

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

**CWP No. 27527 of 2018  
Decided on : 16.11.2018**

Bachint Singh

... Petitioner(s)

Versus

State Bank of India and others

... Respondent(s)

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

**PRESENT:** Mr. Jitender S. Chahal, Advocate  
for the petitioner(s).

Mr. Pradeep Sharma, Advocate for  
Mr. Gaurav Goel Ravi Sharma, Advocate  
for respondents No.1 to 3.

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**AJAY KUMAR MITTAL, J. (Oral)**

The petitioner by way of present petition filed under Articles 226/227 of the Constitution of India, seeks quashing of order dated 01<sup>st</sup> April, 2017 (Annexure P-6), passed in SA No. 309 of 2015, which was changed into SA No. 139 of 2017, titled as, "Bachint Singh Vs. SBOP" was dismissed being premature. A further prayer for quashing of impugned notices dated 01.08.2015 and 12.10.2015 (appended as Annexures P-2 & P-4) under Section 13 (2) and 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'the SARFAESI Act').

2. It was urged by learned counsel for the petitioner that the Debt Recovery Tribunal-II, Chandigarh (in short '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 petitioner, 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. 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 **01<sup>st</sup> 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 01<sup>st</sup> April, 2017 (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. The parties are directed to appear before the DRT on 17.12.2018.

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

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

**November 16, 2018**

*J.Ram*

*Whether speaking/reasoned: Yes/No*

*Whether Reportable: Yes/No*