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

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**Civil Writ Petition No.22688 of 2016
Date of Decision: May 09, 2017**

Mangat Ram

....Petitioner

versus

State Bank of India

...Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Pulkit Dagar, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate
for the respondent-Bank.

AJAY KUMAR MITTAL, J. (Oral)

The challenge in the instant writ petition filed under Articles 226/227 of the Constitution of India is to possession notice dated 14.06.2016 (Annexure P-2) issued under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, (in short, 'the Rules, 2002) and notice dated 11.02.2016 issued under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') read with Rule 9 of the Rules, 2002.

2. Section 17 of the SARFAESI Act reads thus:-

'17. Right to appeal

(1) Any person (including borrower), aggrieved by any of the

measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation : For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate

and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

PROVIDED that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

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

3. In view of the above, more so when the factual matrix is involved in the present case, it would be appropriate that the petitioner is relegated to the remedy as available under Section 17 of the SARFAESI Act by approaching the Debts Recovery Tribunal.
4. Dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 09, 2017
sonia gugnani

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No