

IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD
Regular Appeal No. 27/2022

Canara Bank, Asset Recovery Management Branch, Vipin Khand, Gomti Nagar, Lucknow-226010 (U.P.) through its Authorized Officer.

.....Appellant

Versus

1. Neelama Pandey, W/o Shri Ram Krishna Pandey, R/o 1003-C, 10th Floor, Surya Lok View Apartment, Vikalp Khand, Gomti Nagar, Lucknow-226010.
2. Shri Gurpreet Singh, S/o Harshdeep Singh, R/o 358/130, Biharipur, Sahadatganj, Lucknow-226003.

.....Respondents

Advocates, who appeared in this case:

For the appellant-Bank Shri Ankur Gupta, Advocate
For the respondent no. 1 Shri Kushal Kant, Advocate
For the respondent-auction purchaser Shri Nirankar Singh, Advocate

JUDGMENT

Date of Pronouncement: 02.07.2026

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 judgment dated 19.01.2022, whereby the Securitization Application No. 795/2019 filed by the respondent-borrower has been allowed.
2. Brief facts of the matter are that one M/s Space Wood was granted certain credit facilities by the appellant-Bank through its proprietor Ram Krishna Pandey, to which respondent no. 1-Neelama Pandney, who is wife of the said proprietor stood as guarantor and created equitable mortgage over her property by depositing original title deed with the Bank. Since the borrower did not maintain the financial discipline, therefore, the accounts were classified as NPA on 31.03.2015 and a demand notice

dated 11.05.2015 u/s 13(2) of the SARFAESI Act was issued for a sum of Rs.1,26,33,428/-. Since the borrower did not pay any heed to the said demand, therefore, the possession notice dated 27.08.2015 u/s 13(4) of the said Act was issued and symbolic possession of the mortgaged property was taken by the Bank. Thereafter, the appellant-Bank issued sale notice dated 14.10.2019, which was affixed and published in the newspapers scheduling the auction of the property in question on 20.11.2019, in which the respondent no. 2 was found to be the highest bidder.

3. The respondent no. 1, who is guarantor/mortgagor to the credit facilities advanced by the Bank in favour of R. K. Pandey has challenged the entire proceedings of the Bank including the auction sale by filing S.A. No. 795/2019 before the Tribunal below, which has been allowed vide order impugned and entire proceedings of the Bank have been quashed. Being aggrieved by the said order, the present appeal has been filed by the appellant-Bank.
4. Learned counsel for the appellant-Bank submitted that in para 7 to 10 of the order impugned, it has been stated that Perusal of Annexure no. 1 filed by the Bank along with its reply reveals that copy of demand notice dated 11.05.2015 has been filed by the Bank. However, no postal receipts has been filed by the Bank to prove that the said demand notice was sent to borrowers. In para 4 of the reply filed by the Bank, it is stated on page 04 that demand notice was sent to borrowers vide certain postal receipts however, Bank has not filed copy of those postal receipts.
5. It was further contended that due to inadvertent error, the bank was unable to file postal receipts before the Tribunal below, but the same were filed before this

Appellate Tribunal along with the rejoinder affidavit being Annexure No. 1, therefore, the finding given by the Tribunal below is un-sustainable in the eyes of law and as such the Bank has complied with all the rules and regulations while initiating the SARFAESI actions. It was therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed.

6. Learned counsel for the respondent-borrower submitted that even before the Tribunal below, it is specifically pleaded in para 5.3 of the Securitization Application that demand notice was not served. It was further contended that in para 4 of the counter affidavit and in para 5.6 of the memo of appeal, the appellant-Bank has used the word "dispatched" and the word "served" is not used. It was also contended that no postal receipt of sending the demand notice was filed by the appellant-Bank before the Tribunal below nor any postal receipt of sending the demand notice was filed with the memo of appeal.
7. It was further contended that the appellant-bank had filed rejoinder affidavit in the present appeal and annexed therewith Annexure No. 1 alleging that the same was a photocopy of the postal receipt vide which the demand notice was sent to the borrowers, which cannot be considered as the same is also illegible. Learned counsel further submitted that Order 41 Rule 27 CPC specifically bars filing of any evidence/paper, which was not filed before the Court below, as the appellant-Bank in para 6 of the rejoinder affidavit has stated "due to some inadvertent situation, the Bank was unable to file the postal receipts before the Tribunal below." It was also contended that no permission has been obtained from the Appellate Tribunal for taking on record the additional

evidence, therefore, the copy of postal receipts filed by the appellant along with its rejoinder cannot be taken into consideration. It was, therefore, prayed that the appeal filed by the appellant may be dismissed with heavy costs.

8. Learned counsel for the respondent-Auction Purchaser has adopted the arguments as advanced by the learned counsel for the appellant-Bank adding further that he is bonafide purchaser of the property in question and after deposition of entire sale consideration, sale certificate was issued, which was registered before the Competent Authority and the possession of the property in question has also been handed over by the Bank. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant-Bank may also be allowed.
9. Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the loan was disbursed by the Bank and the same was utilized by the Borrowers.
10. The main controversy involved in the present case is, as to whether the demand notice issued by the bank u/s 13(2) of the SARFAESI Act was served upon the borrowers or not?
11. It is to be seen that after classification of the accounts as NPA, the demand notice dated 11.05.2015 was issued and the same is stated by the appellant-Bank to have been sent through speed post on 12.05.2015, but neither postal receipts or tracking reports were filed either before the Tribunal below or with the present memo of appeal before this Tribunal, though it has been filed before this Tribunal by the appellant-Bank along with its rejoinder. In this regard, Order XLI Rule 27 of the CPC says as under:-

"Production of additional evidence in Appellate Court.-(1) *The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-*

(a) *The Court from whose decree, the appeal is preferred has refused to admit evidence, which ought to have been admitted, or*

(aa) *The party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time, when the decree appealed against was passed, or*

(b) *The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,*

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) *Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."*

12. From the above, it is clear that the said provision of the CPC does not permit the filing and taking on record any evidence, which was not filed before the Tribunal below and also the appellant has not taken any permission from this Court for taking on record the said document, by which the appellant has attempted to establish that the demand notice was served upon the borrowers.

13. It is to be noted that the postal receipt, which is filed as Annexure No.1 by the appellant-Bank along with its rejoinder is also found to be illegible, thus the said document can be said to be a plain paper, therefore, the same cannot be taken on record. Further, any content of the rejoinder or any document filed with it, which was not filed either before the Tribunal below or with the memo of appeal, cannot be said to be a part of the main pleadings. If the postal receipt, by which the demand notice is stated to have been sent, had been lying with the appellant-Bank, as to why the same was not filed before the Tribunal below or with the present memo of appeal or

later on with an appropriate application before this Tribunal, for which no reason has been assigned by the appellant-Bank. Thus it appears that the copies of the postal receipts filed by the Bank along with its rejoinder, by which the demand notice is alleged to have been sent to the borrowers, has been filed an afterthought that too an illegible one. Hence the same cannot be considered and taken on record. As such the Tribunal below has rightly held that the demand notice was not served upon the borrowers vide order impugned.

14. In view of the discussions as recorded above, there is no infirmity or illegality in the order impugned, hence the same does not call for any interference by this Tribunal. Consequently, the appeal filed by the appellant-Bank is dismissed with no order as to costs.
15. 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