

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

**CWP No. 27489 of 2018
Decided on : 07.12.2018**

M/s Chaudhary Poultry Farm through partners

. . . Petitioner(s)

Versus

Punjab National Bank and another

. . . Respondent(s)

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

PRESENT: Mr. Avtar Singh, Advocate for
Mr. S.S. Momi, Advocate
for the petitioner(s).

Mr. Rajan Chawla, Advocate
for respondent No.1.

AJAY KUMAR MITTAL, J. (Oral)

The petitioners have approached this Court under Articles 226/227 of the Constitution of India, seeking quashing of the impugned notice dated 20.10.2017 (Annexure P-5) issued under Section 14(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short, 'the SARFAESI Act, 2002') and subsequent proceedings i.e. order dated 29.08.2018 (Annexure P-6), passed by the District Magistrate, Kurukshetra - respondent No.2, under Section 14 of SARFAESI Act, 2002.

2. It was urged by learned counsel for the petitioners that while petitioners approached the Debts Recovery Tribunal-II, Chandigarh (in short 'the DRT') by way of SA No. 206 of 2018, the DRT vide order dated 10.10.2018 (Annexure P-7) refused to entertain the SA filed by the petitioners by relying upon the judgment of the Full Bench of the Allahabad High Court rendered in *M/s*

Hindon Forge Pvt. Limited and another vs. State of Uttar Pradesh, through DM Ghaziabad and others, 2018(2) RCR (Civil) 234, holding that without losing the

physical possession the borrower cannot approach the DRT under Section 17 of the SARFAESI Act, 2002. Since, the Bank has not taken the physical possession of the mortgaged property, therefore, in the light of the aforesaid judgment, SA cannot be heard on merits being premature. However, the directions were issued by this Court in CWP No. 19318 of 2018, titled as, “M/s Shree Shayam Cotex Pvt. Ltd. Vs. SBI and others, to all the DRTs in Chandigarh not to dismiss the SA till the decision of the writ petition pending before this Court on the ground that physical possession had not been lost by the applicant. 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.

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. 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, 2002 Act on issuance of notice under Section 13(4) of the said Act.

4.

In such a situation and keeping in view the above, since the matter is

already pending adjudication before the DRT, therefore, without expressing any opinion on the merits of the controversy, the impugned order dated 10th October, 2018 (Annexure P-7) is set aside and the DRT is directed to proceed further in the matter, 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