2025:PHHC:103088-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20202-2025 (O&M)
Date of decision: 08.08.2025

Aanya (minor) through grand-father Fatta Ram Saharan

......Petitioner

Versus

Housing Development Finance Corporation Limited and others

.........Respondents

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

Present: Mr. Anil Ghanghas, Advocate,
for the petitioner.

Mr. Sahil Khunger, Advocate,
for respondent No.1.

Mr. Ripu Daman Boora, Advocate,
for respondent No.5.

***

SHEEL NAGU, C.J. (ORAL)

1. The petitioner being a minor, represented through her paternal grand-father, is before this Court assailing the action taken by respondent No.1-bank under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, for liquidating the secured asset in respect of which, there was default in repayment of the loan amount borrowed by the father and mother of the minor petitioner.

2. On being asked, as to why the petitioner has not

availed remedy under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal, which is a statutory forum established under the SARFAESI Act, 2002, learned counsel for the petitioner informs that there is a legal issue, as to whether the bank can initiate action under the SARFAESI Act against the minor or not.

3. This Court has no manner of doubt that when the mortgage deed was signed, it legally bound not only the signatory, but also the legal heir of signatory. If, the legal heirs are minor, they can always be represented through their guardian.

4. Another issue that was raised by learned counsel for the petitioner, is that a suit has been filed for appointment of guardian at District Courts, Rajgarh (Churu), Rajasthan, which is pending adjudication.

5. On the other hand, learned counsel for the respondent-bank informs that the secured asset, which was a residential opened plot, has already been put to sale and third party rights have been created in favour of the auction purchaser pursuant to the sale certificate dated 25.07.2025.

6. We are of the view that if, the petitioner approaches the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, then the action of the bank in liquidating the secured asset will remain subject to the outcome of the application filed under Section 17 of the SARFAESI Act.

7. It has also been informed by learned counsel for the bank that an excess amount of Rs.2,14,30,586/- is lying with

the bank, to be disbursed to the legal heirs of the original borrower.

8. All the aforesaid issues can very well be raised by the petitioner in the application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, which if, filed within a period of 30 days, shall be entertained and decided on its own merits without being dismissed on the ground of limitation.

9. With the aforesaid liberty, the petition stands disposed of.

(SHEEL NAGU)
CHIEF JUSTICE

(SANJIV BERRY)
JUDGE

08.08.2025
Ajay Prasher

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