

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16529-2017

Date of Decision: July 28, 2017

India Infoline Finance Limited

.....Petitioner

Versus

District Magistrate-cum-Deputy Commissioner, SAS Nagar, District Mohali
and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL**

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Vivek Sethi, Advocate
for the petitioner.

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SURYA KANT, J.

The petitioner is a financial Institution within the meaning of Section 2(1)(m) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'). It is averred that respondent Nos.2 to 4 availed three business loans to the tune of Rs.1,48,50,000/-, Rs.2,27,78,682/-, and Rs.76,00,000/- vide loan agreements dated 16.04.2013, 31.03.2014 and 31.03.2014, respectively. As the borrowers defaulted in repayment, their accounts were classified as 'NPA' and the petitioner-Institution decided to proceed under the provisions of the SARFAESI Act. The Notice under Section 13(2) of the SARFAESI Act was accordingly issued; objections were invited from the respondents followed by Notice under Section 13(4) of the Act. The petitioner-Institution also applied to the District Magistrate, SAS Nagar, Mohali, under Section 14 of the SARFAESI Act to take physical possession of the 'secured assets' and

hand over the same to it so that the same could be sold for recovery of the loan amount. The order dated 10.03.2017 was passed by the District Magistrate, SAS Nagar, Mohali, directing the Tehsildar to hand over the actual physical possession of the properties to the petitioner-Institution.

[2] The petitioner's allegation is that with a view to hoodwink the process of law, the respondent-borrowers have got filed five collusive civil suits through the so called tenants seeking restraint orders against their forcible dispossession. The plaintiffs in those suits have also filed injunction applications and a perusal of the orders passed by the Civil Courts, Mohali, reveal that counsel for the respondent-borrowers, who are defendants in the civil suits, conceded the claim in *ad interim injunction* applications and thus, consent orders have been passed granting injunction in favour of the alleged tenants.

[3] Due to those orders of the Civil Courts, the District Magistrate or Tehsildar, SAS Nagar, Mohali, are unable to hand over the physical possession of 'secured assets' to the petitioner-Institution.

[4] The aggrieved petitioner seeks a direction to the District Magistrate, Mohali, to hand over the physical possession of the secured assets comprising two SCFs bearing Nos.49 and 51, Phase -VI, Mohali, Punjab, to it.

[5] We have heard learned counsel for the petitioner. There appears to be some genuine difficulty being faced by the District Magistrate in handing over the physical possession of the 'secured assets' in view of the injunction orders passed by the Civil Court in the, prima facie, collusive

would be to dispose of this writ petition with liberty to the petitioner-Institution to immediately apply to the Courts of concerned Civil Judge (Junior Division), Mohali, before whom the above-stated civil suits are pending, to seek its impleadment as a co-defendant. The Civil Courts are directed (i) to entertain such application(s) and decide the same within one week and if need be, the next date of hearing in the civil suits shall also be preponed; (ii) the petitioner-Institution shall be at liberty to move application(s) for recalling of injunction orders, which have been passed with the consent of the borrowers; (iii) the Civil Courts are directed to decide such application(s) within two weeks and if so required, let the applications be heard on day-to-day basis; and (iv) the petitioner-Institute shall also be at liberty to point out to the Court that under the SARFAESI Act, the jurisdiction of the Civil Court is expressly barred and such bar on jurisdiction will have to continue, even in a matter which is relatable to the action taken under the SARFAESI Act. Such objections shall be decided by the Civil Courts in accordance with law and in a time-bound manner.

[6] The Presiding Officers of the concerned Civil Courts at Mohali, where the suits are pending, are directed to send their respective compliance reports to the Registrar Judicial within three days of expiry of the above given period.

(SURYA KANT)
JUDGE

July 28, 2017

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(SUDHIR MITTAL)
JUDGE

- 1. Whether speaking/reasoned ?**
- 2. Whether reportable ?**

Yes/No
Yes/No