

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.30974 of 2018
Date of decision :18.12.2018

M/s Ramesh Bansal Ispat Udyog Private Limited and others

..... Petitioners

Versus

Punjab and Sind Bank and another

..... Respondents

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

Present: Mr.Aalok Jagga, Advocate for the petitioners.
Mr.BPS Dhaliwal, Advocate for the respondents.

AJAY KUMAR MITTAL,J.

1. The petitioners by way of present petition filed under Articles 226/227 of the Constitution of India, seek quashing of order dated 23.3.2017 (Annexure P-4), passed in SA No. 61 of 2017, by the Debts Recovery Tribunal-I, Chandigarh (in short 'the DRT')-respondent No.2 dismissing the application filed by the petitioners on the ground that physical possession of the secured asset has not been lost by the petitioners and, therefore, SA filed under Section 17 of the Securitization and Reconstruction of Financial Assets Act and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') was not maintainable.

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, 2018(2) RCR (Civil) 234.** 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 v. 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, on issuance of notice under Section 13(4) of the said Act.

4. In view of the above, impugned order dated 23.3.2017 (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.

5. The parties through their counsel are directed to appear before the DRT on 30.1.2019.

(AJAY KUMAR MITTAL)
JUDGE

December 18, 2018
KD

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking / reasoned:
Whether Reportable:

Yes / No
Yes / No