

IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. NO 555/2022

Authorized Officer, Punjab National Bank, Office at New Delhi Circle Sastra, 2nd Floor, Vikrant Tower, Rajendra Place, New Delhi-110008.

.....Appellant

Versus

1. Amzad Hussain, S/o Khaybar Ali, R/o 7 Dinhata District Cooch Bihar West Bengal India- 736135. Plot No. 20, Block-E, Sector Beta 01, Greater Noida, Gautam Budh Nagar.
2. Mrs. Wahida Begum, W/o Sri Amzad Hussain, R/o 7 Dinhata District Cooch Bihar West Bengal India- 736135. Plot No. 20, Block-E, Sector Beta 01, Greater Noida, Gautam Budh Nagar.
3. Mrs. Payal Gupta, Mohan Niwas Rajghat Kankhal Haridwar4 Uttarakhand 249408(Auction Purchaser).
4. Mrs. Shashank Joghri, House No. 200 SFS flats Ashok Vihar Phase 4 New Delhi- 110052 (Auction Purchaser)

.....Respondents

Advocates, who appeared in this case:

For the appellant-Bank	Shri S.K. Pandey along with Shri P.K. Srivastava, Advocate
For the respondent nos. 1 & 2- borrowers	Shri Anuj Mandhyan, Advocate
For the respondent nos. 3 & 4- Auction- Purchasers	Shri Shashank Johri, Advocate in person

JUDGMENT

Date of Decision: 22.07.2025

JUSTICE R. D. KHARE, CHAIRPERSON

1. The present appeal has been filed under Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") against the order dated 19.07.2022, whereby the S.A. filed by the respondents-borrowers was disposed of.
2. The brief facts of the case are that the respondents-borrowers were granted certain credit facilities by the

appellant-Bank. In order to secure the said credit facilities, the borrowers had created an equitable mortgage over their property in question by depositing original title deed with the appellant-Bank. Since the borrowers did not maintain the financial discipline, therefore, the accounts of the borrowers were classified as NPA on 16.06.2019 and a demand notice dated 19.06.2019 was issued under Section 13(2) of the SARFAESI Act for a sum of Rs. 1,52,23,010.70 as on 31.05.2019. The borrowers did not pay any heed to the said demand, therefore, symbolic possession of the property in question was taken by issuing possession notice dated 24.11.2019 and the same was affixed at the conspicuous place of the property in question and published in two newspapers having wide circulation in the area, where the respondents-borrowers reside. Thereafter, the auction sale notice dated 16.12.2021 was issued scheduling the auction on 18.01.2022, but the same could not be materialized for want of bidders. Subsequently, the another sale notice dated 30.04.2022 was issued and dispatched on the same day to the borrowers, copy of the said sale notice and postal receipts are placed at page no. 30 and 39 of the paper book. The said sale notice was published in the newspapers one in vernacular language scheduling the auction of the property in question on 18.05.2022. The copies of the said publications have been filed at page nos. 31 to 38 of the paper book.

3. The respondents-borrowers challenged the entire proceedings of the appellant-Bank by filing the securitization application before the Tribunal below on 27.05.2022 without any application for condonation of delay. The Tribunal below vide order impugned has disposed of the said S.A., setting aside the auction sale

notice dated 30.04.2022 and subsequent actions thereof and they challenged the demand notice and possession notice, which were dismissed being barred by limitation. Being aggrieved by the said order, the present appeal has been filed by the appellant-Bank.

4. Learned counsel for the appellant submitted that a short question involved in the present case is that there is non compliance of **Rule 9(1)** of the Security Interest (Enforcement) Rules, 2002, therefore, the sale has been set aside by the Tribunal below holding that 15 days' clear notice has not been given to the borrowers and all the proceedings of the Bank upto possession notice has been upheld. The learned counsel further submitted that the sale notice was issued on 28.04.2022 scheduling the auction of the property in question to be held on 18.05.2022. The learned counsel also submitted that as per information received from the postal department, the sale notice was sent by registered post on 30.04.2022 and it was served upon the borrowers on 04.05.2022 and the Tribunal below by taking this as relevant date has stated that 15 days' clear notice has not been given. The matter is to be considered as to on what date the delivery of notice upon the borrowers was made by the Bank.
5. The learned counsel further submitted that the impugned order has been passed on the basis of a judgment passed by the Hon'ble Kerala High Court in the case of E.K. Rajan Vs. A.O. W.P. (C) No. 27485/2021 and relied upon para 16 thereof. It was thus contended that the sale notice was dispatched by the appellant on 30.04.2022, therefore, there was clear 15 days' notice. The learned counsel also submitted that after pronouncement of the order impugned, the appellant approached the postal

department under the RTI Act, against which an information vide letter dated 11.08.2022 (at page No. 119 of the paper book) has been received from the Senior Superintendant of the Post Office, Ghaziabad, wherein it is stated that delivery of notice was made on 02.05.2022 to the addressee. It was next contended that the said information was received/obtained after pronouncement of judgment by the Tribunal below, but it cannot be said that the said information given by the postal department is not conclusive proof of service upon the parties. The next argument was that the borrowers have never intimated that on which date the notice was served upon them, therefore, it was contended that a clear 15 days' notice has been given to the borrowers, hence, it was prayed that the order impugned may be set aside and the appeal may be allowed.

6. Learned counsel for the respondent-borrower submitted that the appellant has not approached before this Tribunal with clean hands, as the postal receipts and tracking reports filed by the appellant before the Tribunal below indicate that "item delivery confirmed on 04.05.2022". Copies of the postal receipts and the tracking reports are placed from page nos. 67 to 69 of the reply of the respondent-borrower. It was further contended that the new document, which is sought to be filed by the appellant before this Appellate Tribunal, cannot be permitted to be taken on record. It was further contended that both the documents, which have been referred to by the appellant, have been issued by the same postal department, which are contrary to each other, therefore, the new document filed by the appellant cannot be relied upon. It was also contended that after passing of the order impugned by the Tribunal below and even after filing of the present appeal

before this Tribunal, vide interim order dated 14.07.2023, the respondent-borrower was directed to deposit the amount, which has been deposited and the possession is with the respondent-borrower. It was further contended that pursuant to the order dated 14.07.2023 of this Tribunal, the respondent-borrower approached the Bank along with Bank draft of Rs. 1,87,600/- with the OTS proposal dated 06.10.2023. It was next contended that when the right of redemption was claimed by the borrower, the sale was already set aside, therefore, it cannot be said that the redemption sought by the borrower was after publication of the sale notice or confirmation of sale, whereas the entire amount has been deposited by the borrower pursuant to the order dated 14.07.2023 passed by this Tribunal. It was, therefore, prayed that the order impugned does not call for any interference by this Tribunal, hence the appeal may be dismissed with heavy costs.

7. In rejoinder, the learned counsel appearing for the Bank submitted that the respondent-borrower did not approach before this Tribunal with clean hand and concealed the material facts in as much as the borrower did not approach the Bank with entire amount pursuant to the order of this Tribunal nor gave any proposal. Secondly, it was contended that the argument raised by the learned counsel for the respondent-borrower regarding tracking report that it is conclusive proof of service, is not sustainable, as the postal department itself has given its report that the notice sent through speed post on 30.04.2022 was delivered/served upon the borrowers on 02.05.2022. It was lastly contended that right of redemption has been settled by the Hon'ble Apex Court in the case of Celir LLP Vs. Bafna Motors (P) Ltd., Mumbai

that after issuance and publication of sale notice, the right of redemption of the borrowers is extinguished in view of section 13(8) of the SARFAESI Act.

8. Learned counsel for the auction purchaser has adopted the arguments as advanced on behalf of the appellant-Bank adding further that she is bonafide purchaser of the property in question and has deposited the entire sale consideration with the Bank in accordance with the Act and Rules made thereunder, therefore, the sale may not be disturbed at this stage. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed.
9. I have considered the rival contentions of the learned counsels for the parties and perused the record.
10. Admittedly, the borrowers had challenged the entire proceedings of the Bank, i.e. demand notice, possession notice and sale notice by filing the aforesaid S.A. before the Tribunal below. The Tribunal below vide order impugned has set aside the challenge of the borrower with regard to demand notice and possession notice on the ground of delay, which has not been challenged by the borrowers, therefore, the order impugned to this extent has attained finality.
11. The controversy involved in the present case is, as to whether Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 has been complied with or not?
12. Undisputedly, the present sale is a second sale, therefore, a clear 15 days' notice was required to be delivered/served upon the borrowers in view of the Rule 9(1) of the said Rules, 2002. The sale notice was issued on 30.04.2022 and the same was sent to the borrowers through speed

post on the same day, copy of postal receipts are placed at page no. 56 of the paper book. As per tracking reports downloaded from the website of the postal department, the same were delivered on 04.05.2022. Thus, the sale had taken place prior to expiry of 15 days and on the basis of the same, the Tribunal below has rightly set aside the same. The copies of tracking reports are placed at page no. 57 and 58 of the reply filed by the borrowers, but on the contrary, the appellant has filed a letter dated 11.08.2022 issued by the department of Post, Ghaziabad, wherein it is stated that "*as per report from the Knowledge Park Post Office Noida, Article No. ED109287516 and ED109287520 had been delivered on 02.05.2022 to the addressee. Proof of delivery is also attached*". Copies of the said letter along with copy of delivery manifest dated 02.05.2022 are placed at page no. 119 & 120 of the paper book. The admitted fact is that the said documents were not filed before the Tribunal below, but the same has directly been filed by the appellant-Bank before this Tribunal while filing the present appeal. Thus the question arises, as to whether any new document directly filed by the appellant before the Appellate stage can be taken on record?

13. In this regard, Order XLI Rule 27 of the CPC deals with as under:-

27. 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.

14. While going through the pleadings of the memo of appeal, there is nothing, which may show the reason as to why the aforesaid documents were not filed before the Tribunal below. The parties to an appeal is not entitled to produce additional evidence in the Appellate Court unless the conditions stipulated under Order XLI Rule 27 of the CPC are satisfied.
15. In the present case, the appellant-Bank has filed the aforesaid documents along with the memo of appeal only stating therein that the sale notice was served upon the borrowers on 02.05.2022 and nothing else. It is not the case of the appellant-Bank that the Tribunal below had refused to accept the said documents. It is also not the case of the appellant-Bank that the said document was not within his knowledge or could, after the exercise of due diligence, be produced by him during the pendency of the Securitization Application before the Tribunal below, because para 8 of the order impugned clearly says that the sale notice was delivered to applicants on 04.05.2022 as per postal track record at page 32 & 33 of the reply, meaning thereby the tracking report dated 04.05.2022 was filed by the appellant-Bank itself. If the appellant-Bank was under impression that the said notice was

delivered on 02.05.2022, at that time the appellant ought to have obtained the said documents, but the same was obtained after passing of the order impugned, which means the appellant-Bank was watching the fate of the case. Thus it can be said that the said documents have been obtained by the appellant-Bank to make out its case. Thus none of the conditions of Order XLI Rule 27 of the CPC is satisfied, therefore, the contention of the appellant-Bank that the sale notice was served on 02.05.2022 is not tenable for want of any evidence/document in this regard.

16. In view of the discussions as recorded above, the order impugned does not call for any interference by this Appellate Tribunal, hence the appeal is dismissed with no order as to costs.
17. A copy of this judgment be supplied to the parties concerned as well as the DRT concerned and be also uploaded on the e-DRT portal.



CHAIRPERSON

VN GIRI,PS