RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Special Appeal Writ No. 748/2024
CNR: RJHC010507982024 | URN: SAW / 1193U / 2024

Rajasthan High Court
सत्यमेव जयते
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1. Aditya Birla Finance Limited, A Company Incorporated And Registered Under The Companies Act, 1956, Having Its Registered Office At Indian Rayon Compound, Veraval, Gujarat - 362 266, And Its Corporate Office At Plot No. 17, 1St Floor, Vijaya Building, Bara Khamba Road, New Delhi - 110 001.

2. **Encore Asset Reconstruction Company Pvt. Ltd.** Through its Authorized Signatory having its Registered Office: Caddie Commercial Tower, Regus Business Centre, 5th Floor, Aerocity (Dial), New Delhi, India-110037 and Corporate Office: 5th Floor, Plot No.137, Sector-44, Gurgaon, Haryana-122002.

----Appellants

Versus

1. State Of Rajasthan, Through The Registrar, Cooperative Societies, Having Its Address At Nehru Sahkar Bhavan, Bhawani Singh Road, Jaipur - 302 005.
2. Deputy Registrar, Cooperative Societies, Jodhpur, Having Her Address At Sahkar Bhavan, Opposite Railway Station, Jodhpur - 342001.
3. Sooryabhoomi Buildinfra Private Limited, A Company Incorporated And Registered Under The Companies Act, 1956, Having Its Address At 2Nd Floor, 180 Manji Ka Hatta, Paota Jodhpur - 342 001 And At 181 And 182, Manji Ka Hatta, Paota, Jodhpur - 342 001.
4. Vinod Kanwar, An Indian Inhabitant Of Jodhpur, Having Her Address At 2Nd Floor, 180 Manji Ka Hatta, Paota Jodhpur - 342001 And At 169, Umaid Heritage, Defense Lab Road, Ratanada, Jodhpur - 341001 And At 181 And 182, Manji Ka Hatta, Paota Jodhpur - 342001.
5. Vikram Singh Rathore, An Indian Inhabitant Of Jodhpur, Having His Address At 2Nd Floor, 180 Manji Ka Hatta, Paota Jodhpur - 342001 And At 169, Umaid Heritage, Defense Lab Road, Ratanada, Jodhpur - 342001 And At 181 And 182, Manji Ka Hatta, Paota Jodhpur - 342001.
6. Usha Kanwar, An Indian Inhabitant Of Jodhpur, Having Her Address At 2Nd Floor, 180 Manji Ka Hatta, Paota

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Jodhpur - 342001 And At 700, Sejaliya Farm, Gol Sirohi, Gol - 307801, And At181 And 182, Manji Ka Hatta, Paota Jodhpur - 342001.

7. Rajendra Singh, An Indian Inhabitant Of Jodhpur, Having His Address At 2Nd Floor, 180 Manji Ka Hatta, Paota Jodhpur - 342001 And At Shekhasar, Phalodi, Jodhpur - 342001 And At 181 And 182, Manji Ka Hatta, Paota Jodhpur - 342001.

----Respondents

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For Appellant(s)	:	Dr. Harish Purohit
For Respondent(s)	:	Mr. Pawan Bharti for Mr. IR Choudhary, AAG

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
HON'BLE MR. JUSTICE SANDEEP SHAH

Order

23/11/2026

1. Heard learned counsel for the parties.

2. The present Special Appeal (Writ) has been filed against the order dated 24.05.2024 passed by the learned Single Bench in *S.B. Civil Writ Petition No.16491/2023 (Aditya Birla Finance Ltd. Vs. State of Rajasthan & Ors.)*, whereby the writ petition preferred by the appellants has been dismissed on the ground of an alternative remedy under Section 14 of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the 'BUDS Act, 2019').

3. Learned counsel for the appellants submits that it would be burdensome for the appellants to approach the competent authority under Section 14 of the BUDS Act, 2019. Learned counsel further submits that Section 13 of the BUDS Act, 2019 mandates that where a particular property is already subject to

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proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act, 2002') or the Insolvency and Bankruptcy Code, 2016, such proceedings shall get precedence over the proceedings initiated under the BUDS Act, 2019. Therefore, no attachment of such property can be made by the competent authority under the BUDS Act, 2019.

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4. Learned counsel for the respondents submits that even the attachment made by the authority concerned under the BUDS Act, 2019 can be de-attached, provided an appropriate application is filed under Section 15 of the BUDS Act, 2019. Learned counsel further submits that the competent authority was unaware of the pendency of the proceedings under the SARFAESI Act, 2002 in respect of the property in question. Therefore, the attachment has rightly been made.

5. We have considered the submissions so made before this Court and have gone through the relevant material available on record, including the provisions of the BUDS Act, 2019. For better appreciation of the facts of the present case, it would be worthwhile to reproduce Sections 13, 14 and 15 of the BUDS Act, 2019:-

> *"**13. Precedence of attachment.-** (1) Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Insolvency and Bankruptcy Code, 2016 (31 of 2016), an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.*

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(2) Where an order of provisional attachment has been passed by the Competent Authority-

(a) such attachment shall continue until an order is passed under sub-section (3) or sub-section (5) of section 15 by the Designated Court;

(b) all the attached money or property of the deposit taker and the persons mentioned therein shall vest in the Competent Authority and shall remain so vested till further order of the Designated Court.

(3) The Competent Authority shall open an account in a scheduled bank for the purpose of crediting and dealing with the money realised under this Act, which shall not be utilised except under the instructions of the Designated Court.

(4) The Competent Authority shall not dispose of or alienate the property or money attached, except in accordance with the order of the Designated Court under sub-section (3) or sub-section (5) of section 15.

(5) Notwithstanding anything contained in sub-section (4), the Competent Authority may, if it thinks it expedient, order the immediate sale of perishable items or assets, and the proceeds of the sale shall be utilised in the same manner as provided for other property.

14. Application for confirmation of attachment and sale of property.-

(1) The Competent Authority shall, within a period of thirty days, which may extend up to sixty days, for reasons to be recorded in writing, from the date of the order of provisional attachment, file an application with such particulars as may be prescribed, before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary, by private sale.

(2) In case where the money or property has been attached on the permission granted by a Designated Court in another State or Union territory, the application for confirmation of such attachment shall be filed in that Court.

15. Confirmation of attachment by Designated Court.-

(1) Upon receipt of an application under section 14, the Designated Court shall issue notice to-

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(a) the deposit taker; and

(b) any person whose property is attached under section 14, to show cause, within a period of thirty days from the date of issue of notice, as to why the order of attachment should not be made absolute and the properties so attached be sold.

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(2) The Designated Court shall also issue notice to all other persons represented to it as having or being likely to claim any interest or title in the property, to appear on the same date as persons referred to in sub-section (1) to raise objections, if they so desire, to the attachment of the property.

(3) The Designated Court shall, after adopting such procedure as may be prescribed, pass an order-

(a) making the provisional order of attachment absolute; or

(b) varying it by releasing a portion of the property from attachment; or

(c) cancelling the provisional order of attachment, and in case of an order under clause (a) or clause (b), direct the Competent Authority to sell the property so attached by public auction or, if necessary, by private sale and realise the sale proceeds.

(4) The Designated Court shall not, in varying or cancelling the provisional order of attachment, release any property from attachment, unless it is satisfied that-

(a) the deposit taker or the person referred to in sub-section (1) has interest in such property; and

(b) there shall remain an amount or property sufficient for repayment to the depositors of such deposit taker.

(5) The Designated Court shall pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money attached or realised out of the sale.

(6) The Designated Court shall endeavour to complete the proceedings under this section within a period of one hundred and eighty days from the date of receipt of the application referred to in sub-section (1).”

6. It is undisputed that, in the present case, the property in question is already a subject matter of proceedings under the

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SARFAESI Act, 2002. The loan amount of the appellants has also not been fully satisfied by the private respondents. Therefore, the appellants have already pressed into service the appropriate remedy under the SARFAESI Act, 2002, and the same is pending consideration before the Debt Recovery Tribunal (DRT).

7. Needless to emphasize that Section 13 of the BUDS Act, 2019 clearly gives precedence to the proceedings under the SARFAESI Act, 2002 and the Insolvency and Bankruptcy Code, 2016, in respect of such properties. Therefore, in these circumstances, we are of the view that if an appropriate application is preferred before the competent authority under Section 14 of the BUDS Act, 2019, the competent authority may pass an appropriate order in terms of Section 15 of the BUDS Act, 2019.

8. In view of the above, we are not inclined to interfere with the order passed by the learned Single Bench. Accordingly, the present Special Appeal (Writ) is disposed of with a direction to the designated authority to decide the application, if preferred by the appellants, in accordance with the provisions of Section 14 of the BUDS Act, 2019. Till such application is decided, the status quo, as it exists today, shall be maintained.

(SANDEEP SHAH),J (VINIT KUMAR MATHUR),J

Crt_2 (1974)
D-A/41
Devraj Pandey

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