IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO-.- 535 OF 2022

WITH

INTERIM APPLICATION (ST) NO.19495 OF 2022

M/S. Apex Consumer Appliances Pvt. Ltd. ...Appellant
Thr. Director Kinjal Dhaval Shah

Vs.

The Board Of Directors Of Bank Of Baroda ...Respondents
Thr. Chairman And Managing Director

Mr. M. J. Nedumpara a/w Adv. Hemali Kurne., for Appellant.
Mr. Shashank N. Fadia, for Respondent No. 4.
Mr. Sachin Kanse i/b PRS Legal, for Respondent Nos. 1 and 2.

CORAM:- N. J. JAMADAR, J.

DATED:- 8th MARCH, 2023

PC:-

1) Heard Mr.Nedumpara, the learned Counsel for the appellant.

2) This Appeal is directed against an order passed by the learned Judge, City Civil Court, on 20th April, 2022, whereby the learned City Civil Judge considered it appropriate to give opportunity of hearing to the defendants before the prayers for ad-interim relief in the draft Notice of Motions were considered and thus the prayer for ad-interim relief came to be rejected.

3) When the matter was first listed before the Vacation Court on 20th May, 2022, while issuing notice to the respondent Nos. 1 to 5, the Court directed the appellant to serve a copy of the A.O. and a copy of the said order on respondent Nos.1 to 5. It was further directed that, in the meanwhile, no coercive steps should be taken against the appellant. The appellants, in turn, were restrained from transferring and/or disposing of any of their movable and immovable properties.

4) It seems that subsequently, on 24th August, 2022, this Court clarified that there is no interim order operating in this matter. The appellant has thus taken out an Interim Application (L) No.19495 of 2022, seeking a clarification that the ad-interim injunction granted by the Vacation Court, continues to operate and, therefore, no proceedings under Section 13(4) and 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (SARFAESI Act) can be initiated or continued and any action under Section 13(4) and 14 of the SARFAESI Act would amount violation of order of the Court dated 20th May, 2022.

5) Having regard to the nature of the impugned order, heard the learned Counsel for the appellant in the Appeal from Order.

6) At the outset, it would be necessary to extract the reasons which weighed with the learned Judge, City Civil Court, not to consider the prayer for ad-interim relief. The relevant part of the order reads as under:-

> "Perused the draft Notice of motion affidavit in support of them and record. Heard ld. Adv. for plaintiff.
>
> Considering the nature of suit and the nature of reliefs sought in the draft notice of motions, the object of granting reliefs as sought is not likely to be defeated by some delay. Considering the nature of suit and reliefs sought, it will be appropriate to give opportunity of hearing to the defendants first. Therefore, prayer of plaintiffs for grant of ad-interim relief in the draft Notice of motions is dismissed."

7) Mr. Nedumpara, the learned Counsel for the appellant, submitted that the appellant being a Micro, Small and Medium Enterprise is entitled to the protection envisaged by provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act).

8) The appellant/plaintiff had thus sought multifarious declarations including that the plaintiff is entitled to protection and care under the provisions of MSMED Act and Section 14 of

SARFAESI Act is unconstitutional and void and the declaration of the plaintiff as a wilful defaulter is illegal and void.

9) Prayer Clause "a" in the Notice of Motion is relevant and, hence, extracted below:-

> "a. to grant an ad-interim declaration declaring that the purported guidelines of the RBI of year 2013 and 2015 in furtherance of which, the Defendant No. 1 Bank had proceeded to declare the Plaintiffs as willful defaulter are both rendered void ab initio, since neither under the Reserve Bank of India Act, the Banking Regulation Act nor under the SARFAESI Act or under any other law is such power conferred on the RBI, and further to restrain the Respondent Bank from initiating any action that will shake the vinculum juris pendent lite pending final disposal of the above suit".

10) Evidently, the plaintiff primarily seeks declaration, at an interim stage, about the validity of the guidelines issued by the RBI of the years 2013 and 2015, in the matter of declaring a borrower as a willful defaulter.

11) Mr. Nedumpara, the learned Counsel for the plaintiff/appellant, invited the attention of the Court to the provisions contained in Sections 9 and 10 of the Act, 2006 and the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises framed under Section 9 of the Act, 2006, vide Notification dated 29th May, 2015. It was urged that in the face of the aforesaid provisions and the framework, the defendant No. 1 could not have declared the plaintiff a willful defaulter.

12) Evidently, the learned Judge, City Civil Court, in the backdrop of the nature of the prayer in the Notice of Motion, extracted above, considered it appropriate to give notice to the defendants before the prayers were considered. Having regard to the nature of the prayers, the course adopted by the learned Judge, City Civil Court, can not be faulted at.

13) In any event, there is no provision in the Act, 2006, which impinges upon the rights of the secured creditor to enforce the security in accordance with the provisions contained in the SARFAESI Act, 2002, which has overriding effect over all other laws, except Insolvency and Bankruptcy Code, 2016. In a recent pronouncement in the case of **Kotak Mahindra Bank V. Girnar Corrugators Pvt. Ltd**[1]**,** the Supreme Court held that SARFAESI Act, 2013, overrides over the provisions of MSMED Act, 2006.

14) Nonetheless, all these issues can be considered by the trial court. Since the trial court considered it appropriate to issue notice before considering prayer for interim relief, extracted above, the Appeal does not deserve to be entertained.

15) Thus the Appeal stands dismissed.

16) Interim Application also stands dismissed.

[N. J. JAMADAR, J.]

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1 AIR 2023 SC 268