

233 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No.26327 of 2018  
Decided on : 21.11.2018

Vijay Jha

..... Petitioner

Versus

Debt Recovery Tribunal-II, Chandigarh & ors.

..... Respondents

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

Present : Mr. Vivek Goyal, Advocate  
for the petitioner.

Mr. Sandeep Suri, Advocate  
for respondent No.2.

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**Ajay Kumar Mittal, J.**

This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the order dated 12.07.2018 (Annexure P-5) whereby Debt Recovery Tribunal, Chandigarh (in short 'Tribunal') – respondent No.1 dismissed the SA No.220 of 2017 filed by the petitioner only on the ground that physical possession of the secured asset has not been delivered and therefore, no cause of action occurred to him to approach the Tribunal.

2. The Tribunal had relied upon the decision of Full Bench of Allahabad High Court in *M/s Hindon Forge Private Ltd. vs. State of UP through DM, Ghaziabad and others, 2018 SCC Online SC 237* and the judgment passed by Hon'ble Supreme Court in *Nobal Kumar vs. Standard Chartered Bank, (2013) 9 SCC 620* and held that the petition under Section 17 before the Tribunal would be maintainable only after the physical possession of the mortgaged property was lost by the borrower.

3. It was not disputed that the Supreme Court in Civil Appeal No. 10873 of 2018 titled as “**M/s. Hindon Forge Pvt. Ltd. And another vs. The State of Uttar Pradesh Through D.M. Ghaziabad and another'** (decided on 01.11.2018) has set aside the Full Bench decision of the Allahabad High Court in M/s Hindon Forge Pvt. Ltd.'s case(Supra) after considering its earlier decision in Nobal Kumar's case(supra).

4. Accordingly, the present petition is disposed of and the impugned order dated 12.07.2018 (Annexure P-5) is set aside and the matter is remanded back to the Tribunal to proceed in accordance with law.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**(MANJARI NEHRU KAUL)**  
**JUDGE**

21.11.2018

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| Whether speaking/reasoned: | Yes/No |
| Whether reportable :       | Yes/No |