

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CWP No.27431 of 2018
Date of Decision : 27.09.2019

Shanta Arora

.....Petitioner

Versus

Debt Recovery Tribunal-II, Chandigarh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Saurabh Arora, Advocate for the petitioner.

Mr. Madan Pal, Advocate for respondent No.6.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is directed against the order dated 03.08.2018 passed by Debts Recovery Tribunal-II, Chandigarh by which Securitization Application No.643 of 2017 filed by the petitioner was dismissed on the ground that the secured creditor has not taken physical possession on the basis of symbolic possession in terms of the provisions of Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). In this regard, the Tribunal had relied upon a decision of Full Bench of the Allahabad High Court rendered in the case of '*M/s Hindon Forge Private Limited Vs. State of U.P. Though DM, Ghaziabad and others*'.

Counsel for the petitioner has submitted that the *Civil Appeal No.10873 of 2018*, arising out of the decision of the aforesaid Full Bench of the Allahabad High Court, has been decided by the Supreme Court, titled as '*M/s Hindon Forge Private Limited and*

another Vs. The State of Uttar Pradesh Though District Magistrate, Ghaziabad and another' on 01.11.2018 in which it has been held that "it is hereby declared that the borrower/debtor can approach the Debts Recovery Tribunal under Section 17 of the Act at the stage of the possession notice referred to in rule 8(1) and 9(2) of the 2002 Rules". The Full Bench judgment of the Allahabad High Court was found to be erroneous and was set aside.

In view of the aforesaid facts and circumstances, once the law has been settled by the Hon'ble Supreme Court in the case *M/s Hindon Forge Private Limited and another (supra)*, the impugned order passed by the Tribunal on 03.08.2018 do not survive. Therefore, the writ petition is hereby allowed and order dated 03.08.2018 is set aside and the matter is remanded back to the Debts Recovery Tribunal-III, Chandigarh to decide the same in accordance with law.

Parties are directed to appear before the Tribunal on 14.10.2019.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

27.09.2019
Kothiyal

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No