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(2020) 08 DRT CK 0003

In the Debts Recovery Tribunal

Case No : Original Application No. 423 Of 2019

Bank Of Baroda APPELLANT

Vs

Shifa Marbles And Anr. RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13

Citation : (2020) 08 DRT CK 0003

Hon'ble Judges : Vivek Saxena, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The Applicant Bank originally filed this O.A. on 15-03-2019, against the Defendants for the recovery of a sum of Rs.41,40,207/- (Forty One Lacs Forty Thousand Two Hundred Seven Only) on Term Loan & Cash Credit Facilities 13.80% and 13.75% p.a. with monthly rests respectively from the Defendants with date of filing this original application till the date of realization and in default by sale of equitable mortgage immovable property i.e. Industrial Converted Plot No. 3, (part) measuring 253.33 Sqr. Yds, situated at Khasra No. 925/1, present Khasra No. 3427/928, Village-Roopangarh, TehsilKishangarh, District-Ajmer. Boundaries- On the North-Remaining part of Plot No. 3, On the South-Plot No. 4, On the East-Land of Khasra No. 925/2/2 and On the West-Road 40 feet wide and hypothecated of Plant & Machinery being mixture, hydraulic press, electrical motor and equipments, vehicles, spares, tools and accessories, furniture and fixtures and fixed assets, whole of goods, i.e. stocks, both present and future, raw materials, work in process, semi finished goods and finished goods, marbles blocks and marbles, sheets, packing materials and stores, book debts as well as stone cutting plant etc. and as well as Personal movable and immovable properties/assets of Defendants, jointly and severally. The applicant bank is entitled to proceed against the same towards recovery of its debt. The applicant bank is entitled to the costs and expenses of the original application.

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The brief facts of the case are-

i. that the present original application was filed by the Sr. Manager of the applicant bank vide power of attorney Exhibit-A-1 and who was authorized to sigh & verify the original application and the same on behalf of the bank.

ii. that the Defendant No. 2, being Sole Proprietor of Defendant No. 1 Firm, availment of credit facilities to install project for stone cutting had approached the applicant bank for grant of Credit Facilities.

iii. that the applicant bank has sanctioned the Term Loan for Rs. 17.30 lacs for construction of plant, building and setting up the purchaser of plant and machinery and Cash Credit Limit of Rs. 12.50 lacs as working capital against hypothecation of stocks and book debts.

iv. that the Term Loan shall be paid in 76 monthly installments with ballooning repayment and in default is made in making payment of the installment, additional interest of 2% p.a. shall be made.

v. that the defendant no. 1 and 2 hypothecated to the applicant bank the whole of goods i.e. the stocks, both present and future and including but without prejudice to the generality of foregoing words, all stocks of raw materials, work in process, semi finished goods and finished goods relating to marble blocks and marbles sheets packing materials and stores etc.

vi. that since the defendants did not maintain the financial discipline by operating the Cash Credit account and making requisite payment in the Term Loan Accounts and hence the action under Section 13 of SARFAESI Act, 2002.

vii. that the applicant bank is entitled to recover the aforesaid amount from the Defendants and also entitled to realize outstanding amount by the sale of above mortgaged property, all hypothecated goods and as well as Personal movable and immovable properties/assets of Defendants, jointly and severally.

2. The Defendants is called absent and set ex-parte on 30.11.2019.

3. The applicant bank filed its evidence affidavit along with list of documents, annexing therewith Exhibit A/1 to A/49.

4. Heard the Ld. Counsel for the applicant bank.

5. The point that arise for consideration is: Whether the applicant bank is entitled to the claim as prayed for?

6. As stated supra, the Defendants remained ex-parte. The applicant bank filed the evidence affidavit coupled with the recitals in the documents, viz Exhibit A/1 to A/49 marked on behalf of the applicant bank, clinches the claim of the applicant bank against the Defendants. Hence, I hold that the Defendants are liable to pay to the applicant bank the claim made in O.A. with future interest and costs.

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7. In the result, this O.A. No. 423 of 2019 is allowed declaring that:-

a) The Defendants are liable to pay to the applicant bank a sum of Rs.41,40,207/- (Forty One Lacs Forty Thousand Two Hundred Seven Only) with future interest @ 10% p.a. (Simple) rests from the date of filing the original application till the date of realization.

b) The applicant bank is entitled to recover the above amount by the sale of equitable mortgage immovable property i.e. Industrial Converted Plot No. 3, (part) measuring 253.33 Sqr. Yds, situated at Khasra No. 925/1, present Khasra No. 3427/928, Village-Roopangarh, Tehsil-Kishangarh, District-Ajmer. Boundaries- On the North-Remaining part of Plot No. 3, On the South-Plot No. 4, On the East-Land of Khasra No. 925/2/2 and On the West-Road 40 feet wide and hypothecated of Plant & Machinery being mixture, hydraulic press, electrical motor and equipments, vehicles, spares, tools and accessories, furniture and fixtures and fixed assets, whole of goods, i.e. stocks, both present and future, raw materials, work in process, semi finished goods and finished goods, marbles blocks and marbles, sheets, packing materials and stores, book debts as well as stone cutting plant etc. and as well as Personal movable and immovable properties/assets of Defendants, jointly and severally. The applicant bank is entitled to proceed against the same towards recovery of its debt.

c) The applicant bank is entitled to the costs and expenses of the O.A.

8. The recovery certificate be issued forthwith and be sent to the Recovery Officer, DRT, Jaipur.

9. Parties are directed to appear before the Recovery Officer, DRT, Jaipur on 16.12.2020.

10. Prepare Recovery Certificate accordingly.

11. A copy of the Judgment and Recovery Certificate be given or sent by registered post to each of the parties free. A copy of the Recovery Certificate be sent to the Recovery Officer of this Tribunal for necessary action as per the law.

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