

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

**CWP No. 27358 of 2018
Decided on : 16.11.2018**

Bhupinder Singh and another

... Petitioner(s)

Versus

Debts Recovery Tribunal-III, Chandigarh and another

... Respondent(s)

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

PRESENT: Mr. Aalok Jagga, Advocate
for the petitioners.

Mr. Ravi Sharma, Advocate
for respondent No.2 - caveator.

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 05th April, 2017 (Annexure P-4) passed in S.A. No. 363 of 2017, titled as, “Bhupinder Singh Vs. Central Bank of India” by the Debt Recovery Tribunal-III, Chandigarh (in short 'the DRT') i.e. respondent No.1, wherein, the aforesaid 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 petitioners that the DRT while holding the petition premature had relied upon the DRAT Delhi order rendered in Misc. Appeal No.60 of 2016, titled as, “Vikram Bakshi Vs. HDFC and others”, decided on 20.03.2017. 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.

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/debter 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 April, 2017 (Annexure P-4) 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 16, 2018

J.Ram

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