

Update

SARFAESI Rulings



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Canara Bank Ashram Road vs Collector Of Stamps *C/SCA/2113/2012, Gujarat High Court*

Facts of the Case

The petitioner is a nationalized bank. A company named M/s.Dairyden Limited (“Borrower”) had availed of financial facilities from the petitioner bank to the tune of Rs.11.55 Crore some time in the year 2003. At the time of availing of the financial facilities Borrower created a mortgage in favour of the petitioner bank by deposit of title deeds in respect of the land Borrower defaulted in repayment of the credit facility availed of and accordingly the account of Borrower Limited was classified as a non performing asset.

The petitioner bank thought fit to proceed against Borrower under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. A notice under Section 13, Clause (2) of the SARFAESI Act was served upon Borrower and pursuant to the same the symbolic possession of the secured asset was taken over by the petitioner bank under Section 13, Clause (4) of the Act in the year 2007.

Thereafter, the petitioner bank filed an application with the District Magistrate, under Section 14 of the SARFAESI Act praying for that police protection for purpose of taking over the actual possession of the secured asset from the Borrower. The said application of the Petitioner was allowed. Pursuant to the order passed by the District Magistrate, the physical possession of the secured asset was taken over by the petitioner bank on 18th December 2009 by drawing a panchnama.

The petitioner bank thereafter placed the property in question for auction, where M/s. Palco Recycle Industries Limited (“Bidder”) being the highest bidder got the property and 'Sale Certificate' was issued by the petitioner bank. In support of said sale, the necessary stamp duty was paid by the bidder.

Consequently, authorities under the Gujarat Stamp Act, 1958 took the view that no stamp duty was paid by the petitioner bank where it acquired the possession of the mortgaged property in question from the Borrower, the petitioner bank was liable to pay the deficit stamp duty.

Judgment

1. Whether action of taking possession pursuant to the provisions of the SARFAESI Act would constitute a conveyance and is liable for stamp duty?

The court held that any panchnama drawn at the time of taking over of the physical possession of the secured asset under provisions of Section 13 or pursuant to the order of the District Magistrate under Section 14 of the SARFAESI Act could not be termed as an instrument creating any right or liability in favour of the bank so as to bring it within the ambit of conveyance.

2. Whether debtor is entitled to get back the secured property even if the creditor has taken possession of the same?

On conjoint reading of all sub-sections of Section 13 indicates that after taking possession of the assets the secured creditor gets a right to sell the property for realization of its dues as if the sale has been made by the secured creditor himself. Sub-section (8) clearly indicates that if the dues of



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the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor and no further steps shall be taken by him for transfer or sale of that secured asset.

Therefore, even after taking possession, if before sale of the property, a debtor pays the amount as mentioned in sub-section (8) to the secured creditor, in that event no further steps should be taken by the secured creditor and the debtor will be entitled to get back the possession.

Our Comments: This is a good judgment in our view. The secured creditor has been empowered to take possession of the asset for realization of his dues. If the secured creditor faces difficulties in repossessing the asset, the same can be resolved through exercising rights conferred by section 14 of the Act. The purpose for which the asset is possessed by the secured creditor is “realization of the dues”. The secured creditor only gets a right of possession for realization of dues by sale of the asset. Further section 13 (8) clearly provides that *“If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.”* Thus in view of the said section the Borrower is entitled to get back the secured asset if the secured creditor is paid at any time before the sale or transfer of the secured asset takes place.

Link: <http://www.indiankanoon.org/doc/78231670/>

Poonam Garg vs. Chief manager, SBI *WP (C) 527/2012, High Court of Delhi*

The question that arose in this particular writ petition is that Whether the Debts Recovery Appellate Tribunal has jurisdiction to condone the delay under Section 5 of the Limitation Act, 1963 in filing of an appeal under Section 18 of the SARFAESI Act, 2002?

The Delhi High Court held as follows:

While section 18 of the Securitization Act prescribes a period of limitation of 30 days for filing of an appeal before the Tribunal from an order passed under Section 17 by the Debts Recovery Tribunal, Section 20 of the RDDDBFI Act stipulates a period of 45 days for filing of an appeal to the Appellate Tribunal from an order passed by the DRT.

Another significant and material difference between the provisions of Section 18 of the Securitization Act and Section 20 of the RDDDBFI Act is that while the proviso to Section 20(3) of the RDDDBFI Act enables the Appellate Tribunal to entertain an appeal even after the expiry of the prescribed period of 45 days, if it is satisfied that there was sufficient cause for not filing the appeal within the prescribed period, there is no such stipulation or provision contained in Section 18 of the Securitization Act.

When the legislature enacted the Securitization Act, it was certainly aware of the provisions of appeal to an Appellate Tribunal under the RDDDBFI Act. Being aware of the provisions, it specifically provided for a different period of limitation of 30 days for an appeal under the Securitization Act and also consciously excluded a provision similar to the proviso to Section



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20(3) of the RDDBFI Act. The only conclusion that can be drawn from this is that the legislative intent was clear, in that the delay in filing an appeal under Section 18 of the Securitization Act could not be condoned. It is clear that the Debts Recovery Appellate Tribunal does not have the power to condone the delay in the filing of an appeal under Section 18 of the Securitization Act.

Our Comments: This judgment is bad in our view. In our view, if a court which has the power to adjudicate a dispute has an inherent power to condone the delay in filing of the appeal. If, a meritorious matter cannot be heard by a court or a quasi judicial body due to delay, the same would amount to denial of justice.

In case of *Collector, Land Acquisition v. Mst. Katiji* [1987] 167 ITR 471, Hon'ble Supreme Court held that *"The Legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression 'sufficient cause' employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice-that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court."*

In another case of *N. Balakrishnan v. M. Krishnamurthy* [1998] 7 SCC 123, the Hon'ble Apex court explained the scope of limitation and condonation of delay, as under:

"The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy."

Thus in light of the Supreme Court judgments also we hold in our view that even if the adjudicating body has not been conferred power to condone delay vide specific and express provision under any Act, the same is conferred and assured by section 5 of the Limitation Act 1963. Section 5 thus has wider interpretation and confers powers of condonation where substantive clauses/provisions do not confer or are silent. Interpretation of clauses and/or provisions should always be done in liberal manner so as to advance the purposes of justice and not to restrict the same.

Link: <http://indiankanoon.org/doc/28055581/>