

233 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP-24356-2022 (O&M)
Date of Decision: 01.04.2024

M/s Hukam Chand and SonsPetitioner
versus
Additional District Magistrate, Ludhiana
and others Respondents

AND

2. CWP-22533-2022 (O&M)
Date of Decision: 01.04.2024

M/s Hukam Chand Tarsem Lal and othersPetitioners
versus
Additional District Magistrate, Ludhiana
and others ...Respondents

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

Present: Mr.Aalok Jagga, Advocate and
Mr.H.S.Jagdev, Advocate for the petitioner(s).

Mr.Rohit Bansal, Sr. DAG, Punjab.

Mr.C.S.Pasricha, Advocate for the respondent-bank
in both the cases.

LISA GILL, J. (ORAL)

1. CWP No. 24356 of 2022 and CWP No. 22533-2022 are taken up for hearing and adjudication together at request and with consent of learned counsel for the parties.
2. Both the aforementioned petitions have been filed for setting aside impugned notice(s) dated 11.01.2020 (Annexure P-4) and 08.07.2020 (Annexure P-5) issued by respondent-bank under Section 13(2) and Section 13(4) respectively of Securitisation and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), order dated 19.07.2022 (Annexure P-7) passed by District Magistrate, Ludhiana under Section 14 of the SARFAESI Act and subsequent notice dated 17.08.2022 issued by respondent No.2 pursuant thereto.

2. Question sought to be raised in this writ petition is that a valid mortgage in respect to secured asset/property in question has not been created in favour of respondent-Bank inasmuch as it was not compulsorily registered in terms of Section 17 of Registration Act, 1908. Therefore, in this view of the matter, proceedings under the SARFAESI Act initiated against petitioner are not maintainable.

3. Learned counsel for the petitioner fairly submits that the controversy as raised in this writ petition is squarely covered against petitioner in terms of decision dated 22.12.2023 in CWP No. 22358 of 2021 (M/s GRD Food Private Limited vs. Union of India and others) and CWP No. 6253 of 2022 (M/s GRD Food Private Limited and others vs. Jammu Kashmir Bank and others), wherein it has been held as under:-

“ XX XX XX XX XX
We also do not find any merit in the argument raised by learned counsel for petitioner-Company that it is a pure question of law and a jurisdictional issue which arises for consideration in this writ petition. As to whether equitable mortgage was indeed created or not as has been sought to be agitated by petitioners at this later stage after initiation of proceedings under SARFAESI Act and staunchly refuted by respondents, cannot be termed to be a pure question of law. It is a mixed question of fact and law which will have to be looked into and adjudicated upon by the Appropriate Forum/Tribunal.”

4. Accordingly present petition(s) are dismissed with liberty to petitioners to avail remedy(ies) as available to them in accordance with law.

It is clarified that there is no expression of opinion on the merits of the matter.

5. Pending miscellaneous applications, if any, shall also stand disposed of.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

01.04.2024
sunita/‘om’

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No