

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-8282-2021

Date of decision: 03.09.2021

Gaurav Arora

.....Petitioner

versus

Additional Deputy Commissioner, Amritsar and others

....Respondents

**CORAM: Hon'ble Mr. Justice Jaswant Singh
Hon'ble Mr. Justice Girish Agnihotri**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Sushant Kareer, Advocate
for the petitioner.

Mr. I.P.S. Doabia, Additional AG, Punjab
for respondents No.1 & 2.

Mr. Munish Jain, Advocate for
Sh. Gursimran Singh Bawa, Advocate
for respondent No.3/Caveator.

*(the aforesaid presence is being recorded through video conferencing since the
proceedings are being conducted in virtual court on account of restrictions due
to COVID 19)*

GIRISH AGNIHOTRI, J.

(1) Petitioner-Gaurav Arora, stated to be aged 44 years, has filed the present petition *inter alia* with a prayer for issuance of a writ in the nature of certiorari for quashing of the order dated 13.03.2020 (Annexure P-10) and 22.03.2021 (Annexure P-18).

(2) Learned Senior counsel for the petitioner, by making reference to the pleadings in the petition, *inter alia* submits that the property/land is having an area of 6628 square yards at Village Naushehra Nangali, Majitha

Road, Tehsil and District Amritsar. Shri Om Parkash Arora and others including respondent No.4, are stated to be owners of the property. The case of the petitioner is that Shri Om Parkash Arora is father of the present petitioner and real brother of respondent No.2. In the year 1996, the owners had agreed to lease the property in question to K.J. Cold Storage Private Limited (of which petitioner is one of the Directors).

(3) In para 4 of the writ petition, certain facts have been mentioned to plead that because of certain disputes which had arisen after the death of one of the lessees Shri Janki Dass, in the year 2003, respondent No.5-M/s K.J. International Limited had availed financial assistance from Industrial Development Bank of India (IDBI). It is submitted that respondent No.5 defaulted in payments and its account was declared Non Performing Asset (NPA), which resulted in recovery suit bearing OA No.564 of 2001, filed before DRT, Chandigarh. For the sake of brevity various other facts are not required to be mentioned at this stage.

(4) The present writ petition was filed on 06.04.2021 *inter alia* with the prayer to quash the order dated 13.03.2020, passed by District Magistrate (DM), Amritsar, on application for giving police help under Section 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) (hereinafter referred as 'the Act').

(5) Mr. Munish Jain, learned counsel appearing for respondent No.3 has relied upon the judgment dated 18.08.2017, passed in **CWP-16366-2016** titled as “**Asset Reconstruction Company (India) Ltd. vs. State**

of Haryana and others". It is submitted by learned counsel for respondent No.3 that in the aforementioned judgment various questions of law were framed, which are also reproduced hereunder:-

"....(17) The following questions thus fall for consideration:-

- (i) What is the scope of powers exercisable by a District Magistrate under Section 14 of the SARFAESI Act?*
- (ii) Whether ARCIL in the instant case is entitled to seek assistance of the District Magistrate under Section 14 of the SARFAESI Act to recover possession of the secured asset from respondent No.3&4?*
- (iii) Whether the District Magistrate is competent to 'review' his own order or the one passed by his predecessor under Section 14 of the SARFAESI Act?*
- (iv) What is the remedy available to a borrower or guarantor against whom the District Magistrate has passed an order under Section 14 to provide assistance to the secured creditor in taking possession of the secured asset?"*

(6) The aforementioned questions have been answered in the above said judgment dated 18.08.2017. It was clearly held that once the District Magistrate has invoked his powers under Section 14 of the Act and passed the order, the borrowers had no other remedy except to approach DRT under Section 17 of the Act. Reliance has also been placed on the judgment of Hon'ble Supreme Court in ***"Kanaiyalal Lalchand Sachdev & others vs. State of Maharashtra & others*** reported as ***(2011) 2 SCC 782***", wherein, it has been held that an action under Section 14 of the Act, constitutes an action taken after the stage of Section 13(4) and therefore would fall within the ambit of Section 17(1) of the Act.

(7) In view of the facts and ground noticed above, we are in

agreement with the ratio laid down in the judgment dated 18.08.2017, passed by this Court in CWP-16366-2016.

(8) Accordingly, the present writ petition is devoid of any merit and is **dismissed** with the liberty to the petitioner to avail such other remedy as available to the petitioner, in accordance with law.

(JASWANT SINGH)
JUDGE

(GIRISH AGNIHOTRI)
JUDGE

03.09.2021
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Whether speaking/ reasoned:
Whether Reportable:

Yes/No
Yes/No