

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on: 29.04.2019

1. CWP-11053-2019

Zenica Cars India Pvt. Ltd. and ors.

.... Petitioners

Versus

The Debt Recovery Tribunal-II, Chandigarh and ors. Respondents

2. CWP-11054-2019

Zenica Performance Cars Pvt. Ltd. and ors.

.... Petitioners

Versus

The Debt Recovery Tribunal-II, Chandigarh and ors.Respondents

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

Present: Mr. Anand Chibber, Sr. Advocate with
Mr. Varun Tandon, Mr. Abhilaksh Grover,
Mr. Shikhar Sarin & Mr. Anand S. Miglani, Advocates
for the petitioners.

Mr. Rajeeve Mehra, Sr. Advocate with
Mr. Manish Jain & Mr. Mayur Kanwar, Advocates
for respondent No.2-HDFC-caveator.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Rose Gupta, Mr. Mohinder S. Nain and
Mr. Himanshu Gupta, Advocates.

AJAY KUMAR MITTAL, J (ORAL)

This order shall dispose of CWP Nos. 11053 and 11054 of 2019, as according to the learned counsel for the parties, the issue involved in these petitions is identical.

2. In view of the consensus between the learned counsel for the parties, the detailed facts are not being recorded. Prayer made in civil writ petitions under Articles 226/227 of the Constitution of India, inter alia, is for quashing the impugned orders dated 05.02.2019 and

20.03.2019 (Annexures P-14 and P-15) passed by respondent No.3-The District Magistrate, Gurugram under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act')

3. The petitioner in CWP No. 11053 of 2019 had mortgaged the following properties for securing the loan:

“1. Built up property on the Ground Floor, Orchid Centre, Sector-53, Golf Course Road, Gurugram admeasuring 13605 square feet (super area).

2. Built up property on E-26, Block E, South City-1, Gurugram, Haryana admeasuring 840 square meters (1004.64 square yards).

4. However, in CWP No.11054 of 2019, the following properties were furnished as secured asset for obtaining the loan facility:-

“1. Unit No.G01, Ground Floor and F01, First Floor in Tapasya Co-operative Heights Village Wazirabad and Haiderpur Viran, Sector-53, Gurugram.

2. E-26, South City-1, Gurugram, Haryana”

5. Since, the petitioners failed to clear the outstanding amount, the bank initiated action under Section 14 of the SARFEASI Act. The District Magistrate passed the order for taking physical possession of the secured assets. The petitioners approached the Debts Recovery Tribunal-II, Chandigarh (in short 'DRT') impugning the said order, in which the next date of hearing is 03.05.2019.

6. A perusal of the writ petitions shows that besides the commercial property in each of the writ petitions, E-26, Block E, South City-1, Gurugram, Haryana, which is also the secured asset is a residential house, where statedly petitioner No.2 and 3 and their family

members are residing. The other unit No.G01, Ground Floor and F01, First Floor in Tapasya Co-operative Heights Village Wazirabad and Haiderpur Viran, Sector-53, Gurugram and Built up property on the Ground Floor, Orchid Centre, Sector-53, Golf Course Road, Gurugram admeasuring 13605 square feet (super area) and Unit No.G01, Ground Floor and F01, First Floor in Tapasya Co-operative Heights Village Wazirabad and Haiderpur Viran, Sector-53, Gurugram are the commercial showrooms for Audi and Porsche.

7. Learned counsel for the petitioners made a statement that in so far as the commercial properties situated at Unit No.G01, Ground Floor and F01, First Floor in Tapasya Co-operative Heights Village Wazirabad and Haiderpur Viran, Sector-53, Gurugram and Built up property on the Ground Floor, Orchid Centre, Sector-53, Golf Course Road, Gurugram admeasuring 13605 square feet (super area) are concerned, the physical possession shall be delivered to the bank by 30.04.2019 after removing the assets other than the hypothecated goods. In so far as House No. E-26, Block E, South City-1, Gurugram, is concerned where petitioners and their family members are residing, a prayer was made that physical possession of the same be not taken by the bank, as the stay application is still pending for adjudication before the Tribunal on 03.05.2019.

8. Learned counsel appearing for the caveator-bank on instructions from Ms. Shalini Mathur, Regional Head-North, DFSO, HDFC, assured the Court that so far as E-26, Block E, South City-1, Gurugram is concerned, the physical possession of the said unit shall not be taken by the bank till the stay application is adjudicated by the Tribunal. However, the possession of Built up property on the Ground Floor, Orchid Centre, Sector-53, Golf Course Road, Gurugram

admeasuring 13605 square feet (super area) and Unit No.G01, Ground Floor and F01, First Floor in Tapasya Co-operative Heights Village Wazirabad and Haiderpur Viran, Sector-53, Gurugram i.e. mortgaged property shall be taken by tomorrow i.e. 30.04.2019.

9. In view of the above, we dispose of the writ petitions and clarify that in so far as commercial property bearing unit No.G01, Ground Floor and F01, First Floor in Tapasya Co-operative Heights Village Wazirabad and Haiderpur Viran, Sector-53, Gurugram, the physical possession of the mortgaged property shall be delivered by the petitioners by 30.04.2019. In case the petitioners fail to abide by the statement of their learned counsel made in Court today, the writ petition shall be deemed to have been dismissed. However, the physical possession of E-26, Block E, South City-1, Gurugram i.e. the residential house, the interim prayer regarding the same shall be adjudicated by the Tribunal expeditiously. The Tribunal is directed to dispose of the stay application on or before 31.05.2019 and pass the speaking order after hearing the parties, in accordance with law.

10. Needless to say anything observed hereinbefore shall not be taken as an expression of opinion on the merits of the case and the parties shall remain bound by the statement made in the Court.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

29.04.2019

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No