

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

CWP-10278-2019

Decided on: 16.04.2019

Ranbir Singh & others

....Petitioners

Versus

Authorised Officer, Bank of Baroda & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr.N.C.Sahni, Advocate, for the petitioners.

Mr.C.S.Pasricha, Advocate, for the caveator/respondents.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present writ petition, filed under Article 226 of the Constitution of India, is to the order dated 12.04.2019 (Annexure P-10), passed by the Debts Recovery Appellate Tribunal, Delhi, vide which, interim relief qua dispossession, has been denied.

The case of the petitioners is that they were running a hotel in the mortgaged property and therefore, the denial, as such, of the interim relief, is not justified as it would displace a lot of persons. It is submitted that the petitioners have been regularly paying the amounts due, as such.

It is a matter of record that on account of the credit facility which was availed, a demand notice (Annexure P-1) was issued under Section 13(2) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act'), whereby an amount of Rs.2,11,23,159/- which was due w.e.f. 21.07.2014, was served upon the petitioners. Thereafter, on 13.01.2015, possession notice was also issued under Section 13(4) of the SARFAESI Act. Police help was sought under Section 14 on 13.08.2015

(Annexure P-3).

A writ petition bearing CWP-10958-2018 was also filed by the Bank, as the State was not providing appropriate help, in which directions were issued by the Division Bench on 03.05.2018, to ascertain correct facts and take appropriate action. The petitioners, thereafter, filed CWP-12576-2018 titled *Ranbir Singh & others Vs. Authorised Officer, Bank of Baroda & others*. It is pertinent to notice that during the pendency of the writ petition, the Division Bench, on 13.12.2018, directed the petitioners to produce a demand draft of Rs.50 lakhs on the next date, to show the *bona fides* as more than the amount of Rs.1 crore was still outstanding. Petitioners chose to withdraw the petition on 11.01.2019 (Annexure P-4), to seek their remedy under Section 17 of the SARFAESI Act.

In the meantime, the Debt Recovery Tribunal, vide order dated 15.01.2019, also allowed the OA for recovery of Rs.2,65,09,522/- and directed that recovery certificate be issued, accordingly. Petitioners failed to get interim relief in the petition filed under Section 17 and the SA was dismissed on 26.02.2019 (Annexure P-6). Thereafter, the appeal was filed before the Tribunal at Delhi, which has also declined to grant any interim relief vide the impugned order by noticing that the payments have been due since the last 5 years, while placing reliance upon various judgments of the Apex Court, on account of the petitioners being defaulters, as such.

Counsel for the petitioners, thus, submitted that the petitioners have been paying the amounts on regular basis.

Mr.Pasricha has put in appearance on account of advance copy having been supplied and has pointed out that the amounts have been duly adjusted. Admittedly, Mr.Sahni also could not dispute this aspect that whatever repayment has been done, that has been duly shown in the calculation sheet which was also filed before the Debts Recovery Tribunal. It is further pointed out from the said sheet that as on 31.03.2019, an amount of Rs.2,65,09,522.78 is still due.

It has been put to the counsel for the petitioners that for the benefit of interim relief, if he is willing to deposit some amount, to show their *bona fides*. Counsel for the petitioners has expressed his inability, as such, to deposit any amount, to show his *bona fides*, which should at least be 1/3rd of the amount due.

Resultantly, this Court is of the opinion that the order passed in the petition filed under Section 17 and upheld by the Appellate Tribunal, does not warrant any interference, under Article 226 of the Constitution of India, being a discretionary jurisdiction. Needless to say that in the appeal to be filed against the order of the DRT, the Appellate Tribunal will decide the said issue on merits, without being prejudiced by any observations made herein.

Dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

16.04.2019
Sailesh

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>