M/S L And T Housing Finance Limited vs M/S Trishul Developers on 27 October, 2020

Equivalent citations: AIR 2020 SUPREME COURT 5339, AIRONLINE 2020 SC 788

Author: L. Nageswara Rao

Bench: Ajay Rastogi, Hemant Gupta, L. Nageswara Rao

NON–REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(s). 3413 OF 2020
(Arising out of SLP(C) No(s). 18360 of 2019)

M/S. L&T HOUSING FINANCE LIMITED ...APPELLANT(S)

VERSUS

M/S. TRISHUL DEVELOPERS AND ANR. ...RESPONDENT(S)

JUDGMENT

Rastogi, J.

1. The instant appeal is directed against the impugned judgment and order dated 27 th June, 2019 passed by the Division Bench of the High Court of Karnataka at Bengaluru in Writ Petition No.22137 of 2019 wherein the High Court while reversing the finding returned by the Debt Recovery Appellate Tribunal in its order dated 16 th April, 2019, upheld the order of the Debt Recovery Tribunal dated 23 rd March, 2018 quashing the demand notice dated 14th June, 2017 served on the respondents (borrower) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act”) followed with the possession notices dated 09 th November, 2017 and 10th November, 2017.

2. Brief facts of the case are that the appellant is a Housing Finance Company under National Housing Bank Act, 1987 and is notified as Financial Institution by the Department of Finance

(Central Government) in exercise of the powers conferred by sub□clause (iv) of clause (m) of sub□ section (1) of Section 2 of the SARFAESI Act. The appellant indeed falls within the definition of "secured creditor" under the provisions of the SARFAESI Act and is entitled to initiate measures under the provision of the SARFAESI Act for enforcement of security interest created on the secured assets by the respondents (borrower/guarantor) in favour of the appellant (secured creditor).

3. Section 2(zd) of the SARFAESI Act which defines "secured creditor", reads as follows: □"2. Definitions. – (1) In this Act, unless the context otherwise requires, □□....

(zd) "secured creditor" means□

(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l);

(ii) debenture trustee appointed by any bank or financial institution; or

(iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or

(iv) debenture trustee registered with the Board appointed by any company for secured debt securities; or

(v) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created by any borrower for due repayment of any financial assistance.

...."

4. The first respondent is a partnership firm registered under the Partnership Act, 1932 and is dealing in the real estate construction business as alleged and the second respondent is the partner of first respondent firm. The first respondent and its partners in carrying out its business obligations approached the appellant for seeking financial assistance and submitted a request to the appellant vide application dated 15 th May, 2015 for term loan of Rs.20 crores for completion of its project ("Mittal Palms, Phase□I").

5. The appellant taking note of the request made by the respondents sanctioned Term Loan Facility to the tune of Rs. 20 crores towards completion of the project vide sanction letter dated 07th August, 2015 on such terms and conditions as set out in the sanction letter and for availing the above credit facility, the respondents executed Facility Agreement dated 11 th August, 2015 along with security documents by mortgaging the various immovable properties as a security for creating security interest in favour of the appellant. It may be relevant to note that the sanction letter dated 07th August, 2015 (P1) duly signed by the authorised signatory of "L&T Housing Finance Ltd." for execution of the Facility Agreement and effecting all compliance as required to the satisfaction of the lender was accepted and signed by the authorised signatory on behalf of the first respondent and

also by the guarantors clearly demonstrates that on the top of the letterhead towards right, the name of the company is mentioned “L&T Finance (Home Loans)” and in the bottom towards left, it was mentioned “L&T Housing Finance Ltd.” with registered office at Mumbai and this is the letterhead which has always been taken in use for correspondence at all later stages when the proceedings against the respondents herein were initiated under Sections 13(2), 13(4) and 14 of the SARFAESI Act.

6. It reveals from the record that the respondents at a later stage failed to maintain financial discipline and subsequently became a defaulter and because of the alleged breach of the terms and conditions of the Facility Agreement executed between the appellant (L&T Housing Finance Ltd.) and the respondents (M/s. Trishul Developers through its Partners) towards completion of its project, the appellant served a demand notice dated 16th December, 2016 to the respondents to pay the outstanding dues within the stipulated period mentioned in the demand notice. Since the respondents failed to make their outstanding payment, under the given circumstances the appellant classified the account of the respondents as Non□performing Assets (NPA) on 15 th April, 2017 and sent a notice of demand dated 14th June, 2017 under Section 13(2) of the SARFAESI Act calling upon the respondents to pay the outstanding dues i.e. Rs.16,97,54,851/□(Rupees Sixteen Crores Ninety Seven Lakhs Fifty Four Thousand Eight Hundred and Fifty One Only) as on 31st May, 2017 in terms of the notice with future interest till actual payment within sixty days from the date of the receipt of the demand notice.

7. Pursuant to the service of the notice of demand dated 14th June, 2017, the respondents did not discharge their liability and sent their reply dated 08 th August, 2017 to the notice with full consciousness knowing it well that the demand notice dated 14th June, 2017 has been served by the appellant (secured creditor) in reference to the Facility Agreement dated 11 th August, 2015 which has been executed between the parties i.e. the appellant and the respondents herein. It may be relevant to note that the demand notice dated 14th June, 2017 under Section 13(2) of the SARFAESI Act was issued on the same letterhead of the appellant duly signed by its self same authorised signatory, who had initially signed at the time when the proposal of term loan was sanctioned vide sanction letter dated 07th August, 2015 and no objection was raised by the respondents in its reply dated 08th August, 2017 of misconception or confusion if any, in reference to the secured creditor (appellant) on whose behest the demand notice was served under Section 13(2) of the SARFAESI Act.

8. Since the respondents failed to discharge their liability towards the appellant in terms of the demand notice, the appellant took further action in due compliance under Section 13(4) read with Section 14 of the SARFAESI Act and filed application before the competent authority for taking possession of the mortgaged properties and the collateral security of the respondents.

9. At this stage, the respondents proceeded in filing a Securitisation Application No.76/2018 before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act assailing the issuance of demand notice under Sections 13(2) and 13(4) of the Act inter alia on various grounds. The learned Debt Recovery Tribunal vide its order dated 23 rd March, 2018 set aside the demand notice on the premise that it has not been validly issued in the name of the appellant (“L&T Housing Finance

Ltd.") instead the name of the company has been mentioned as "L&T Finance Ltd." and this defect as alleged not being curable after issuance of demand notice by another group company instead of secured creditor, held the proceedings not sustainable. The order of Debt Recovery Tribunal dated 23 rd March, 2018 came to be challenged by the appellant in appeal before the Debt Recovery Appellate Tribunal(DRAT) and after the parties being heard, DRAT vide its order dated 16 th April, 2019 set aside the order of Debt Recovery Tribunal which came to be challenged by the respondents in a writ petition before the High Court of Karnataka. The High Court while setting aside the order of DRAT returned its finding in conformity with what was observed by the DRT in its order, which is the subject matter of appeal before us.

10. Learned counsel for the appellant submits that from the initial stage until the demand notice being served under Section 13(2) of the SARFAESI Act or even the later correspondence was on the same letterhead of the appellant from where the proceedings for the term loan was sanctioned in favour of the respondents and further submits that the self□same authorised signatory, being there of both the companies use common letterhead having its registered office and details of the sanction letter and of Facility Agreement coupled with default committed by the respondents are in reference to "L&T Housing Finance Ltd." and only at one stage, due to oversight, the appellant inadvertently put the seal of "L&T Finance Ltd." and it was not the case of the respondents that it has caused any substantial prejudice, either in acknowledging that from whom (secured creditor) demand notice under Section 13(2) has been served which can be further countenanced from the reply to the demand notice filed by the respondents. In the given circumstances, the mere technical defect as being noticed in the demand notice by the Tribunal and confirmed by the High Court in the impugned judgment, will not negate the proceedings which has been initiated by the appellants (secured creditor) in carrying out its obligations and protecting their security interest as contemplated under the provisions of the SARFAESI Act.

11. Learned counsel for the appellant further submits that the proceedings initiated under the SARFAESI Act would not nullify on the mere technicality as being pointed out and the High Court without appreciating the material on record has reversed the finding returned by the DRAT in its extraordinary jurisdiction under Article 226 & 227 of the Constitution and if two views are possible, unless found to be perverse it was not justified for the High Court to reverse the finding of fact supported by the material on record and that needs interference of this Court.

12. Per contra, learned counsel for the respondents while buttressing the judgment impugned of the High Court submits that when the salient defect has been noticed by the DRT and confirmed by the High Court at the very inception of the proceedings being initiated under the SARFAESI Act, all the consequential proceedings initiated in furtherance thereof in the instant case cannot be said to be in due compliance of the SARFAESI Act and once a procedure has been prescribed by law as mandated under the SARFAESI Act, the secured creditor was under obligation to comply which indisputedly has not been followed, in the given circumstances, no error has been committed by the High Court under its impugned judgment and according to him, it needs no interference of this Court.

13. We have heard the learned counsel for the parties and with their assistance perused the material available on record.

14. The indisputed fact which emerges from the record is that the respondents borrowed a term loan from the appellant (L&T Housing Finance Ltd.) of Rs.20 crores vide sanction letter dated 07th August, 2015 and later their account became NPA on 15th April, 2017 and prior thereto, the appellant (secured creditor) served a notice on 16 th December, 2016 demanding its outstanding dues sanctioned under the seal of their authorised officer on behalf of the lender, which has been informed to this Court was a self□same authorised signatory of both the companies namely "L&T Housing Finance Ltd." and "L&T Finance Ltd". Indisputedly, the notice under Section 13(2) of the SARFAESI Act was served by the authorised signatory on behalf of the appellant on the letterhead commonly used by "L&T Housing Finance Ltd." and "L&T Finance Ltd." but inadvertently, the authorised signatory put his signature under the seal of the company "L&T Finance Ltd". In this backdrop, from reply dated 08th August, 2017 of the respondents, it becomes clear that repayment was demanded by the appellant(secured creditor) only and the respondents tried to justify and assigned reasons for which the Facility Agreement dated 11th August, 2015 could not have been carried out and only thereafter, the appellant (secured creditor) has initiated further proceedings under Section 13(4) read with Section 14 of the Act.

15. Notably from the very inception at the stage, when the proposal of taking a term loan from the appellant was furnished by the respondents vide their application dated 15 th May, 2015 and accepted by the appellant vide sanction letter dated 07 th August, 2015 (P1), the letterhead which was used for the purpose clearly indicates that on the top of the letterhead towards right, it reflects "L&T Finance (Home Loans)" and on the bottom towards left, is of "L&T Housing Finance Ltd." with their registered office in Mumbai and this has been duly signed by the authorised signatory of the borrower for M/s. Trishul Developers and by its guarantors.

16. It manifests from the record that the respondents from the initial stage are aware of the procedure which is being followed by the appellant in its correspondence while dealing with its customers and that is the same practice being followed by the appellant when demand notice dated 16 th December, 2016 was served at a later stage. The demand notice in explicit terms clearly indicates the execution of the Facility Agreement dated 11th August, 2015 between the appellant (L&T Housing Finance Ltd.) and the respondents (M/s. Trishul Developers through its partners) and of the default being committed by the respondents (borrower/guarantor) in furtherance thereof, a notice under Section 13(2) of the SARFAESI Act was served on the same pattern of the letterhead which is being ordinarily used by the appellant in its correspondence with its customers and the demand notice dated 14 th June, 2017 without leaving any iota of doubt is in reference to the non□ fulfillment of the terms and conditions of the Facility Agreement dated 11 th August, 2015 executed between the parties and even the schedule of security profile which has been annexed thereto is in reference to the execution of Facility Agreement dated 11 th August, 2015 and its non□compliance of the provisions of the SARFAESI Act.

17. Even in the reply to the demand notice which was served by the respondents through their counsel dated 08th August, 2017 in compliance to Section 13(3A) of the SARFAESI Act, there was no confusion left in reference to the correspondence taken place between the appellant (secured creditor) and the respondents (borrower) tendering their justification and assigning reasons for which compliance could not have been made and no objection was indeed raised by the respondents

in regard to the defect if any, in the demand notice dated 14th June, 2017 which was served by the secured creditor i.e. “L&T Housing Finance Ltd.” in compliance to the provisions of the SARFAESI Act or in furtherance to the proceedings initiated at the behest of the appellant under Section 13(4) read with Section 14 of the Act, for the first time, a feeble attempt was made in raising the alleged technical objection in a Securitisation Application filed before the DRT and succeeded.

18. It may be relevant to note that the respondents (borrower) did not deny advancement of loan, execution of Facility Agreement, their liability and compliance of the procedure being followed by the secured creditor (appellant) prescribed under the SARFAESI Act.

19. In the facts and circumstances, when the action has been taken by the competent authority as per the procedure prescribed by law and the person affected has a knowledge leaving no ambiguity or confusion in initiating proceedings under the provisions of the SARFAESI Act by the secured creditor, in our considered view, such action taken thereof cannot be held to be bad in law merely on raising a trivial objection which has no legs to stand unless the person is able to show any substantial prejudice being caused on account of the procedural lapse as prescribed under the Act or the rules framed thereunder still with a caveat that it always depends upon the facts of each case to decipher the nature of the procedural lapse being complained of and the resultant prejudiced if any, being caused and there cannot be a straitjacket formula which can be uniformly followed in all the transactions.

20. Adverting to facts of the instant case, we are of the view that the objection raised by the respondents was trivial and technical in nature and the appellant (secured creditor) has complied with the procedure prescribed under the SARFAESI Act. At the same time, the objection raised by the respondents in the first instance, at the stage of filing of a Securitisation Application before DRT under the SARFAESI Act is a feeble attempt which has persuaded the Tribunal and the High Court to negate the proceedings initiated by the appellant under the SARFAESI Act, is unsustainable more so, when the respondents are unable to justify the error in the procedure being followed by the appellant (secured creditor) to be complied with in initiating proceedings under the SARFAESI Act.

21. The submission made by the respondent’s counsel that the notice under Section 13(2) of the Act was served by the authorised signatory of “L&T Finance Ltd.” and that was not the secured creditor in the facts of the case, in our considered view, is wholly without substance for the reason that “L&T Finance Ltd.” and “L&T Housing Finance Ltd.” are the companies who in their correspondence with all its customers use a common letterhead having their self□same authorised signatory, as being manifest from the record and it is the seal being put at one stage by the authorised signatory due to some human error of “L&T Finance Ltd.” in place of “L&T Housing Finance Ltd.”. More so, when it is not the case of the respondents that there was any iota of confusion in their knowledge regarding the action being initiated in the instant case other than the secured creditor under the SARFAESI Act for non□fulfillment of the terms and conditions of the Facility Agreement dated 11 th August, 2015 or any substantial prejudice being caused apart from the technical objection being raised while the demand notice under Section 13(2) was served under the SARFAESI Act or in the proceedings in furtherance thereof no interference by the High Court in its limited scope of judicial review was called for. Consequently, in our view, the judgment of the High Court is unsustainable and deserves

to be set aside.

22. In the result, the appeal succeeds and is accordingly, allowed. The impugned judgment dated 27 th June, 2019 passed by the High Court of Karnataka is hereby quashed and set aside. No costs.

23. Pending application(s), if any, stand disposed of.

.....J. (L. NAGESWARA RAO) .....J. (HEMANT GUPTA) .....J. (AJAY RASTOGI) NEW DELHI OCTOBER 27, 2020