IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 15384 of 2018
Decided on : 29.11.2018

Anubhav Gupta and others

. . . Petitioner(s)

Versus

Small Industries Development Bank of India and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Aalok Jagga, Advocate
for the petitioner(s).

Mr. Shiv Kumar, Advocate
for respondent No.1.

Mr. Anand Chhibbar, Sr. Advocate with
Mr. Shekher Sarin, Advocate
for respondent No.2.

Mr. Aalok Kumar Jain, Advocate
for respondent No.10.

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AJAY KUMAR MITTAL, J. (Oral)

The guarantors of a loan availed by respondent No.2 – M/s Ravlak Technologies Pvt. Ltd., have approached this Court under Articles 226/227 of the Constitution, seeking quashing of order dated 02nd June, 2018 (Annexure P-14), passed by Debt Recovery Tribunal-II, Chandigarh (in short 'the DRT'), in SA No. 108 of 2018, titled as, “Anubhav Gupta Vs. Small Industries Development Bank of India”, whereby, the SA had been dismissed as premature by relying upon the decision of the Apex Court rendered in “Nobel Kumar Vs. Standard Chartered Bank” and the Full Bench of Allahabad High Court in the case, titled as, “M/s Hindon Forge Private Limited Vs. State of U.P. through DM, Ghaziabad and others” on the ground that since the physical possession of the secured asset has not been surrendered, therefore, the SA was not maintainable. Further challenge has also been made to the consequential sale notice dated 10th May, 2018 (Annexure P-11) in the writ petition.

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2. After hearing learned counsel for the parties, it requires to be noticed that the Apex Court in **Civil Appeal No. 10873 of 2018**, titled as, "**M/s Hindon Forge Pvt. Ltd. & another Vs. The State of Uttar Pradesh through District Magistrate, Ghaziabad & another**", decided on **01st November, 2018**, while setting aside the judgment of the Full Bench of the Allahabad High Court in '**M/s Hindon Forge Pvt. Ltd. and another Vs. State of U.P. Through D.M. Ghaziabad and others**' had held that the borrower/debtor or any other aggrieved person can approach the DRT under Section 17 of the SARFAESI Act at the stage of possession notice.

3. In view of the above, impugned order dated 02nd June, 2018 (Annexure P-14) is set aside and the matter is remitted back to the DRT to decide the same afresh on merits in accordance with law.

4. A prayer was made that during the pendency of the writ petition interim protection had been granted to the petitioners, which may be continued. Accordingly, the parties are directed to appear before the DRT on 17.12.2018 and the interim protection shall continue till then. It is, however, clarified that grant of interim protection till appearance before the DRT shall not be taken as an expression of opinion on the merits of the controversy.

5. It was further stated that during the pendency of the writ petition, on 07.06.2018, learned counsel for the petitioners had stated that the petitioners are in a position to get a buyer for ₹ 4.25 crores to satisfy the debt. Accordingly, the case was kept for the next day i.e. 08.06.2018 and on the said date three bank drafts for a sum of ₹ 4.25 crores were produced in Court which were directed to be kept in the safe custody of Registrar (Judicial) of this Court, for onward transmission to counsel for the respondent-Bank.

6. Thereafter, vide order dated 13th September, 2018, it was recorded

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that the learned counsel for respondent No.10 i.e. prospective buyer, submitted that the validity of the three demand drafts amounting to ₹ 4.25 Crores had expired and therefore, the same shall be taken back from the Registrar (Judicial) of this Court. However, it was ordered that the fresh demand drafts prepared in the name of Registrar (General) be deposited with the Registrar (Judicial) of this Court within next three days and it was further directed that on deposit of the said demand drafts, the same shall be encashed and kept in the Fixed Deposit for one month initially with the State Bank of India, High Court Branch by the Registrar (G) of this Court. A prayer was made for return of the amount of drafts along with interest accrued thereon to respondent No.10 – the prospective buyer.

7. Accordingly, while disposing of the writ petition, it is directed that the amount of drafts, which were encashed by the Registrar (G) of this Court in terms of order dated 13th September, 2018 and kept in the Fixed Deposit with the State Bank of India, High Court Branch, shall be returned to the learned counsel for respondent No.10 along with interest accrued thereon forthwith, after due receipt.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

November 29, 2018
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

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