IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Regular Appeal No. 219/2018

1. M/s Dolce Foods Pvt. Ltd., 1031/19, Indira Nagar, Dehradun, U.K. 248006 through its Director Sri Naveen Kumar.
2. Naveen Kumar, S/o Sh. Vijay Pal Singh, R/o 1031/19, Indira Nagar, Dehradun, U.K.248006.
3. Vineet Kumar, S/o Sh. Vijay Pal Singh, R/o 1031/19, Indira Nagar, Dehradun, U.K. 248006.

....Appellants

Versus

1. Authorized Officer, Punjab National Bank, Branch Paltan Bazar, Astley Hall, Dehradun U.K. 248001.
2. Smt. Parul Agarwal, W/o Sri Arvind Kumar Agarwal, R/o 1-Vasant Kunj, Vasant Vihar, Dehradun, U.K. 248006

....Respondents

Advocates, who appeared in this case:

For the appellants	Shri K. Kartikey, Advocate
For the respondent-Bank	Shri A. K. Pal, Advocate
For the respondent-auction purchaser	Shri V.K. Shukla, Advocate

JUDGMENT

Date of Pronouncement: 10.07.2026

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 26.09.2018, whereby the Securitization Application No. 22/2018 filed by the respondent-borrower has been dismissed.

2. Brief facts of the matter are that the appellant No. 1 was granted certain credit facilities by the respondent No. 1 through its directors appellants No. 2 & 3. In order to secure the said facilities, the appellants created equitable mortgage over their property i.e. Industrial Plot of land bearing No. 450 Ka having area of 4098sq. meters situated at Village-Makhdoompur, Pargana-Manglore,

Tehsil-Roorkee, Haridwar, Uttarakhand. Since the borrowers failed to adhere the terms of loan agreement, therefore, the accounts were classified as NPA and a demand notice dated 13.10.2014 under section 13(2) of the SARFAESI Act was issued followed by possession notice dated 14.10.2016 under section 13(4) of the said Act. Thereafter, the respondent-Bank issued sale notices dated 22.12.2016, 10.02.2017 and 02.05.2017, but the property in question could not be sold for want of bidders. However, the respondent-Bank issued afresh sale notice dated 15.09.2017, which was published in newspapers and was also pasted over the property in question, in which the respondent No. 2 was found to be highest bidder for an amount of Rs. 66.00 lacs and after deposition of entire sale consideration, the respondent-Bank confirmed the sale and issued sale certificate in favour of the respondent No. 2-auction purchaser.

3. It appears that after finalization of the auction sale, the appellants filed a Civil Misc. Writ Petition No. 2726/2017 before the Hon'ble High Court of Uttarakhand praying that the respondent-Bank may be directed to finalize the one time settlement and not to proceed for finalization of sale of the property in question. The said writ petition was disposed off by the Hon'ble High Court vide order dated 19.02.2018 with direction to the appellants for approaching the Bank within a period of two weeks from the date of the order for one time settlement, on which the respondent-Bank shall pass orders within a period of 15 days thereafter. Further, in case the order is not to the satisfaction of the petitioner, he would always be at liberty to challenge the same before the Tribunal below as that is the remedy available to him by the statute. Accordingly, the appellants submitted the OTS proposal dated 06.03.2018, which was considered and rejected by

the Bank vide letter dated 16.03.2018. After rejection of OTS, the appellants filed the S.A. No. 22/2018 along with application for condonation of delay before the Tribunal below seeking the relief for setting aside the entire recovery proceedings initiated by the Bank and for approval of the OTS. The Tribunal below vide order impugned has dismissed the S.A. of the appellants holding that the Bank has complied with all the mandatory provisions of the Act and Rules made thereunder. Being aggrieved by the said order, the present appeal has been filed by the appellants.

4. Learned counsel for the appellants submitted that the possession notice and the sale notice have not been served upon the appellants and the possession notice also contains the discrepancies regarding details of the property in question. It was further contended that neither the possession notice nor the sale notice was affixed upon the conspicuous part of the property in question. It was also contended that the property in question has been sold on the basis of single bid set up by the respondent-Bank and the property of the appellant has been sold away at a throwaway price of Rs. 66.00 Lacs, whereas the respondent-Bank has also rejected the offer of Rs 1.24 crore given by the appellants. It was further contended that the auction purchaser is the wife of the Chartered Accountant, who was handling the matters of the respondent-Bank as well as he is the same person, who has calculated the net worth of the appellants on behalf of the Bank. It was further contended that the Tribunal below while passing the impugned order has not recorded any finding to the issues raised by the appellants and moreover has recorded a finding that all compliances were made, whereas the respondent-Bank itself has not filed proof of

compliance, which renders the impugned order invalid, as the same is also contrary to the record filed by the respondent-bank. It was lastly contended that the respondent-Bank has opted not to file any documents before the Tribunal below and also not to file any reply to the present appeal. It was, therefore, prayed that the impugned order may be set aside and matter may be remanded back for fresh adjudication on the issues raised in the Securitization Application.

5. Learned counsel for the respondent-Bank submitted that when the appellants-borrowers failed to repay the demanded amount within stipulated period, the respondent-Bank had no option except to proceed further for its recovery and the respondent-Bank issued and published the possession Notice dated 14.10.2016 under section 13(4) of SARFAESI Act and the same was pasted at the conspicuous place of the property in question and served to the borrowers, but despite taking symbolic possession, the borrowers did not pay the legitimate dues of the respondent-Bank.

6. It was further contended that after complying all the mandatory provisions of the Act and Rules made thereunder, the respondent-Bank served the sale notice dated 15.09.2017 upon the borrowers and the same was published in two daily newspapers namely Dainik Jagaran (Hindi) and Indian Express (English) and the said Sale notice was also pasted over the secured asset. It was further contended that pursuant to the sale notice issued/published by the Bank, the Respondent No. 2 participated in auction proceeding and was declared highest bidder for an amount of Rs 66.00 Lakh and the auction purchaser deposited the entire sale consideration within stipulated period, therefore, the respondent-Bank

confirmed the sale and issued sale certificate in favour of the respondent no. 2-Auction Purchaser and as such there is no violation of any provisions of the Act and Rules made thereunder.

7. Learned counsel further submitted that vide order dated 19.02.2018, the appellants were directed by the Hon'ble High Court to approach the respondent-Bank within a period of two weeks (15 Days) from 19.02.2018, but the appellants themselves did not comply the order as directed by the Hon'ble High Court and they submitted the OTS dated 06.03.2018 after expiry of the time of two weeks, but since there was an order of Hon'ble High Court, the respondent-Bank considered the proposal of OTS, but the same was not reasonable, therefore, the Authorized Officer rejected the same vide letter dated 16.03.2018. It was, therefore, prayed that in the interest of Justice, the appeal filed by appellants may be dismissed with heavy costs, as the pleadings/grounds mentioned in the appeal have no legal force.

8. Learned counsel for the respondent-Auction Purchaser has adopted the arguments as advanced by the learned counsel for the respondent-Bank adding further that he is bonafide purchaser of the property in question and after paying all sale consideration, the sale certificate has been issued in favour of the Auction Purchaser on 13.12.2017 and sale deed has also been executed on 06.02.2018. It was, therefore, prayed that the appeal filed by the appellants may be dismissed with heavy costs by affirming the order impugned passed by the Tribunal below.

9. I have considered the rival contentions of the learned counsels for the parties and perused the material available on record.

10. It is to be seen that after issuance of demand notice dated 31.10.2014, possession notice dated 14.10.2016 and sale notice dated 15.09.2017, the appellants-Borrowers preferred a writ petition no. 2736/2017 before the Hon'ble High Court of Uttarakhand in November 2017, which was disposed off vide order dated 19.02.2018 with direction to the appellants, which are as under:-

> *"The writ petition stands disposed with the direction to the petitioner to approach the respondent-bank within a period of two weeks from today for One Time Settlement, on which the respondent-bank shall pass orders within a period of 15 days thereafter. In case, the order is not to the satisfaction of the petitioner, he would always be at liberty to challenge the same before the Debts Recovery Tribunal, as that is the remedy available to him by the Statute. However, it is made clear that till the disposal of the application of the petitioner for One Time Settlement by the respondent-bank and 15 days thereafter, the respondent bank shall not take any coercive measures against the petitioner in order to enable the petitioner to appear before the Debts Recovery Tribunal, in case the occasion arises"*

11. Pursuant to the above order, the appellants submitted an OTS proposal dated 06.03.2018 to the respondent-Bank, which was declined vide letter dated 16.03.2018 due to the reasons as under:-

> *"As in the meeting you have been repeated your earlier offer Rs.1.24 Cr. (which already declined) With conditions that "Auctioned Factory land and Building which has already been sold by the bank through SARFEASI for Rs.66.00 Lakh, to be restored" as during the meeting you have been clearly told that sale of Land and Building cannot be restored as it is not legally possible as third party interest has been created.*
>
> *Despite opportunity given by the committee to you, at the meeting you have not shown any interest to settle the NPA account through OTS/compromise and not submitted reasonable and acceptable officer to bank."*

12. Since the order passed by the respondent-Bank with regard to the OTS was not to the satisfaction of the appellants, therefore, the appellants filed the S.A. No.

22/2018 along with application for condonation of delay before the Tribunal below challenging the proceedings of the respondent-Bank that there are non-compliance of Rules 8(1), (2), (5), (6), (7) and Rule 9(1) and 9(2) of the Rules, 2002. The application for condonation delay was allowed by the Tribunal below vide order dated 09.05.2018, holding that time spent in pursuing the matter before Hon'ble High Court as well as liberty given by the Hon'ble High Court as explained in the S.A. is justified. Hence, the present S.A. filed before this Tribunal is within limitation. Thus, all the issues as mentioned above were to be considered and decided by the Tribunal below while passing the order impugned, but the Tribunal below has only decided the issue with regard to the sale notice dated 15.09.2017 and the rejection of OTS by the Bank vide letter dated 16.03.2018.

13. While going through the S.A. filed by the appellants, it is found that the appellants had also challenged the possession notice under section 13(4) of the SARFAESI Act stating that there is non compliance of provisions of Rules 8(1) and 8(2) of the Rules, 2002 by not affixing and publishing the same, as it is pleaded in para 33 of their S.A., but the Tribunal below has not given any finding in this regard while passing the order impugned, as to whether the said notice was affixed at the conspicuous place of the property in question and published in the newspapers or not? On this count alone, the order impugned is liable to be quashed and the case is liable to be remanded back for its consideration by the Tribunal below.

14. The auction sale notice was challenged on one ground also that the respondent-Bank had not obtained the

valuation report in respect of the property in question before auctioning the property, but this aspect of the matter has also not been considered by the Tribunal below while passing the order impugned. It is to be pointed out that the said issue was pleaded by the appellants in para 36 of their S.A. On this count also, the order impugned is liable to be set aside.

15. In view of the above, the order impugned is set aside and the case is remanded back to the Tribunal below for deciding it afresh in accordance with law without being influenced by the observations made herein above. Accordingly, the appeal filed by the appellants stands disposed off with no order as to costs.

16. 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