

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-37619-2018

Date of Decision: 6.5.2019

Bank of Baroda

...Petitioner

Versus

State of Punjab and others

...Respondents

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

PRESENT: Mr. Gaurav Goel, Advocate for the petitioner.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

Mr. Vikas Bali, Advocate for respondent No.8.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ of mandamus directing respondent No.3 to decide the application dated 31.1.2017 (Annexure P-2) moved by the petitioner under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short “the SARFAESI Act”).

2. Respondents No.4 to 7 took a loan of ₹ 27,35,00,000/- from the petitioner and mortgaged the immovable properties as mentioned in para 2 of the writ petition. Since respondents No.4 to 7 failed to repay the loan amount, their account was declared as Non-Performing Asset (NPA) on 17.12.2015. A notice dated 15.1.2016 under Section 13(2) of the

₹ 27,08,41,486.17 plus interest. Since, respondents No.4 to 7 failed to make the amount in question, the petitioner took symbolic possession of the mortgaged properties by issuing notice dated 15.12.2016 (Annexure P-1) under Section 13(4) of the SARFAESI Act. Thereafter, the petitioner filed an application dated 31.1.2017 (Annexure P-2) under Section 14 of the SARFAESI Act before respondent No.2 for taking physical possession of the mortgaged properties. Respondent No.3 vide order dated 19.6.2016 (Annexure P-3) adjourned the application *sine die* in view of an ad-interim injunction granted by the Civil Court, Ludhiana in a suit filed by a third party (respondent No.8) against respondents No.5 and 6 showing himself to be the tenant in the property. Respondent No.8 filed civil suit No. 346 of 2016 on 25.4.2016 (Annexure P-4) against respondents No.5 and 6. The Civil Court, Ludhiana vide order dated 26.4.2016 (Annexure P-5) granted *exparte* injunction qua the suit property against respondents No.5 and 6 for dispossession. Respondent No.8 also moved an application (Annexure P-6) under Order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”) for impleading the petitioner as party in the civil suit. Upon impleadment, the petitioner moved an application dated 27.3.2017 (Annexure P-7) under Order 7 Rule 11 of the Code for rejection of plaint. Thereafter, respondent No.8 filed CR No. 5491 of 2018 for deciding the application under Order 6 Rule 17 of the Code before the decision on the application under Order 7 Rule 11 of the Code filed by the petitioner. This Court vide order dated 23.8.2018 (Annexure P-8) issued notice of motion to the petitioner and respondents No.5 and 6 and directed the Civil Court, Ludhiana to adjourn the matter beyond the date fixed by this Court. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved an application dated 31.1.2017 (Annexure P-2) under Section 14 of the SARFAESI Act before respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the parties, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the application dated 31.1.2017 (Annexure P-2), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the concerned parties within a period of one month from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

May 6, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No