

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

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**CWP No. 28304 of 2018 (O&M)**

**Date of Decision: April 26, 2022**

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**ICICI Bank Limited**

**...Petitioner**

**Versus**

**District Magistrate, Fatehgarh Sahib and others**

**...Respondents**

**Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao  
Hon'ble Mr. Justice H.S. Madaan**

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**Present:-** Mr. Sandeep Suri, Advocate  
and Mr. Vijiyesh Malhotra, Advocate for the petitioner.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

Mr. Sanjeev Manrai, Sr. Advocate  
with Mr. Kanav Singla, Advocate for respondents No. 3 to 6.

Mr. Prabhdeep Singh Toor, Advocate  
for respondents No. 7, 8 and 13.

Ms. Supriya Garg, Advocate for applicant-respondent No. 17.

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**M.S. Ramachandra Rao, J. (Oral)**

**C.M. No. 277 of 2019**

Learned counsel for the applicant seeks permission to withdraw  
this application with liberty to avail the other remedy.

Granting liberty as sought for, this application is dismissed as  
withdrawn.

**CWP-28304-2018**

Mr. Anil Kumar Garg, Advocate has filed vakalatnama for  
respondent No. 14, which is taken on record.

Heard Mr. Sandeep Suri, Advocate and Mr. Vijiyesh Malhotra, Advocate for the petitioner, Mr. Sanjeev Manrai, Sr. Advocate with Mr. Kanav Singla, Advocate for respondents No. 3 to 6, Mr. Prabhdeep Singh Toor, Advocate for respondents No. 7, 8 and 13, Ms. Supriya Garg, Advocate for respondent No. 17, Mr. Anil Kumar Garg, Advocate for respondent No. 14 and Mr. V.G. Jauhar, Sr. DAG, Punjab.

In this Writ Petition, petitioner has sought Writ of Mandamus for implementation of the order dt. 29.7.2015 passed by respondent No. 1 under Section 14 of the SARFAESI Act, 2002 for taking over physical possession of property bearing House No. 155, Sector 4-B, Shastri Nagar, Ward No. 3, Mandi Gobindgarh, District Fatehgarh Sahib. It is the contention of the counsel for the petitioner bank that the said order had been questioned by the borrower before the DRT as SA 427 of 2015, and the said challenge also failed when the DRT dismissed the same vide order dt. 23.11.2016. It is the further case of the petitioner bank that it had filed OA 681 of 2017 against the borrowers before the Debts Recovery Tribunal- III, Chandigarh, which was allowed on 3.1.2018, and recovery certificate was also issued. Learned counsel for the petitioner bank contends that petitioner bank is, therefore, entitled for enforcement of the order passed by the District Magistrate on 29.7.2015, and respondents No. 1 and 2 were obligated to deliver the possession of the above said liquid assets to petitioner bank, but have not discharged the said obligation.

Learned counsel for the State states that respondents No. 1 and 2 will implement the said order dt. 29.7.2015 passed by District Magistrate within four weeks from today.

Learned counsel for respondents No. 3 to 6 has brought to our notice an order dt. 10.5.2018 in CWP No. 10687 of 2018, and contended that for enforcement of the same order of the District Magistrate, the petitioner has earlier approached this Court, and the following order was passed on 10.5.2018 :-

“Notice of motion to respondent Nos.1 and 2 only at this stage.

Mr.Sahil Sharma, DAG, Punjab, who is present in Court, accepts notice. Let two sets of paper-book be handed over to him during the course of day failing which this order shall be automatically recalled, and the writ petition shall be deemed to have been dismissed for non-prosecution.

In view of the nature of the order, which we propose to pass, there is no need to seek any counter reply from the official respondents or to serve the private respondents at this stage as no order on merits prejudicial to their interest is being passed.

Petitioner-ICICI Bank Limited seeks a direction for implementation of the order dt. 29.07.2015 passed by the District Magistrate, Fatehgarh Sahib, in exercise of powers under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'). It is not disputed by learned counsel for the petitioner-Bank that the order of the District Magistrate could not be given effect due to an ad interim injunction granted in a pending civil suit, in which the Bank is not a party.

Since there is legal impediment for giving effect to the order passed under Section 14 of the SARFAESI Act, the writ petition is disposed of without expressing any views on merits with liberty to the petitioner Bank to move applications before the Civil Court, namely, (i) its impleadment as a party-

respondent; (ii) for vacation of stay; and (iii) to question the maintainability of the suit. The Civil Court is directed to decide those applications in accordance with law, and after hearing the parties concerned as early as possible, but not later than two months from the date of receipt of a certified copy of this order. If the Bank finds that some other suit has also been filed by the borrowers, their family members or their relatives, it may approach the said Court in the same manner, as directed above.”

It is contended that the instant Writ Petition is, therefore, not maintainable in view of the said order, and is barred by principle of resjudicata.

Refuting the said contentions, counsel for the petitioner has pointed out that the petitioner bank had got impleaded in CS 328 of 2017 filed by the third parties with regard to the subject property, and got the said suit dismissed on the ground that it was not maintainable, and the interim order passed staying dispossession was got vacated.

Learned counsel for respondents No. 3 to 6, however, stated that there was interim injunction order granted on 30.5.2018 in another Civil Suit CIS No. 20V2018 before the Additional Civil Judge (Sr. Divn.), Fatehgarh Sahib for restraining alienation of the suit property, but the petitioner bank has not availed the remedy which it was directed to avail in the order dt. 10.5.2018 in CWP No. 10687 of 2018.

Having perused the said order, we are of the opinion that the said order does not give any protection to the plaintiff therein as regards dispossession from the subject property, but only prohibits alienation thereof. Therefore, there is no impediment for the petitioner bank to take

possession of the property, and it is not obligated to get impleaded in the said suit, and get that interim order dt. 30.5.2018 vacated.

Having regard to the above facts and circumstances, we are of the opinion that the Writ Petition deserves to be allowed. It is accordingly allowed, and a direction is given to respondents No. 1 and 2 to ensure compliance with the order dt. 29.7.2015 passed by respondent No. 1 within four weeks by providing police help, if required. Consequently, the order dt. 12.9.2018 passed by respondent No. 2 vide Annexure P-11 is set aside.

No costs.

**(M.S. Ramachandra Rao)**  
**Judge**

**(H.S. Madaan)**  
**Judge**

**April 26, 2022**

*P.Singh*

Whether speaking/reasoned?

Yes/No

Whether Reportable?

Yes/No