HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.18741 of 2017 (O&M)
Date of Decision: 19.02.2018

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M/s Cholamandlam Investment and Finance Ltd. ...Petitioner

VS.

District Magistrate-cum-DC Ludhiana & Ors. ... Respondents

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Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Shekher Dhawan

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Present: Ms. Puja Chopra, Advocate for the petitioner

Mr. Sahil Sharma, DAG Punjab

Mr. SD Bansal, Advocate for respondents No.3&4

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SURYA KANT J. (Oral)

(1) 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. The petitioner advanced loan to respondents No.3&4-borrowers and due to alleged non-payment thereof, measures under Section 13 of the Act were taken against them. Thereafter, the petitioner applied under Section 14 of the Act for taking physical possession of the 'secured assets' but its application has been dismissed by the Additional District Magistrate, Khanna vide the impugned order dated 12.05.2017. The aggrieved petitioner has approached this Court.

(2) After hearing counsel for the parties at a considerable length this Court passed the following order on 16.01.2018:-

> *"Prima facie it appears that the impugned order has been passed by the District Magistrate for extraneous consideration for which the matter requires a deeper probe. However, before we pass the order to hand over the matter to State Vigilance Bureau, an opportunity is*

given to the then Additional District Magistrate, Khanna, to file an affidavit and explain the power of District Magistrate exercisable under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. He shall also remain present in Court."

(3) In deference to the aforesaid order, the District Magistrate is present in Court. Learned State counsel fairly submits that the impugned order dated 12.05.2017 can't sustain and may be set aside so that a fresh order can be passed in accordance with law.

(4) Counsel for the borrowers has also no objection to the aforesaid statement made by learned State counsel though according to him, the very action taken under Section 13 of 2002 Act is under challenge at the instance of the borrowers before the DRT.

(5) Having regard to the above-stated stand taken before us and without expressing any views on merit, the writ petition is allowed to the extent that the impugned order dated 12.05.2017 is set aside with a direction to the Additional District Magistrate, Khanna, who exercises the powers of District Magistrate under Section 14 of the Act, to pass a fresh order in accordance with law within *one month*. If respondents No.3&4 have approached the DRT, they shall be at liberty to pursue their remedy in accordance with law.

(Surya Kant)
Judge

19.02.2018 **(Shekher Dhawan)**
vishal shonkar **Judge**

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? ***No***