

CWP No.12165 of 2016

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12165 of 2016
Date of decision: 23.08.2016

M/s Sumati Engineering Company Private Limited and others
....Petitioners

Versus

Punjab National Bank and others
....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: - Mr. I.P. Singh, Advocate, for the petitioners.
Mr. C.S. Pasricha, Advocate, for the respondents.

AJAY KUMAR MITTAL, J. (ORAL)

Petitioners by way of present writ petition filed under Articles 226/227 of the Constitution of India have assailed the orders dated 24.05.2016 (Annexure P-1) and 30.05.2016 (Annexure P-2) passed by respondent No.2. Further prayer has been made for quashing the notice dated 24.01.2015 (Annexure P-3) issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 (for short 'SARFAESI Act') and auction of the properties conducted on 24.05.2016 by respondent No.1 in pursuance of sale notice dated 18.04.2016 (Annexure P-16).

2. Section 18 of the SARFAESI Act reads as under: -

“Appeal to Appellate Tribunal (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

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Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”

3. In view of Section 18 of the SARFAESI Act, learned counsel for the petitioners states that against the action sought to be impugned in the writ petition, appeal before the Appellate Tribunal is maintainable, therefore, he may be allowed to withdraw this writ petition with liberty to avail the alternative remedy of appeal before the Appellate Tribunal. It was, however, prayed that time be allowed to file the appeal so that the same may not be dismissed on the ground of limitation.

4. Dismissed as withdrawn with the aforesaid liberty. However, it is observed that in case any such appeal is filed within 30 days from today, the same shall not be dismissed on the ground of limitation.

(AJAY KUMAR MITTAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

23.08.2016
R.S.

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No