

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

**CWP No. 29544 of 2017
Decided on : 09.08.2018**

M/s Ridaus Auto Component Pvt. Ltd., Gurgaon and others

Petitioners

Versus

Central Bank of India and another

Respondents

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**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

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

Mr. Ravi Sharma, Advocate
for the respondent-Bank.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 10.11.2017 (Annexure P-15), dismissing the Miscellaneous Application (for short 'M.A.') No. 245 of 2017 in Securitisation Application (for short 'S.A.') No. 87 of 2017 filed by the petitioner-company.

2. The Central Bank of India, Branch Office, Industrial Area, Anand Parbat and Debts Recovery Tribunal-II, Chandigarh (for short 'D.R.T.-II') have been arrayed as respondents No.1 and 2 in writ petition.

3. The petitioner No.1, a private limited company is engaged in manufacturing of equipment known as "Speed Governors". The petitioner has a manufacturing unit at Gurgaon. Petitioner availed cash credit limit of ₹2.5 crores from respondent No.1 and the same was sanctioned on 12.02.2015. The petitioner-company suffered certain set-back in the business

and account of petitioner-company was declared as Non-Performing Asset (N.P.A.) on 31.12.2015. A notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') was issued on 18.01.2016, claiming that an amount of ₹3,30,48,363/- is recoverable. The petitioner, on 18.05.2016, submitted its reply under Section 13(3A) of the SARFAESI Act. The respondent No.1 issued notice under Section 13(4) of the Act on 27.04.2016 and thereafter the notices were issued on 19.05.2016 and 14.06.2016.

4. The petitioner filed an S.A. No. 326 of 2016 before the D.R.T.-II on 28.07.2016, challenging the demand notice and possession notice. The S.A. was dismissed on 30.03.2017 as pre-mature because the physical possession of the mortgaged property was not taken by the bank. Aggrieved of the dismissal of S.A., the petitioner-company filed CWP-COM No. 71 of 2017 in the High Court. The writ petition was disposed of vide order dated 31.07.2017. The order of respondent No.2 was set aside and direction was issued that S.A. should be decided on merits.

5. For ready reference, the order is quoted below :-

“(1) The petitioners filed SA No.87/2017 which the DRT-II, Chandigarh has dismissed being premature on the ground that the possession of the mortgaged property has not been taken so far.

(2) Learned counsel for the financial institution fairly states that instead of keeping the matter pending before this Court with an interim stay, let the Tribunal's order dated 30.03.2017 (P10) be set aside and the matter be remitted to the Tribunal to decide the same afresh on merits.

(3) In view of the stand taken by learned counsel for the

financial institution, the writ petition is allowed in part; the impugned order dated 30.03.2017 of DRT-II, Chandigarh is set aside and the said Tribunal is directed to decide the said SA on merits irrespective of the view taken by DRAT in “Vikram Bakshi & Company Pvt. Ltd. vs. Housing Development Finance Corporation Ltd. & Ors.,” which has since been stayed by Delhi High Court. The DRT-II is directed to decide the SA as early as possible and preferably within two months from the date of receipt of certified copy of this order.

(4) Ordered accordingly.”

6. The petitioner filed M.A. No. 245 of 2017 for placing on record the order of this Court dated 31.07.2017. The application came up for hearing on 10.11.2017 and the same was dismissed. It was held that the order of High Court was received by respondent No.2 on 21.08.2017 and the matter was listed on 25.08.2017. On 25.08.2017, no one appeared on behalf of the applicant before the Tribunal and the matter was adjourned to 08.09.2017. On 08.09.2017, none appeared and the S.A. was dismissed. The contention raised by the learned counsel for the applicant that no notice was served, was rejected. The relevant portion of the order is reproduced below :-

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“Counsel for the applicant in this application states that no notice was sent by this tribunal after revival of the matter.

Be that as it may.

Since, counsel has filed this application and it was for the counsel who was appearing in the matter previously to be more vigilant after the orders were passed by the Hon'ble High Court of Punjab and Haryana.

Counsel for the applicant further states that once the Securitisation Application is disposed off the vakalatnama of the counsel ceases to exist.

Be that as it may.

Name of the counsel for the applicant who was appearing in the matter was shown in the advance cause notice of both the dates and since, the Securitisation Application was revived, the duties are also cast upon the counsel to appear in the matter especially when it was on the asking of the applicants that the order was set-aside by the Hon'ble High Court of Punjab and Haryana.

In any case, this Miscellaneous Application has been filed more than two months after the order was passed by the Hon'ble High Court of Punjab and Haryana and as stated above, after the order came to the notice of this Tribunal, the matter was listed and Securitisation Application was disposed of due to non appearance of counsel of the applicant.

In view of above, order passed by the Hon'ble High Court of the Punjab and Haryana is taken on record and this Miscellaneous Application is allowed and disposed off.

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7. Aggrieved of the order, the present writ petition has been filed.
8. Notice of motion was issued after hearing the learned counsel for the parties. It is evident that the Tribunal dismissed the S.A., without issuing notice to the parties. The application was filed for placing on record the order of High Court and for revival of the S.A. The same has also been dismissed on the ground that the counsel who was appearing in the matter should have been more vigilant. Further, the matter was shown in the advance cause list on 25.08.2017 and on 08.09.2017 and hence the duty was casted upon the counsel to appear in the matter.
9. We would not like to comment upon the way the Tribunal proceeded to deal with the matter. The fact remains that after receiving the orders of the High Court with a direction to decide the S.A. on merits, the parties were not put to notice. The direction to the Tribunal was not complied

with and the same was dismissed on the ground that no one appeared on behalf of the applicant. The orders have been passed in violation of principles of natural justice.

10. The orders Annexure P-14 and P-15, dated 08.09.2017 and 10.11.2017 respectively are set aside and the matter is remitted back to the Tribunal to decide the S.A. on merits. The parties are directed to appear before the Tribunal on 27.09.2018.

11. While issuing notice of motion, this Court ordered to maintain *status-quo* regarding possession. The said interim order would continue till 27.09.2018, until and unless specifically extended by the Tribunal on that date.

12. We may hasten to add here that this Court while extending the interim directions has not expressed any opinion on the merits of the controversy.

13. The writ petition is allowed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

09.08.2018
pankaj baweja

<i>Whether speaking/reasoned:</i>	<i>Yes / No</i>
<i>Whether reportable :</i>	<i>Yes / No</i>