

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

**CM-3493-CWP-2019 in/and
CWP-26703-2018
Decided on : 05.03.2019**

Kotak Mahindra Bank Ltd.

... Petitioner(s)

Versus

BGS Fashions Pvt. Ltd. and others

... Respondent(s)

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

PRESENT: Mr. Aman Bansal, Advocate
for the non-applicant/petitioner(s).

Ms. Supriya Garg, Advocate
for applicant-respondents No.1 & 2
(in CWP Nos. 26703 & 26704 of 2018).

Mr. Ayuwan Singh, AAG, Haryana.

AJAY KUMAR MITTAL, J. (Oral)

CM-3493-CWP-2019

Annexure R-1 (affidavit of respondent No.2) filed along with the application is taken on record, subject to all just exceptions. Office to tag the same at the appropriate place.

CM stands disposed of.

Main case(s)

This order shall dispose of Civil Writ Petitions No. 26703 & 26704 of 2018, as according to the learned counsel for the parties, the issue involved therein is identical. However, the facts are being extracted from CWP No. 26703 of 2018.

2. The petitioner-Bank has approached this Court under Articles 226/227 of the Constitution of India, seeking writ of *Mandamus*, for directing the respondents that the physical possession of the mortgaged property, in respect of which the facility of loan was availed by respondent No.2-borrower, be handed over to the petitioner.

3. The petitioner-Bank had initiated steps under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'the SARFAESI Act, 2002') for taking the

physical possession of the secured asset, as the principal borrower and the

guarantors had defaulted in maintaining the financial discipline. The District Magistrate, Gurugram – respondent No.4, passed an order dated 15th May, 2018 (Annexure P-2) under Section 14 of the SARFAESI Act, 2002, however, the same having remained un-executed, the petitioner-Bank has approached this Court for redressal of its grievance.

4. Upon notice of motion having been issued, Ms. Supriya Garg, Advocate, on behalf of respondents No.1 & 2 and the learned State counsel on behalf of respondent No.4, had put in appearance. In compliance to the order dated 20.02.2019, separate affidavits along with requisite applications have been filed in both the writ petitions, wherein, it has been specifically averred that respondents have no objection if the physical possession of the secured asset is taken by the petitioner-Bank.

5. After hearing learned counsel for the parties, perusing the averments made in the writ petition and also in view of the order of even date passed in the aforesaid CM application(s), whereby, above referred affidavit(s) of respondent No.2 has been taken on record, we dispose of present writ petition(s) by directing respondent No.4 to ensure that the physical possession of the secured asset is delivered to the respondent-Bank in terms of the order dated 15th May, 2018 (Annexure P-2), passed under Section 14 of the SARFAESI Act, 2002, within a period of 07 days from the date of receipt of certified copy of this order.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

March 05, 2019

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No