IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. **CRA-S-4326-SB-2017(O&M)**

Deputy Director

... Appellant

Versus

PNB Housing Finance Limited

... Respondent

2. **CRA-S-3916-SB-2017 (O&M)**

Deputy Director

... Appellant

Versus

ICICI Bank Limited and others

... Respondents

3. **CRA-S-4456-SB-2017**

Deputy Director

... Appellant

Versus

State Bank of India

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr.Satya Pal Jain, Senior Advocate,
Addl.Solicitor General of India with
Mr.Arvind Moudgil, Senior counsel Govt. of India, &
Mr.Suresh Batra, Advocate
for the appellant.

Mr.D.K.Singal, Advocate
for the respondent in CRA-S-4456-SB-2017.

Mr.Harsh Chopra, Advocate,
Mr.Nitin Grover, Advocate,
Mr.Sanjeev Singh, Advocate
for the respondent in CRA-S-4326-SB-2017.

Mr.Sandeep Suri, Advocate
for ICICI Bank in CRA-S-3916-S-2017.

RAJIV SHARMA, J.(ORAL)

Since the common questions of law and facts are involved in the aforesaid three appeals, therefore, these are taken up together for decision. The facts are taken from CRA-S-4326-SB-2017.

Delay in filing the appeals is condoned.

The loan was sanctioned by the respondent bank on 17.07.2010. The FIR was registered by the appellant on 25.03.2013. The complaint was lodged with the adjudicating authority on 17.12.2015. The adjudicating authority passed the order on 16.06.2016 which led to filing of the appeal before the learned Appellate Tribunal. The learned Appellant Tribunal passed the order releasing the properties from attachment on 28.08.2017. Para 20 of the order reads as under:-

> *"20. In the light of above, the schedule 'A', 'B' and 'C' properties are released from the attachment and the appellant Banks may take the possession of these properties mortgaged with them as secured assets. It is noted here that PNBHF Ltd. Bank and ICICI bank, appellants in FPA-PMLA-1388/JL/2016 and FPA-PMLA-1423/JL/2016 respectively, during the course of pendency of the appeal prayed this tribunal to allow them to sell the mortgaged properties i.e. scheduled 'A' & 'B' properties below and after selling and adjustment*

of their dues to deposit the surplus, if any, with the respondent i.e. Enforcement Directorate. The State Bank of Patiala has not filed any such application. However, in the interest of justice, it is hereby ordered that the appellant banks to sell the schedule 'A', 'B' & 'C' properties in the presence of nominated officers of the respondent. The appellant banks after sell and adjustment of dues shall deposit the surplus amount with the respondent. Accordingly, the misc. application nos.MP-PMLA-3318/JL/2017 & MP-PMLA-3318/ JL/2016 are disposed off."

We have gone through the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act") as well as Prevention of Money Laundering Act, 2002 (in short "PMLA"). The purpose of both enactments is different. The PMLA is a special Act. Section 71 reads as under:-

"71. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

The attention of the Court has been drawn towards Section 26 E of the SARFAESI Act, which reads as under:-

"26E. Priority to secured creditors.- *Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in* *priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority."*

On the conjoint reading of both the Acts, we are of the considered view that PMLA would prevail over the SARFAESI Act. The adjudicating authority could not release the properties during the pendency of trial which commenced pursuant to the FIR dated 25.03.2013.

Accordingly, the appeals are disposed of. The impugned orders are set aside. Parties can avail remedy after final adjudication by the trial Court.

The parties are directed to maintain status quo till the decision by the learned trial Court.

(RAJIV SHARMA)
JUDGE

(AJAY TEWARI)
JUDGE

February 28, 2020.
Davinder Kumar

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