



 **Prakhar Galaw***

Legal Decisions Affecting Bankers

Appellants : **Bank of Baroda**
Vs.
Respondents : **M/s. Karwar Trading Company and Anr.**
Supreme Court
Bench Strength : **2**
Bench : **Justice M. R. Shah & Justice Sanjiv Khanna**
Citation : **CA No. 363 of 2022**

Relevant Provision of Law

Section 13(2), 13(4), 13(8) and 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Issue

Whether the borrower can be discharged of his liability to pay the entire amount as demanded by the bank under section 13 (2) of SARFAESI Act, if the borrower is willing and ready to pay the highest bid price or reserve price in the public auction.

Brief Facts of the Case

The appellant bank granted a term loan of Rs. 100 lakh and a cash credit limit of Rs. 95 lakh to the respondent company against mortgage of two properties one of which was an industrial plot and the other being a residential property. The respondent borrower failed to pay equated monthly instalment on time as per the terms and conditions of the loan

agreement, thereby the account of the borrower was classified as Non-Performing Asset on 31.10.2012. The appellant bank then initiated recovery proceedings against respondent borrower, and served the borrower a demand notice under section 13(2) of Rs.1,85,37,218.80/- after which the appellant bank took symbolic possession of the mortgaged properties on 22.08.2013 under section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 hereinafter referred to as “the Act”, notice of which was also served to the borrower. The appellant bank then filed an application for recovery under section 14 of the Act, in the debt recovery tribunal the matter was heard by the tribunal and the recovery application of bank was allowed and their prayer to take possession of the mortgaged properties was allowed with the help of police force. The appellant bank with the aid of police took possession of the housing property on 25.11.2013. The appellant bank then put the property for public auction sale on 16.12.2013 the reserve price of which was Rs. 48.65 lakh. The respondent borrower challenged the said auction by filing a Securitisation Application under section 17 of the Act, before the DRT, Jaipur. The matter was heard by the tribunal at length and certain interim orders were passed by the tribunal that if the borrower deposits Rs. 20 lakhs on 20.01.2014 by 12.00 noon, the bank shall accept the bids but not finalize the bids/confirm the sale of the

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secured asset and if the borrower commits default in payment of balance amount of Rs.28.65 lakhs, the restraint order shall stand vacated automatically. The DRT also observed that if the borrower deposits Rs.48.65 lakhs with the bank on or before 27.01.2014, the bank shall deliver the possession of the secured asset along with the original title deeds of the property in question.

The borrower deposited the said amount of Rs. 48.65 Lakh. The afore- stated interim orders were challenged by the bank in DRAT on the following facts and grounds:

- a. That, the bank had received bids upto Rs. 71 Lakh in public auction, and the default amount was Rs. 1,85,37,218.80/- as per the demand notice issued by the bank to the borrower. So, if the borrower wanted to redeem his mortgaged property, he could only do so by paying the entire amount as mentioned in the demand notice not by merely paying the reserve price of Rs. 48.65 Lakh as per the directions of the DRT and the said directions were against the provisions of section 13 (8) of the Act.
- b. The bank also contended that, if the borrower was ready and willing to pay the highest bid amount of Rs. 71 Lakh, the bank may release the mortgaged property of the borrower, but it would also not absolve the borrower of his liability towards the bank as per the demand notice issued by the bank.

The appeal of the bank got rejected by the DRAT. The DRAT held that the borrower had already paid the reserve price of Rs. 48 Lakh. The DRAT also observed that the bidders who had made bids in the range of 61 - 71 Lakh have not deposited the earnest money. Borrower on the contrary was ready to pay Rs. 71 Lakh to the bank. On following facts

and observations the DRAT dismissed the appeal of the bank. Aggrieved by the orders of the DRAT, the bank preferred an appeal before the High Court. The learned single judge of the High Court allowed the appeal of the bank and dismissed the orders of both DRAT and DRT, as the same were in contravention of Section 13(8) of the Act. The orders of the single judge were then challenged by the borrower in intra-court appeal before the division bench of the high court. The bench allowed the said appeal and directed the bank to release the mortgaged property that is the residential house with its title deeds in favour of the borrower, after the borrower further deposits an amount of Rs. 17 lakh with the bank. Aggrieved by the orders of the Division bench, the bank preferred an appeal before the Supreme Court on the following facts and grounds.

- a. That, the intention of the borrower was malafide from the very beginning as he wanted to purchase the property in the public auction at the reserve price. The borrower never wanted to repay the amount of Rs. 1,85,37,218.80/- as per the demand notice. Also, just by paying an amount of Rs. 71 lakh would not absolve the borrower of his liability as stated in the demand notice.
- b. That, it was misinterpreted/misconceived by the division bench of the High Court that on payment of Rs. 71 Lakh by the borrower, the entire liability of the borrower would be waived off.
- c. That, it was contented by the bank that the amount of Rs. 71 Lakh which was the highest bid amount was based on the valuation done in the year 2013-14. The division bench failed to appreciate such important fact. The division bench failed to understand the intent behind the provision mentioned under section 13(8)

of the Act and had passed an order contrary to the said provision. The borrower could not have been discharged by merely paying Rs. 65.65 Lakh as opposed to the demand notice of Rs. 1,85,37,218.80/-

Observations and Decision

The Supreme Court heard the matter at length and weighed the contentions and grounds of both the parties. The impugned order passed by the division bench of the High Court was a direction to the bank to release the mortgaged residential property with its title deeds and discharge the borrower/defaulters of his entire liability of Rs. 1,85,37,218.80/- as per the demand notice under section 13(2) of the Act on payment of Rs. 65.65 lakh, which was the reserve price of the public auction and an additional amount of Rs. 17 Lakh.

That, the Supreme Court made following observations based on the records and the grounds raised by the counsels of both the parties:

- a. That, the action taken by the bank under section 13 and 14 of the Act against the borrower was just, fair and reasonable. The orders passed by the DRT in the appeal filed by the borrower under section 17 of the Act were interim in nature, by taking a lenient view towards the borrower. The division bench of the High Court could not have gone beyond the law as stated under section 13 (8) of the Act to dilute the liability of the borrower

and discharge him of his liability as per the demand notice under section 13 (2) of the Act.

- b. That, the borrower was not willing and ready to pay the entire amount of Rs. 1,85,37,218.80/- as mandated under section 13 (8) of the Act. Thus, it was open for the appellant bank to put the mortgaged property in public auction and realise the maximum outstanding amount through the sale of the said property. Thus, the directions passed by the division bench were contrary to the provisions of section 13(8) of the Act.
- c. That, even after the payment of Rs. 65.65 Lakh the liability of the borrower would have continued, and borrower could not have been discharged. Thus, the directions passed by the division bench directing the bank to accept the amount of 65.65 lakh only, restoring the possession to the borrower and returning the title deeds of the mortgaged property was bad in law.

The Supreme Court allowed the appeal of the bank and restored the interim orders passed by the DRT and allowed the bank to go forward with public auction of the mortgaged residential property. And, also directed the bank to allow the borrower to live in the residential property till the finalization of the auction sale, subject to the undertaking to be given by the borrower that he would not transfer, sell or alienate the said mortgaged property in the course of the auction and would give a peaceful possession after the finalization of auction sale.

