IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13069-2025
Date of decision: 29.08.2025

SUNITA SHARMA AND ANR ...PETITIONERS

Versus

STATE OF PUNJAB AND ORS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY

Present: Mr. Brijesh Nandan, Advocate
for the petitioners.

Mr. Vipin Pal Yadav, Addl. AG. Punjab
for respondents No.1,4 and 5.

Mr. Abhinav Sood, Advocate;
Mr. Nitesh Jhajhria, Advocate and
Ms. Mehndi Singhal, Advocate
for respondents No.6 and 7.

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SHEEL NAGU, C.J. (Oral)

1. Learned counsel for the petitioners, who are borrowers and claim to be proprietor of a MSME, are before this Court assailing demand notice dated 08.09.2022 (Annexue P-3) and impugned order dated 11.03.2025 (Annexure P-13) passed under Section 14 of SARFAESI Act, which relate to two different and distinct loan accounts numbers i.e. HHLLUD00427223 and HHLLUD00427233.

2. The ground raised herein is that despite the petitioners informing the respondent-Bank vide Annexure P-12, in response to the notice of possession dated 28.11.2022 (Annexure P-8) issued under Section 13(4) of SARFAESI Act, that the firm of the petitioners is a MSME, the benefit of RBI guidelines in respect of MSME have not enured to the petitioners. The petitioners in this regard has relied upon the judgment passed by the Apex

Court in the case of '***M/s Pro Knits Versus Board of Directors of Canara Bank, 2024, RCR Civil 692'***.

3. Learned counsel for the respondent-Bank has disputed the contentions made in this petition by primarily objecting to the very maintainability of this petition on the ground that two different loan accounts, which give rise to two different causes of action, have been mixed up in the present petition and therefore the petition is not maintainable.

4. True it is that the petitioners have mixed up two different causes of action arising out of two different loan accounts No.HHLLUD00427223 and HHLLUD00427233, but looking to the fact that the interim order has already been passed on 08.05.2025, where dispossesion of the petitioners from the secured asset has been protected, this Court ignores the said objection of the counsel for the respondent-Bank.

5. However, learned counsel for the petitioners is unable to satisfy us as to why the information as regards the petitioners being MSME was not intimated to the Bank at the initial stage as is held by the Apex Court in the case of ***M/s Pro Knits*** *(supra),* wherein the Apex Court, after considering the statements of the learned counsel for the rival parties has held as under:

> "*It is also pertinent to note that sufficient safeguards have been provided under the said Chapter for safeguarding the interest of the Defaulters-Borrowers for giving them opportunities to discharge their debt. However, if at the stage of classification of the loan account of the borrower as NPA, the borrower does not bring to the notice of the concerned bank/creditor that it is a Micro, Small or Medium Enterprise under the MSMED Act and if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the concerned bank/creditor in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a*

> *<u>belated stage.</u> Suffice it to say, when it is mandatory or obligatory on the part of the Banks to follow the Instructions/Directions issued by the Central Government and the Reserve Bank of India with regard to the Framework for Revival and Rehabilitation of MSMEs, it would be equally incumbent on the part of the concerned MSMEs to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework."*

6. More so, the petitioners are free to approach the DRT in respect of causes of action arising out of each loan account.

7. The Apex Court has consistently held that High Courts should refrain from interfering under Article 226 of the Constitution in SARFAESI proceedings. The SARFAESI Act, 2002 is a complete code which not only provides for a detailed recovery mechanism but also remedies before the Debts Recovery Tribunal (DRT) and thereafter, Debts Recovery Appellate Tribunal (DRAT).

8. From the averments in the petition, it does not appear that the petitioners have availed the statutory alternative remedy of approaching the DRT and/or DRAT.

9. In view of above and the ratio laid down by Apex Court in **United Bank of India vs. Satyawati Tondon, (2010) AIR SC 3413 (Para 17, 27) ; Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir and others, (2022) 5 SCC 345 (Paras 10, 21) ; PHR Invent Educational Society versus UCO Bank and others, 2024 (6)SCC 579 (Paras 22 to 41),** this Court refrains from exercise of jurisdiction under Article 226 of Constitution.

10. The petitioners are relegated to avail the appropriate statutory remedy under the SARFAESI Act before the DRT and thereafter before

DRAT. In case the petitioners prefer an application under Section 17 of SARFAESI Act within a period of 30 days from today along with copy of this order, the same shall be considered and decided on its own merits, without being dismissed on limitation alone.

11. Interim relief, if granted, in the present petition, shall continue till the DRT takes fresh decision on the question of interim relief, provided the petitioner approaches the DRT within 30 days, failing which the interim relief shall lose its effect. It is made clear that if petitioners approach the Tribunal within the prescribed stipulated time, then this order shall not prejudice the mind of Tribunal while deciding the question of interim relief, if admissible to the petitioner. We further make it clear that the Tribunal shall decide the request for interim relief strictly on merits of the matter, without being influenced by the fact of petitioner having approached this Court or this Court having passed the present order.

12. Consequently, this Court declines interference on merits and disposes of this petition with aforesaid liberty, with no order as to cost.

(SHEEL NAGU)
CHIEF JUSTICE

(SANJIV BERRY)
JUDGE

29.08.2025
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*