

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

**CWP No. 26606 of 2018
Decided on : 26.11.2018**

Gagan Nadkarni

... Petitioner(s)

Versus

Tata Capital Financial Service Limited and another

... Respondent(s)

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

PRESENT: Ms. Mandeep Kaur Kahlon, Advocate
for the petitioner(s).

Mr. Sanjeev Pathak, Advocate
for respondent No.1.

AJAY KUMAR MITTAL, J. (Oral)

The petitioner by way of present petition filed under Articles 226/227 of the Constitution of India, seeks a writ in the nature of *Certiorari*, for setting aside the order dated 05th October, 2018 (Annexure P-6), passed by respondent No.2 i.e. Debts Recovdry Tribunal-II, Chandigarh (in short 'the DRT'), in SA No. 197/18, titled as, "Gagan Nadkarni Vs. Tata Capital Financial Services Limited", wherein, the application filed under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'the SARFAESI Act'), has been dismissed as premature.

2. It was urged by learned counsel for the petitioner 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 petitioner, 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. The Supreme 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 borrow/debtor can approach the DRT under Section 17 of the SARFAESI Act at the stage of possession notice.

4. In view of the above, impugned order dated 05th October, 2018 (Annexure P-6) 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

November 26, 2018
J.Ram

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