

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-8438-2019

Date of Decision: 8.5.2019

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.

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 1.11.2017 (Annexure P-3) 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”) and to provide physical possession of the mortgaged properties situated at Ludhiana.

2. Respondents No.4 to 7 took a loan of ₹ 2640 lakhs in the year 2011 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 26.7.2015. A notice dated 7.12.2015 (Annexure P-1) under Section 13(2) of the SARFAESI Act was issued to 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 28.9.2017 (Annexure P-2) under Section 13(4) of the SARFAESI Act. Thereafter, the petitioner filed an application dated 1.11.2017 (Annexure P-3) 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 19.12.2017 (Annexure P-4) adjourned the application *sine die* stating that the same would be processed upon the decision in the civil suit No. 3369 of 2016 (Annexure P-5) filed by the third party Gurdeep Singh (respondent No.8) showing himself to be tenant for the two properties, against dispossession of the mortgaged properties. The Civil Court, Ludhiana vide order dated 9.6.2016 (Annexure P-6) granted *exparte* injunction qua the suit property against respondent No.5 for dispossession. Thereafter, respondent No. 8 had moved an application dated 20.9.2016 (Annexure P-7) under order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”) for impleading the petitioner as a party. Upon impleadment, the petitioner moved an application dated 9.3.2017 (Annexure P-8) under Order 7 Rule 11 of the Code for rejection of plaint. The said application is pending adjudication. Further, one Shri Mohit Kumar filed civil suit No. 1316 of 2016 against respondent No.5. The trial Court vide judgment and decree dated 14.9.2018 (Annexure P-9) dismissed the said civil suit. 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 1.11.2017 (Annexure P-3) 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 1.11.2017 (Annexure P-3), 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 8, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No