

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

CWP No.40587 of 2018
Date of Decision: 28.12.2018

M/S MAHAVIR COLD DRINK AND ANR

....Petitioners

Versus

THE DEBT RECOVERY TRIBUNAL AND ANR

....Respondents

**CORAM:HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Kamaldip Singh Sidhu, Advocate
for the petitioners.

ARUN MONGA, J.(Oral)

The present writ petition has been filed inter alia impugning order dated 11.12.2018 passed by The Debt Recovery Tribunal-III, Sector 17 Chandigarh, whereby the application of the petitioners filed under Section 17 of the SARFAESI, Act impugning the notice dated 02.06.2018 issued under Section 13(2) of the Act *ibid* was challenged.

While challenging the notice of taking over the possession under Section 13 (2) of the Act *ibid* the petitioner also made a prayer that a direction be issued to the Bank to reschedule the total due amount by accepting his offer to pay the same in equal monthly installments of Rs.30,000/-. However, the DRT while disposing of the said application under Section 17, in limni, observed that since the applicant has not challenged the action of Bank under the SARFAESI

Act but has filed the SA only with a prayer to direct the Bank to allow the applicant to settle his dues, therefore, the petitioner was non suited on that ground alone. The DRT while dismissing the SA observed that the same was not maintainable as the prayer seeking a direction to make the payment of the dues is not envisaged under Section 17 of the Act unless an action and/or order of the Bank is challenged under the SARFAESI Act. Learned counsel for the petitioner has shown us the prayer of SA wherein inter alia it is prayed as below:

'further declare the notice dt.02.06.2018 (Annex.A-4) under Section 13(2) of the Securitization Act (Annex. A-1) regarding property (i.e. 0K-6M share of 05K-14M, Khasra no. 137//15 (5-14) Khewat No.683 Jamabandi for the year 2010-11) situated at Nihal Singh Wala as illegal, arbitrary, null and void.'

A perusal of the prayer above clearly reflects that the petitioner indeed had challenged the possession notice dated 02.06.2018 issued under Section 13(2) of the SARFAESI Act before the DRT and the same very notice has been assailed in the present writ petition. In view thereof, the impugned order dated 11.12.2018 passed by the DRT seems to suffer from the error apparent on record to the extent that the DRT seems to have lost sight of the fact that apart from the prayer to seek direction for settling the dues the notice of possession notice issued under Section 13(2) of the Act was also under challenge in the SA. In the circumstances the order dated 11.12.2018 passed by the DRT is set aside with a direction to entertain the SA No.164 of 2018 on merits and proceed with the same

in accordance with law.

Learned counsel for the petitioners points out that he had also made an interim prayer in respect of protecting the possession of the house of the petitioners during the pendency of the SA before the DRT. Learned counsel for the petitioner states that due to extreme urgency he will appear before the DRT on 31.12.2018.

In view thereof the DRT is directed to hear arguments on the interim relief before proceeding on merits of the matter and to pass the orders in accordance with law.

[ARUN MONGA]
JUDGE

[LALIT BATRA]
JUDGE

December 28, 2018
rashmi

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no