IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

119 **CWP-2981-2025.**
Date of Decision: 03.02.2025.

M/s Deswal Brothers and another ....Petitioners.

VERSUS

Punjab National Bank and others ....Respondents.

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CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Ms. Vini Mahajan, Advocate for the petitioners.

Mr. Gaurav Goel, Advocate for respondent-Bank.

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ANUPINDER SINGH GREWAL, J. (Oral)

The petitioners have challenged the order dated 28.01.2025 (Annexure P-1) passed by the DRT-II, Chandigarh. They have also challenged notice dated 20.09.2022 (Annexure P-2) issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'), notice dated 17.12.2022 (Annexure P-3) issued under Section 13(4) of the SARFAESI Act and the e-auction notice dated 06.01.2025 (Annexure P-7). The petitioners have also sought further directions to the respondents including direction to the respondent-Bank to reschedule and regularize the Home Loan Credit Facility and Cash Credit Facility.

2. Learned counsel for the petitioners submits that the petitioners had applied for financial assistance from the respondent-Bank in the form of

Home Loan Credit Facility. The respondent-Bank had sanctioned Term Loan to the petitioners for an amount of Rs.30 Lakhs and Overdraft Facility of Rs.10 Lakhs in the year 2013, which was enhanced to Cash Credit Facility of Rs.26 Lakhs in the year 2016. She further submits that the property of the petitioner has been hurriedly auctioned and the petitioners are ready to pay 50% of the total outstanding dues within 2-3 days and, therefore, the e-auction notice dated 06.01.2025 (Annexure P-7) be set aside and respondents be restrained from issuing the sale certificate to the auction purchaser.

3. Heard.

4. The petitioner is stated to have taken Term Loan and Overdraft facility for a sum of Rs.40 Lakhs in the year 2013, which was enhanced to Cash Credity Facility of Rs.26 Lakhs in the year 2016 vide another loan account. The respondent-Bank had issued notice dated 20.09.2022 (Annexure P-2) under Section 13(2) of the SARFAESI Act, for a sum of Rs.27,06,640.19 and notice dated 17.12.2022 (Annexure P-3) under Section 13(4) of the SARFAESI Act. The respondent-Bank had also issued e-auction notice dated 06.01.2025 (Annexure-P-7) whereby the property was slated to be auctioned on 27.01.2025. The secured asset was successfully auctioned which was recorded by DRT-II in its order dated 28.01.2025 (Annexure P-1). The auction is stated to have been completed and the auction purchaser has also deposited 25% of the bid amount.

5. The petitioners are stated to have challenged the action of the respondents in initiating proceedings under SARFAESI Act, by preferring SA No.322 of 2024, which is pending adjudication before the DRT-II, Chandigarh. The petitioners have challenged the above-mentioned order dated

28.01.2025 (Annexure P-1) in the instant writ petition, but a perusal of the order indicates that statement of the counsel for the respondent-Bank has been recorded to the effect that the secured asset has been sold and he will furnish the particulars of the auction purchaser to the counsel for the petitioners within three days and, therefore, the matter was adjourned by DRT-II to 03.02.2025 i.e. today itself.

6. By the impugned order, the Tribunal has only adjourned the case after recording the statement of the counsel for respondent-Bank. We do not find any illegality whatsoever in the order dated 28.01.2025 (Annexure P-1) passed by the DRT-II, Chandigarh. The petition challenging the order dated 28.01.2025 is wholly misconceived and baseless.

7. It is also manifest that the auction has already taken place. The right of redemption to the borrower is available only, till the date of publication of notice for auction of the secured asset in terms of the amended Section 13(8) of the SARFAESI Act. It is necessary to refer to Section 13(8) of the SARFAESI Act, which is reproduced hereunder:

> *"**Section 13. Enforcement of Security Interest***
> *xxx xxx*
> *(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—*
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> *(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and*
>
> (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.*"*

8. The effect of the amended provisions of Section 13(8) of SARFAESI Act, has been enunciated in the judgement of the Supreme Court in the case of **"CELIR LLP Vs. Bafna Motors (Mumbai) Private Limited and others" (2024) 2 SCC 1,** wherein it has been held that once notice has been published for auction of the secured asset, the borrower would not have any right to stall the same. The relevant extract of the said judgement is reproduced hereunder:-

> *"105. xxx xxx*
>
> *(i) xxx xxx*
> *(ii) xxx xxx*
>
> *(iii) In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser."*

9. Furthermore, the petitioners are already availing their statutory remedy provided under the SARFAESI Act by preferring a SA, which is pending adjudication before the DRT-II, Chandigarh. The petitioners having once exercised the statutory remedy available to them under SARFAESI Act, ought not to have approached this Court by preferring this writ petition. Therefore, we do not deem it appropriate to interfere in the matter at this

stage, when the petitioners have availed their statutory remedy before the competent Tribunal.

10. At this juncture, learned counsel for the petitioners submits that petitioner No.2 has also availed housing loan by mortgaging his residential house and he wants to settle his loan account and is ready to deposit 50% of the amount due and would pay the remaining amount within three months. The petitioner No.2 would approach the respondent-Bank for the same within a week. She submits that respondents be directed to give an opportunity of hearing to petitioner No.2 before initiating steps under the SARFAESI Act, with regard to another loan account, wherein his residential house has been mortgaged.

11. Consequently, we do not find any merit in this petition which stands dismissed. However, petitioner No.2 would be at liberty to approach the respondent-Bank within a week from today for settling his loan account wherein his residential house has been mortgaged. In the event of the petitioner No.2 doing so, the respondent-Bank would afford an opportunity of hearing to him and consider his case in accordance with the policy of the Bank before taking steps under the SARFAESI Act.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

03.02.2025
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No