

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

CR No.4128 of 2017 (O&M)
Date of Decision : 21.11.2018

M/s Manohar Agrotech and others

...Petitioners

VERSUS

State Bank of India

....Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Aalok Jagga, Advocate
for the petitioners.

Mr. S.S.Pathania, Advocate for the respondent.

B.S.WALIA, J. (Oral)

1. Challenge in this revision petition under Article 227 of the Constitution of India is to order dated 01.04.2017 (Annexure P-3), passed by the Debts Recovery Tribunal-III, Chandigarh (hereinafter referred to as 'the DRT-III'), pursuant to order dated 20.03.2017 (Annexure P-4), passed by the Debts Recovery Appellate Tribunal, Delhi (hereinafter referred to as 'the DRAT'), dismissing SA No.34 of 2017 (now SA No.321/17), on the ground of the same being premature by holding that without losing physical possession of the secured asset, remedy of appeal under Section 17 of The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act'). was not available despite the fact that the judgments of Hon'ble the Supreme Court and the SARFAESI Act, 2002, provides for

remedy even against notice under Section 13(4) of SARFAESI Act without making it mandatory to lose physical possession before filing of SA.

2. Learned counsel for the parties are ad-idem that the matter in issue is squarely covered by the pronouncement of Hon'ble the Supreme Court in CA No.10873 of 2018 arising out of SLP (Civil) No.5895 of 2018, in case titled as M/s Hindon Forge Pvt. Ltd. and another vs. State of Uttar Pradesh and another, wherein it has been held that a borrower/debtor can approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act at the stage of possession notice referred to in Section 13(4) read with Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002.

3. As regards the issue with regard to the maintainability of the revision petition against the impugned order under Article 227 of the Constitution of India, learned counsel for the petitioners has placed reliance upon the decision of Hon'ble the Supreme Court in Union of India and others vs. Debts Recovery Tribunal Bar Association 2013 (2) SCC 574, holding that High Courts are empowered to exercise their jurisdiction of superintendence under Article 227 of the Constitution of India in order to oversee the functioning of the Debts Recovery Tribunal and Debts Recovery Appellate Tribunal in terms of Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (read in conjunction with Section 37 of the SARFAESI Act) which provides that the provisions of the SARFAESI Act as well as rules made thereunder are in addition to, and not in derogation of *inter-alia* amongst other provisions, of the RDBI Act, 1993.

4. In the light of the position as noted above, impugned order dated 01.04.2017 (Annexure P-3) passed by the DRT-III is set aside and SA No.321/2017 is revived to its original number and position. Parties through their counsel are directed to put in appearance before the DRT-III, Chandigarh on 13.12.2018, whereupon proceedings would be taken out in accordance with law. Interim order dated 02.06.2017 to continue to remain in force till the parties put in appearance before the DRT-III, Chandigarh.

5. Revision petition disposed of in above terms.

(B.S.WALIA)
JUDGE

21.11.2018
rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No