

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.26635 of 2018
Date of decision :18.12.2018

Harvinder Singh and another

..... Petitioners

Versus

The Debt Recovery Tribunal-II, Chandigarh and others

..... Respondents

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

Present: Mr.Anmol Verma, Advocate for the petitioners.
Mr.Mukesh Kumar Gupta, Advocate for respondent
No.2.

AJAY KUMAR MITTAL,J.

1. The petitioners by way of present petition filed under Articles 226/227 of the Constitution of India, seek quashing of order dated 24.7.2018,Annexure P.1, passed in SA No.147 of 2017, by the Debts Recovery Tribunal-II, Chandigarh (in short 'the DRT')-respondent No.1, notices regarding physical possession dated 11.4.2018, Annexure P.3 and dated 21.8.2018, Annexure P.4, issued by respondent No.2 and the order dated 11.9.2017, Annexure P.2, passed by respondent No.3.

2. It was urged by learned counsel for the petitioners that the DRT while holding the petition premature had relied upon the judgment of Apex Court rendered in **Standard Chatered Bank Vs. V. Nobel Kumar and others, (2013) 9 SCC 620**. According to the learned counsel for the petitioners, the application under Section 17 of the 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 v. 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, on issuance of notice under Section 13(4) of the said Act.

4. In view of the above, impugned order dated 24.7.2018 (Annexure P-1) is set aside and the matter is remitted back to the DRT to decide the same afresh on merits in accordance with law.

5. The parties through their counsel are directed to appear before the DRT on 24.1.2019.

(AJAY KUMAR MITTAL)
JUDGE

December 18, 2018
KD

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking / reasoned:
Whether Reportable:

Yes / No
Yes / No