



 **Prakhar Galaw\***

## Legal Decision Affecting Bankers

**Appellant(s)** : Bank of Baroda & ANR.

**Vs.**

**Respondent(s)** : M/S PARASAADILAL  
TURSIRAM SHEETGRAH PVT.  
LTD. & ORS.

**Court** : Supreme Court

**Bench Strength** : 2

**Bench** : B.R Gavai, J  
PAMIDIGHANTAM SRI  
NARASIMHA, J

**Citation** : CA NO. 5240/2022

### Relevant Provision of Law

Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), hereinafter referred to as the Act.

### Brief Facts of the Case

1. The Respondent company availed credit facility of ₹ 2,34,15,456/- from appellant bank. The directors of the company gave personal guarantee of the loan along with equitable mortgage of immovable property of the company.
2. The company defaulted in its repayment of loan amount, which led the bank to classify the loan account of the company as Non - Performing Assets (NPAs) as per RBI's NPA classification and prudential norms.
3. The appellant bank issued a demand notice under Section 13 (2) of the SARFAESI Act, 2002 demanding the defaulting company to regularize its account. The company did not regularize its loan account within 90 days as mandated under Section 13 (2) of the Act.
4. The appellant bank issued a notice under Section 13 (4) of the Act for taking symbolic possession of the mortgaged property. The bank took the physical possession of the mortgaged property on 30.08.2010.
5. The respondent company against the said action of taking physical possession was challenged in civil writ petition challenging the notices issued under Section 13 (2) and 13 (4) of the Act and sought a writ of mandamus restraining the Bank from taking any coercive action for the recovery of the amount.
6. The said writ petition was disposed with a direction to the company to pay the remaining loan amount in 4 equal instalments and if the Company fails to pay up the dues within the time prescribed, the bank would be at a liberty to exercise all its rights under the SARFAESI Act.
7. The respondent company failed to comply with the directions of the High Court. Meanwhile, the appellant bank issued a sale proclamation with respect to the mortgaged property of the respondent company, which culminated in favour

---

\*Deputy Manager (Litigation & TP claims), HDFC ERGO.

of an auction purchaser. And a sale certificate was issued in his favour.

8. The said proceedings of the bank under Section 13 (4) was challenged by the respondent under Section 17 of the Act, which was dismissed by the Debt Recovery Tribunal (DRT), Lucknow as it was filed beyond the statutory period of 45 days from the date when bank took actions under Section 13 (4).
9. The said order of the DRT was challenged in a review petition before DRT on the ground that the Director of the company died prior to the actions taken by the bank to securitize the assets of the bank, due to which the Legal representatives of the company could not challenge the actions of the bank/notices under Section 13 through section 17 appeal within statutory time period of 45 days. The DRT allowed the application of the company in revision petition.
10. The said orders of DRT were challenged in Debt Recovery Appellate Tribunal (DRAT), which held that there has been no error apparent on the face of record. Thus, dismissed the order of DRT passed in revision and restored the original orders of the DRT.
11. That, against the order of the DRAT, the respondent company through its Directors filed a writ petition on the same ground raised in revision petition. The High Court admitted the petition and stayed the operation of orders passed by DRAT.

12. That, against the said order of the High Court passed in WP, the appellant bank had preferred a Civil Appeal in the Supreme Court.

### **Findings and Observations of Supreme Court**

The Supreme Court held that the reason for providing a time limit of 45 days for filing an application under Section 17 can easily be inferred from the purpose and object of the enactment. In *Transcore v. Union of India and Anr.* This Court held that the SARFAESI Act is enacted for quick enforcement of the security. It is unfortunate that proceedings, where a property that has been brought to sale and third-party rights created under the provisions of the Act, have remained inconclusive even after a decade.

The Court observed that although the court stayed the operation of the orders of High Court, 5 years ago in the Special Leave Petition (SLP). However, no final orders were passed in the matter thereafter. Thus, the Court held that the orders passed by the High Court were not justified and restored the orders of the DRT dismissing Section 17 appeal of the respondent company, also orders passed in revision petition and dismissed the orders of High Court and directed the Court to decide the matter within 3 months.

