

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

112

CWP No.18056 of 2020
Decided on 30.10.2020

Indian Overseas Bank

.....Petitioner.

VERSUS

State of Punjab and Others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

PRESENT:-Mr.Rakesh Gupta, Advocate, for the petitioner.

AJAY TEWARI, J. (ORAL)

The present petition has been filed against the order of the District Magistrate, Gurdaspur (dated 04.01.2018), whereby authorizing the respondent No.8 to take joint possession of the property along with the petitioner. The further attack is against the impugned letter dated 22.07.2020 (Annexure P-10) whereby the respondent No.8 allegedly threatened the petitioner to appropriate sale consideration of the mortgaged property.

As per counsel for the petitioner, the petitioner-Bank had a prior mortgage on that property and therefore, the respondent No.8 could exercise its mortgagee rights only after the petitioner's claims were satisfied.

We put it to the learned counsel why the petitioner could not approach an appropriate Court in this regard, he has pointed out to Section 34 of the SARFAESI Act. Section 34 of the SARFAESI Act is to the following effect:

34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other

authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

Further we put it to the learned counsel whether the issue of the Civil Court jurisdiction would arise in this Case because any action now taken by the petitioner-Bank in fact would not be any suit or proceedings in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered under this Act to determine; for the simple reason that it is a dispute between two lenders and not a dispute between a lender and a borrower.

In these circumstances, we deem it appropriate to dismiss the present writ petition with liberty to the petitioner to approach the Civil Court. Ordered accordingly.

(AJAY TEWARI)
JUDGE

(RAJESH BHARDWAJ)
JUDGE

30.10.2020

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