

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

**CWP No. 33464 of 2018
Decided on : 19.12.2018**

M/s Global Impex

. . . Petitioner(s)

Versus

Debts Recovery Tribunal-III, Chandigarh and another

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

PRESENT: Mr. Pankaj Gupta, Advocate
for the petitioner(s).

AJAY KUMAR MITTAL, J. (Oral)

This order shall dispose of Civil Writ Petitions No. 33464, 33471 & 37547 of 2018, as learned counsel for the petitioner is agreed that the issue involved in all the writ petitions is identical. However, the facts are being extracted from CWP No. 33464 of 2018.

2. The petitioner by way of present petition filed under Articles 226/227 of the Constitution of India, seeks quashing of order dated 28th July, 2018 (Annexure P-2), passed in SA No. 106 of 2018, by the Debts Recovery Tribunal-III, Chandigarh (in short 'the DRT') – respondent No.1. Further, it has been prayed that the DRT be directed to hear and decide the SA on merits.

3. It was urged by learned counsel for the petitioner that the Tribunal while holding the petition premature had relied upon the Full Bench Judgment 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, wherein, it was held that without losing the physical possession the borrower cannot approach the DRT under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'the SARFAESI Act, 2002'). According to the learned counsel, the

application under Section 17 of the SARFAESI Act, 2002, 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.

4. It was not disputed by learned counsel for the petitioner 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 petitioner 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.

5. In view of the above, the writ petitions are allowed, the impugned orders dated 28th July, 2018 (Annexure P-2) in all the three petitions are set aside and the matters are remitted back to the DRT to decide the same afresh on merits in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

December 19, 2018

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No