

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-7357-2019

Date of Decision: 18.3.2019

Kotak Mahindra Bank Ltd.

...Petitioner

Versus

District Magistrate-cum-Deputy commissioner, Ambala and others

...Respondents

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

PRESENT: Mr. Vivek Sethi, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ of mandamus directing the respondent to take a decision on the application dated 15.10.2018 (Annexure P-12) moved under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short “the SARFAESI Act”).

2. Respondents No.2 to 8 approached the petitioner for the business loan and a sum of ₹ 3,70,00,000/- was sanctioned vide sanction letter dated 7.2.2018 against loan account No. 642044002629. Facility-cum-Hypothecation Agreement dated 21.2.2018 (Annexure P-2) was entered between the petitioner and respondents No.2 to 8. Deed of Guarantee dated 21.2.2013 (Annexure P-3) was executed between the

petitioner and respondents No.3 to 8 which was further extended on

22.5.2015 (Annexure P-4). The credit limit of respondents No.2 to 8 was dropped to ₹ 61,50,000/- by the petitioner and respondent No.2 was informed in this regard vide letter dated 7.2.2018 (Annexure P-5). Respondents No.2 to 8 had defaulted in repayment of loan amount and, therefore, their account was declared as Non-Performing Accounts (NPA) on 1.5.2018. A notice dated 18.6.2018 (Annexure P-6) was issued to respondents No.2 to 8 for payment of loan amount of ₹ 65,00,867.55, but to no effect. Thereafter, a notice dated 7.7.2018 (Annexure P-7) under Section 13(2) of the SARFAESI Act was issued to respondents No.2 to 8. Since, the said respondents failed to make the loan amount in question, the petitioner took symbolic possession of the mortgaged property as mentioned in para 16 of the writ petition by affixing the possession notice dated 11.9.2018 (Annexure P-8) under Section 13(4) of the SARFAESI Act on the outer door of the properties of the borrowers. The possession notice was also got duly published in two newspapers in English and Punjabi in the editions dated 13.9.2018 (Annexure P-9 Colly). The petitioner took symbolic possession of the mortgaged properties as mentioned in para 17 of the writ petition by affixing the possession notice dated 25.9.2018 (Annexure P-10) under Section 13(4) of the SARFAESI Act on the outer door of the properties of the borrowers. The possession notice was also got duly published in two newspapers in English and Punjabi in the editions dated 28.9.2018 (Annexure P-11 Colly). Thereafter, the petitioner filed an application dated 15.10.2018 (Annexure P-12) under Section 14 of the SARFAESI Act before respondent No.1 for taking physical possession of the mortgaged property, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved an application dated 15.10.2018 (Annexure P-12) under Section 14 of the SARFAESI Act before respondent No.1, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.1 to take a decision on the application dated 15.10.2018 (Annexure P-12), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the concerned parties within a period of one month from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

March 18, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No