

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

**CWP No. 24742 of 2018
Decided on : 07.12.2018**

Bijender singh Lather and another

. . . Petitioner(s)

Versus

Debt Recovery Tribunal-II, Chandigarh and others

. . . Respondent(s)

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

PRESENT: Mr. V.K. Sachdeva, Advocate
for the petitioner(s).

Mr. Rohit Suri, Advocate
for respondents No.2 & 3.

AJAY KUMAR MITTAL, J. (Oral)

The petitioners have approached this Court under Articles 226/227 of the Constitution of India, seeking quashing of the impugned order dated 05.09.2018 (Annexure P-1), whereby, respondent No.1 – the Debt Recovery Tribunal-II, Chandigarh (in short 'the DRT') has refused to exercise its jurisdiction under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'the SARFAESI Act, 2002'), because the respondent-Bank has not adopted the final measure under Section 13(4) of the SARFAESI Act, 2004, as the physical possession of the properties is still with the petitioners by relying upon the Full Bench judgment of the Allahabad High Court. Further prayers for issuing directions to respondent No.1 – DRT to hear the SA filed before it on merits as well as restraining the respondent-Bank from initiating any further coercive proceedings under the SARFAESI Act, 2002, have been made.

2. It was urged by learned counsel for the petitioners that the DRT while refusing to entertain the SA filed by the petitioners had relied upon the judgment

Pvt. Limited and another vs. State of Uttar Pradesh, through DM Ghaziabad and others, 2018(2) RCR (Civil) 234, holding that without losing the physical possession the borrower cannot approach the DRT under Section 17 of the SARFAESI Act, 2002. Since, the Bank has not taken the physical possession of the mortgaged property, therefore, in the light of the aforesaid judgment, SA cannot be heard on merits being premature. However, the directions were issued by this Court in CWP No. 19318 of 2018, titled as, “M/s Shree Shayam Cotex Pvt. Ltd. Vs. SBI and others, to all the DRTs in Chandigarh not to dismiss the SA till the decision of the writ petition pending before this Court on the ground that physical possession had not been lost by the applicant. According to the learned counsel for the petitioners, the application under Section 17 of the SARFAESI Act was maintainable and it was not *sine-qua-non* that the borrower was to lose the physical possession of the secured asset before invoking the jurisdiction of the DRT.

3. It was not disputed by learned counsel for the parties that **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**, against the judgment of 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**' has been allowed by the Apex Court by setting aside the aforesaid judgment. Further, reliance was also placed by the learned counsel for the petitioners upon the decision of this Court in **CWP No. 19318 of 2018**, titled as, “**M/s Shree Shayam Cotex Pvt. Ltd. Vs. State Bank of India and others**”, decided on **15th November, 2018**, wherein, it has been held that the borrower or any other aggrieved person would be entitled to invoke the jurisdiction of the DRT under Section 17(1) of the SARFAESI Act,

2002 Act on issuance of notice under Section 13(4) of the said Act.

4. In view of the above, impugned order dated 05th September, 2018 (Annexure P-1) is set aside and the DRT is directed to proceed further in the matter in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

December 07, 2018

J.Ram

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