

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

CWP No.17826 of 2017 (O&M)
Decided on : 16.01.2019

Ramesh Chand Chhabra & anr.

..... Petitioners

Versus

Debt Recovery Appellate Tribunal, New Delhi & ors. Respondents

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

Present : Mr. Inderpreet Singh, Advocate for
Mr. J.S.Mehndiratta, Advocate
for the petitioners.

Mr. Rakesh Gupta, Advocate
for respondent No.4.

Manjari Nehru Kaul, J.

The instant petition has been preferred under Articles 226/227 of Constitution of India inter alia for issuance of writ in the nature of certiorari for quashing the order dated 08.12.2016 (annexure P-11) passed by respondent No.1, order dated 27.11.2013 (Annexure P-7) passed by Debts Recovery Tribunal-I, Chandigarh - respondent No.2 in SA No.108 of 2013 and order dated 07.08.2014 (Annexure P-8) passed by Debts Recovery Appellate Tribunal, Delhi- respondent No.1 in Inward No.792 of 2013.

2. The petitioners were guarantors in the loan case of M/s J.S.K. Steels i.e. respondent No.6 and mortgaged their immovable property i.e. Industrial plot No.185, Indl. Area, Phase-I, Chandigarh qua the credit facilities allowed by the consortium of banks i.e. respondents No.3 and 4. The credit facility of respondent No.6 turned into Non-Performing Asset on 28.07.2008 as it failed to maintain financial discipline. Respondents No.3 and 4 i.e.

consortium of banks, initiated action under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'the Act') to recover the outstanding amount from them vide notices dated 10.11.2012 (Annexure P-3) and 19.01.2013 (Annexure P-4).

3. On coming to know about the aforementioned notices, respondent No.5- M/s Padam Motors Pvt. Ltd., who was a tenant in the said mortgaged property, filed SA No.108 of 2013 before Debt Recovery Tribunal-1, Chandigarh (in short 'Tribunal'). During the proceedings, applicant/respondent No.5 offered to deposit the monthly rent with the Tribunal, which was allowed by the Tribunal and it was ordered that the monthly rent along with the arrears be deposited before the said Tribunal within a period of three days of the said order. It was further ordered to keep the said amount in the shape of Fixed Deposit for a period of six months. In the said SA, an IA was also filed by petitioners for release of the rent amount to the extent of 2/3rd in the light of their need and necessity claiming that they had let out the property to M/s Padam Motors Pvt. Ltd. The Tribunal, however, dismissed I.A. on merit vide order dated 27.11.2013 (Annexure P-7). The petitioners, thereafter, approached Debts Recovery Appellate Tribunal, Delhi (herein after 'Appellate Tribunal') against the order dated 27.11.2013 passed by the Tribunal. The same was dismissed by the Appellate Tribunal vide order dated 07.08.2014 (Annexure P-8).

4. SA No.108 of 2013, which was filed by respondent No.5 was ultimately dismissed by the Tribunal vide its order dated 30.01.2015 (Annexure P-9). Respondent No.5 then handed over the possession of mortgaged property to the consortium of banks, who in turn put up the same

for auction as per the provisions of the Act.

5. The petitioners, who were impleaded as respondent Nos.3 and 4 in the case before the Tribunal filed miscellaneous application No.6/2015 in SA No.108/2013 for release of amount of monthly rent deposited by the tenant. The Tribunal allowed the said MA vide order dated 08.12.2015 (Annexure P-10). The consortium member banks being aggrieved of the order dated 08.12.2015 (Annexure P-10) filed separate MA No.387/2015 and 388/2015 before the Appellate Tribunal. Both the appeals after being heard together by the Appellate Tribunal were allowed vide order dated 08.12.2016 (Annexure P-11). The petitioners, have challenged the orders dated 08.12.2016 (Annexure P-11) and dated 27.11.2013 (Annexure P-7) respectively.

6. Learned counsel for respondent No.4 submitted that the case of the petitioners was without any substance. It was also contended that the order of dismissal in SA No.108/2013 was challenged by the tenant before this Court in CWP No.6691 of 2015 and this Court had dismissed the said writ petition vide order dated 28.04.2015 (Annexure R-4/1).

7. We have heard learned counsel for the parties and perused the material available on record.

8. The petitioners admitted that they had stood as guarantors to the credit facilities, which was allowed to respondent No.6 but claimed that their share in the property stood released from mortgage by respondent No.3. It was the admitted case of the petitioners that they never moved any application before the Tribunal under Section 17 of the Act nor did they take up this plea before the Tribunal in SA No.108 of 2013. The Appellate Tribunal allowed both the appeals with the following observations:

“In my view the present Presiding Officer could not

have passed the impugned order giving the mortgagors the relief of release of rent in their favour which had been deposited with DRT by their tenant, who had filed the SA against the two banks in view of the fact that the earlier Presiding Officer had rejected similar prayer of the mortgagors and this Tribunal had declined to reverse that order of the DRT. There was no change in the circumstances justifying the reversal/review of earlier decision on the same point.

These two appeals are, therefore, allowed and the impugned order of DRT-I, Chandigarh is set aside. The rent lying deposited with DRT will continue to remain there till both the banks get the exact liability of the borrower/guarantors adjudicated in appropriate proceedings and when the stage comes for deciding as to in what proportion they have to share the amount, which they are able to get recovered and their shares are determined they can then move the DRT for disbursement of the amount to them in accordance with their respective entitlement.”

9. No illegality and perversity could be pointed out in the order dated 08.12.2016 (Annexure P-11) passed by the Appellate Tribunal. The order under challenge is thus, perfectly justified and hence, do not warrant any interference by this Court.

10. Accordingly, the present petition is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

16.01.2019
sonia

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No