

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

105

(PROCEEDINGS THROUGH V.C.)

CWP-21938-2020

DATE OF DECISION: JANUARY 11, 2021

Bank of Baroda

.....Petitioner

VERSUS

State of Haryana and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Pawan Kumar Gupta,
Mr. Gaurav Deep Goel & Ms.Sonia Gupta, Advocates,
for the petitioner.

Ms. Shubhra Singh, Addl.Advocate General, Haryana,
for the State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner-Bank has approached this Court, praying for issuance of a writ of mandamus, directing official respondents i.e. the Deputy Commissioner-cum-District Magistrate, Ambala, Naib Tehsildar, Ambala Cantt. And Superintendent of Police, Police Lines, Ambala (respondent Nos.2 to 4 respectively) for taking over the possession of the property in question in view of notice dated 29.10.2018 issued under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, “the SARFAESI Act”) to comply with the order dated 19.11.2019 (Annexure P-2) passed by the Deputy Commissioner-cum-District Magistrate, Ambala-respondent No.2.

As is apparent from the pleadings, a civil suit has been preferred by Rajbir Singh against Milkhi Ram and Channi Ram, who are respondent Nos.5 and 6 in the present writ petition and are the borrowers. A letter has been written as per which possession had to be given to the Bank and orders in this regard have been passed under the SARFAESI Act. An injunction application has been moved, wherein interim order has been passed, granting protection. It is alleged by the petitioner-Bank that the said civil suit has been filed by Rajbir Singh alleging himself to be a tenant of Milkhi Ram and Channi Ram (respondent Nos.5 and 6 in the present writ petition) in connivance with them and, thus, with a malafide intention has got the interim order. Assertion has also been made that initially the petitioner-Bank was not made a party to the civil suit and it is subsequently that an application has been moved for being impleaded as a party, which has been allowed. The matter was earlier fixed for 04.12.2020, which now stands adjourned to 28.04.2021.

Counsel for the petitioner asserts that civil suit, which has been preferred, is not maintainable and the issue involved in the said suit would be covered by the decision of Division Bench of this Court dated 10.07.2019 in Civil Writ Petition No.19554 of 2018 (HDFC Bank Ltd. Vs. District Magistrate and others). Reliance has also been placed on the judgment of Hon'ble Supreme Court in Civil Appeal No.6156 of 2013 decided on 07.08.2020 (Hari Krishna Mandir Trust Vs. State of Maharashtra and others). It is on this basis asserted that the interim order, which has been passed by the Civil Court, is without jurisdiction and, therefore, the same cannot sustain. Prayer has, thus, been made for issuance of writ of mandamus.

In the light of the factual position, as has been asserted and found to be correct, this Court is of the view that since a civil suit is pending, where the petitioner is a party, it would be appropriate that a proper application be moved by the petitioner before the Civil Court, bringing to its notice the legal position as well as the judgments referred to above. If such an application is moved by the petitioner, the same shall be considered and a decision taken thereon within a period of four weeks of moving of such an application.

The present petition stands disposed of with the above observations.

(AUGUSTINE GEORGE MASIH)
JUDGE

January 11, 2021
khurmi

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No