

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

**CWP No. 28538 of 2018
Decided on : 16.11.2018**

Ashwani Gupta

... Petitioner(s)

Versus

Asset Reconstruction Company (India) Ltd. and others

... Respondent(s)

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

PRESENT: Mr. Shvetanshu Goel, Advocate
for the petitioner(s).

Ms. Seerat Sharma, Advocate
for the respondent(s).

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 13th August, 2018 (Annexure P-5), passed in SA No. 413 of 2017, by the Debts Recovery Tribunal, Chandigarh (in short 'the DRT') – respondent No.4. Further, it has been prayed that the DRT be directed to decide the SA on merits and also respondent No.1 be directed to not to interfere in the peaceful possession of the petitioner.

2. It was urged by learned counsel for the petitioners that the Tribunal while holding the petition premature had relied upon the Full Bench judgment of Allahabad High Court in '**M/s. Hindon Forge Pvt. Ltd. And another vs. State of U.P. Through D.M. Ghaziabad and others**'. According to the learned counsel for the petitioner, the application under Section 17 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 Vs. State of U.P. Through D.M. Ghaziabad and others**' has been allowed by the Apex Court by setting aside the aforesaid judgment.

4. In view of the above, impugned order dated 13th August, 2018 (Annexure P-5) 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*