

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

**CWP No. 25384 of 2018
Decided on : 07.12.2018**

Shashi Chadha and another

... Petitioner(s)

Versus

Asset Reconstruction Company (India) Ltd. and others

... Respondent(s)

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

PRESENT: Mr. K.S. Jetley, Advocate
for the petitioner(s).

Ms. Seerat Sharma, Advocate for
Mr. Nitin Grover, Advocate
for respondents No.1 & 2.

Mr. Rohit Suri, Advocate
for respondents No.3 & 4.

Mr. Som Nath Aneja, Advocate.

AJAY KUMAR MITTAL, J. (Oral)

The petitioners by way of present petition filed under Articles 226/227 of the Constitution of India, seek quashing of order dated 03rd August, 2018 (Annexure P-9), passed in SA No. 520 of 2017, by the Debts Recovery Tribunal-II, Chandigarh (in short 'the DRT') – respondent No.9. Further, it has been prayed that the DRT be directed to decide the SA on merits and also the operation of the impugned order (Annexure P-9) be stayed in the meanwhile.

2. It was urged by learned counsel for the petitioners that the Tribunal while holding the petition premature had relied upon the Full Bench judgment of Allahabad High Court in '**M/s. Hindon Forge Pvt. Ltd. And another vs. State of U.P. Through D.M. Ghaziabad and others**'. According to the learned counsel for the petitioners, the application under Section 17 of the Securitization and Reconstruction of Financial Assets Act and Enforcement of Security Interest Act,

2002 (in short '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.

4. In view of the above, impugned order dated 03rd August, 2018 (Annexure P-9) is set aside and the matter is remitted back to the DRT to decide the same afresh on merits 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*