate and/or adjust the amount deposited by auction purchaser, the borrower has to accept the auction sale. The borrower can only benefit from the deposit if the borrower unequivocally accepts the sale of the secured asset or the mortgaged property.

Supreme Court held that the High Courts erred in their decision of adjusting the pre-deposit requirement u/s 18 of SARFAESI with the amount deposited by the auction purchaser in sale of the mortgaged property and also erred in excluding the amount of interest while calculating the debt due payable.

Supreme Court upheld the view taken by the Bombay High Court *Eskays Construction Pvt. Ltd. v. Soma Papers & Industries Limited & Ors*¹ which states that the borrower cannot be permitted to adjust the sale proceeds received from the sale of the

subject properties in the application for waiver of deposit and at the same time challenge the sale of very same subject properties.

1 2016 SCC OnLine Bom. 9827