IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP No.138 of 2023 (O & M)
Date of decision : 27.5.2025

Manjit Kaur …………Petitioner

Versus

Housing Development Finance Corporation Limited, Chandigarh and others
…….Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Lakhinder Bir Singh, Advocate and
Ms. Kajal Saini, Advocate, for the petitioner

Mr. Vaibhav Singh Tara, Advocate, for respondents no.1 & 2

Mr. Saurav Verma, Addl. AG, Punjab

SHEEL NAGU, CJ. (ORAL)

1. The challenge in this petition filed by borrower is to an order passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), whereby the Tehsildar, District Jalandhar with the assistance of police has been directed by the Additional Deputy Commissioner, Jalandhar to give possession of the secured assets to the respondent no.1-Bank.

2. It is not disputed at the Bar that the home loan of ₹40 lakhs was taken by the petitioner and to secure the same, the residential property of the petitioner was mortgaged.

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3. When default took place, notices under various sub-sections of Section 13 of the SARFAESI Act were issued and ultimately, order was passed which is impugned as under:

'The applicant-Bank has filed application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act. 2002. praying for grant of permission for taking physical possession of the secured assets, which has been mortgaged in its favour. As per the application, loan account/accounts, namely Manjit Kaur had defaulted the repayment of the loan and consequently the following amounts were due and became payable consequent to service of the Demand Notices issued to the undernoted borrowers and their guarantors by the Secured Creditor (Bank) u/s 13(2) of the SARFAESI Act, 2002.

Name of Borrowers/ Guarantors	*Date on which Classified as Non-Permorming Asset (NPA)*	*Date of Demand Notice u/s 13 of the SARFAESI Act*	*Outstanding/ Amount of Demand (Rs.)*
1. Manjit Kaur as Co-Borrower/Legal Heir/Legal Representative of deceased Borrower Harkirat Singh	*31.01.2021*	*04.08.2021*	*Rs.37,10,000/ as on 30.06.2021*

2. The Bank issued notice to the borrower/guarantor under Section 13(4) of the Act, 2002 thereby taking symbolic possession of the secured assets.
3. The Bank has filed an application u/s 14 of Sarfaesi Act, 2002 alongwith affidavit dated 26.07.2022 of Authorized Officer of Housing Development Finance Corporation LTD. (HDFC Ltd) affirming the aforesaid facts.
4. As per affidavit dated 26.07.2022, the Bank has given description of properties, which have been mortgaged in the accounts, namely Manjit Kaur. As per the Bank, the list of property/properties described in its affidavit dated 26.07.2022 are mortgaged in the above accounts and keeping in view the default of the borrower, the Bank has contended that as a secured creditor they are entitled to take physical possession of the mortgaged properties, which are duly mortgaged with the Bank in the loan account.

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5. Notice of the said application u/s 14 of the SARFAESI Act, 2002 filed by the Bank was issued to the respondent/borrowers/guarantors.

6. No one appeared to defend the case on behalf of Respondent despite of numerous adjournments on 13.09.2022, 14.09.2022 & 11.10.2022 were given. So, it is presumed that respondent doesn't have anything to say or he/she is unwilling to deposit any amount of loan due. Accordingly, the case is being decided keeping in view the documents available on file and on merit thereof.

7. The under noted properties, which have been described in the application and affidavit dated 26.07.2022 is/are all within the jurisdiction of this authority and consequently this authority is competent under Section 14 of the Act 2002 to grant assistance to the Bank to take over physical possession of the mortgaged assets:

Secured Asset
House No. 210 Property Measuring 6 Marla 48 sq. ft. or 156 sq. mts comprised under Khasra No. 29//15/2, 27, 29//16/2 Khata No. 168/174, 169/175 as per Jamabandi for the year 2012-13 situated at Village Ladhe Wali Locality Known as Khera Enclave, Tehsil and District Jalandhar in favour of Mr. Harkirat Singh S/o Mr. Bhag Singh and Mrs. Manjit Kaur W/o Mr. Harkirat Singh vide a sale deed bearing Wasika No. 12557 dated 03.03.2016 Boundaries as:- ***East Plot :*** ***West Street :*** ***North : Plot*** ***South : Plot***

8. Keeping in view the above facts, I grant the permission under Section 14 of the SARFAESI Act 2002 in favour of the bank, enabling it to take physical possession of the mortgaged property for recovery of public money due from the aforesaid borrowers.

9. Consequently, the application filed by the Bank is hereby allowed, Commissioner of Police, Jalandhar/Senior Superintendent of Police (Rural) and Concerned Tehsildar/Executive Magistrate, Distt. Jalandhar, are directed to provide requisite assistance to the Bank for taking physical possession of the above mentioned secured assets, as per law.

10. Before parting with the orders, it is hereby clarified that Section 34 of the Act bars the jurisdiction of Civil Courts to entertain any suit or proceedings where the DRT or DRAT is empowered to act under the Act and no injunction shall be granted against action taken under this Act. This has been repeatedly upheld by judgements of the Hon'ble Supreme Court (Sasi and another Vs Housing Development Finance Corporation Ltd and others, AIR 2011) and The Punjab & Haryana High Court and

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Other High Courts. As Such, relief for stay may be granted only at the competent forum i.e. DRT, DRAT, Hon'ble High Court or Hon'ble Supreme Court.

11. A copy of this order should be sent to the applicant Bank and the bank is directed to make liaison with the concerned Tehsildar and Police Department for getting the necessary assistance for taking over the possession of the property.

Order pronounced and file be consigned to the record room.

Additional District Magistrate
Jalandhar'

4. This Court while taking cognizance of the matter, passed an interim order on 9.1.2023 that the possession of the secured assets, which has already been taken will not be put to auction and no third party rights will be created subject to deposit of ₹10 lakhs by the petitioner on or before 25.1.2023 . Later on, on 11.4.2023, an amount of ₹10 lakhs was deposited with the bank by the petitioner.

5. It appears that no efforts were taken by the Bank to vacate the interim order and therefore, the same continues to subsist till date, despite the petitioner having an alternative efficacious statutory remedy under Section 17 of the SARFAESI Act to approach the Debt Recovery Tribunal (DRT).

6. This matter was listed yesterday, i.e. 26.5.2025, when the petitioner was directed to seek instructions as to whether she is ready and willing to clear the entire dues computed by the respondent-Bank, which is ₹40,94,846/- as on date.

7. Learned counsel for the petitioner after seeking instructions disputes the quantum of the aforesaid amount, *inter alia,* on various accounting differences.

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8. Such differences cause disputed questions of fact, which cannot be adjudicated while exercising the writ jurisdiction, especially when the statutory remedy of approaching the DRT under Section 17 of the SARFAESI Act and thereafter before the DRAT under Section 18 is available.

9. *Ergo*, we relegate the petitioner to remedy for approaching the DRT, after satisfying the DRT on the question of limitation in accordance with law.

10. Disposed of.

11. Nothing said hereinabove be construed as expression upon merits of the *lis* between parties.

12. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(SHEEL NAGU)
CHIEF JUSTICE

(SUMEET GOEL)
JUDGE

27.5.2025
Ashwani

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

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