

101

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP-13-2018

Date of decision : 04.01.2018

Asset Reconstruction Company (India) Ltd.

... Petitioner(s)

Versus

Union of India and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL  
HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. V.K. Sachdeva, Advocate  
for the petitioner.

\*\*\*\*

**AMIT RAWAL, J. (ORAL)**

The petitioner-Asset Reconstruction Company India Ltd., has  
approached this Court with the following relief:-

*"Civil Writ Petition under Articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of Certiorari for quashing the Impugned Final Notice/Order dated 26.12.2017 (Annexure P-1) issued/passed by Respondent No.2-The Project Director, National Highway Authority of India, thereby directing the respondent No.3-M/s Kiran Overseas Exports Limited to remove its movable/immovable properties from the alleged encroachment on National Highway No.1 (Now National Highway No.44) before 5.1.2018, without adjudicating the legal rights of the Petitioner-Financial Institution that physical possession of the secured assets/properties of M/s Kiran Overseas Exports Limited is with the Petitioner-Financial Institution under the provisions of SARFAESI Act, 2002 vide possession notice dated 19.9.2017 pursuant to order dated 18.8.2017 passed by*

*this Hon'ble High Court in CWP No.16366 of 2016 thereby directing the District Magistrate, Sonapat, Haryana, to take physical possession of the mortgage properties by giving effect to the order dated 08.02.2016 passed by District Magistrate Sonapat under Section 14 of the SARFAESI Act, 2002.*

*AND*

*For issuance of a writ in the nature of mandamus for issuance of appropriate directions to Respondent No.2 to keep in abeyance the implementation of the Impugned Order/Notice dated 26.12.2017 (Annexure P-1) till the final adjudication of the legal rights of the petitioner Company and till the final adjudication of the present writ petition in the interest of justice.*

*AND*

*For issuance of any other appropriate writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice."*

Mr. V.K. Sachdeva, learned counsel appearing on behalf of the petitioner-Company submits that the petitioner-Company is the assignee of Industrial Development Bank of India Ltd. (IDBI), Punjab National Bank and Union Bank. The Assigner-Banks vide their respective Sale Deeds of Assignment dated 30.06.2008, 15.09.2008 and 22.12.2008 assigned all the rights, title and interest over the dues recoverable from respondent No.3- Kiran Overseas Exports Ltd., with underlying securities. Thereafter, the petitioner had invoked the provisions of SARFAESI Act, 2002 for taking over the possession and the matter reached upto the office of District Magistrate in a proceedings initiated under Section 14 of the SARFAESI Act. The order of possession was recalled by the District Magistrate, Sonapat constraining the petitioner to approach this Court vide CWP No.16366 of 2016 and this Court vide its comprehensive order dated

18.08.2017, quashed the impugned order therein and allowed the writ petition with a direction to the District Magistrate, Sonapat to give effect to the order dated 08.02.2016 i.e. first order passed by the District Magistrate, Sonapat, for taking over the possession, and also to submit a compliance report to the Registrar Judicial of this Court. As per report of Naib Tehsildar dated 19.09.2017 (Annexure P-4), the possession had been taken on 19.09.2017. Thereafter, a public notice dated 23.09.2017 (Annexure P-5) with regard to taking over the possession was published in the newspaper. The bids were also invited in pursuance to the E-Auction Notice dated 24.11.2017 (Annexure P-6). The auction slated for particular date could not be materialized and therefore, vide corrigendum notice dated 15.12.2017 (Annexure P-8), the auction date was extended to 04.01.2018 i.e. today. The petitioner-Company received the notice dated 26.12.2017 (Annexure P-1) on 27.12.2017, indicating that the borrower of erstwhile banks had encroached the land belonging to the National Highway. All efforts were made to ascertain the actual and alleged encroachment by the borrower viz-a-viz the notification purportedly issued under Section 3 and 3(G) of the National Highways Act, but did not yeild any result. Even a representation dated 29.12.2017 (Annexure P-9) to the E-auction notice dated 26.12.2017 (Annexure P-1) had been submitted to the National Highway Authority, but of no avail and there is likelihood that the petitioner-company shall be dispossessed without affording any opportunity of hearing, much less, ascertainment of alleged encroachment which according to the petitioner is none.

After hearing learned counsel for the petitioner and perusing the averments made in the petition and without expressing any opinion on

the merits of the controversy, we dispose of the writ petition by directing respondent No.2/Project Director, National Highway Authority of India, A-3, UGF, Pushpanjali Enclave, Pitampura, New Delhi, to take a decision on representation dated 29.12.2017 (Annexure P-9) or any other relevant documents, which petitioner may produce, after affording an opportunity of hearing, to belie allegations in the impugned notice dated 26.12.2017 (Annexure P-1) by passing a speaking order in accordance with law.

Let this exercise be undertaken within a period of one month from the date of the receipt of the certified copy of this order.

It is expected that respondent No.2 shall not take the action as contemplated in notice dated 26.12.2017 (Annexure P-1).

( AMIT RAWAL )  
JUDGE

( ANIL KSHETARPAL )  
JUDGE

04.01.2018  
Yogesh Sharma

✓

Whether speaking/reasoned    Yes/ No

✓

Whether Reportable                Yes/ No