



211

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17361-2020

Date of Decision: 28.05.2024

M/s Chadha Distributors and another

..... Petitioners

Versus

Authorized Officer, Asset Reconstruction Co. India Ltd. and others

..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present: Ms. Jyoti Sareen, Advocate
for the petitioners.

Mr. Nitin Grover, Advocate
for respondents No. 1 and 2 (through Video Conferencing).

LISA GILL, J.(oral)

1. Prayer in this writ petition is for setting aside order dated 07.10.2020 passed by learned Debts Recovery Tribunal-III, Chandigarh (for short 'DRT-III'), whereby S.A. No. 40 of 2020 filed by petitioners challenging proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and specifically order dated 19.05.2017 passed by Additional Deputy Commissioner, Ludhiana under Section 14 of SARFAESI Act.

2. Learned DRT-III, Chandigarh has dismissed S.A. No. 40 of 2020 as not maintainable being premature, as actual physical possession, it is stated had not been taken by respondent at the time of filing of S.A.



CWP-17361-2020

-2-

3. Learned counsel for respondents No. 1 and 2 is unable to deny that this issue is squarely covered by the judgment of Hon'ble the Supreme Court of India in M/s Hindon Forge Pvt. Ltd. & Anr. Versus State of Uttar Pradesh Through District Magistrate Ghaziabad & Anr., 2018(4) R.C.R.(Civil) 948, wherein it has been held that borrower/guarantor is entitled to approach DRT for redressal of his grievance with initiation of proceedings under Section 13(4) without there being actual loss of possession. Therefore, in the present case, dismissal of S.A. filed by petitioners on the ground of physical possession not having been lost is squarely in the teeth of abovesaid judgment of Hon'ble the Supreme Court. A pure question of law has been raised in the present writ petition, therefore same is entertainable by this Court in exercise of jurisdiction under Article 226 of Constitution of India and petitioners need not be relegated to their remedy of appeal before learned DRAT in terms of Section 18 of SARFAESI Act. Gainful reference in this respect can be made to judgments of Hon'ble Supreme Court of India in M/s Godrej Sara Lee Ltd. Versus The Excise and Taxation Officer-cum-Assessing Authority & Ors., 2023(2) Scale 361 and PHR Invent Educational Society Versus UCO Bank and others, 2024 AIR (SC) 1893.

4. Learned counsel for respondents No. 1 and 2 is unable to deny the said factual position.

5. Keeping in view the facts and circumstances as above, impugned order dated 07.10.2020 is set aside and matter is remanded to learned DRT-III, Chandigarh with a direction that same be decided in

**CWP-17361-2020****-3-**

accordance with law, after affording opportunity of hearing to parties concerned.

6. It is agreed that the parties would remain present before learned DRT-III, Chandigarh on 02.07.2024. The fact that interim order passed in favour of petitioners on 16.10.2020 has continued till date, same shall enure till 02.07.2024. Question of continuance or otherwise of interim order in petitioners' favour is necessarily in the realm of consideration by the learned DRT-III in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

7. It is clarified that above interim protection afforded to petitioners shall not enure beyond 02.07.2024 in the absence of appropriate order by the learned Tribunal.

8. Writ petition is accordingly disposed of.

9. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

28.05.2024*lalit*

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