2026:PHHC:072036-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-16191-2022(O&M)
Reserved on :11.02.2026
Pronounced on: 08.05.2026
Uploaded on : 08.05.2026

Whether only operative part of the judgment is pronounced or the full Judgment is pronounced: ***Full Judgment***

DEVI HOSPITALITY PVT. LTD

... PETITIONER

Versus

PUNJAB NATIONAL BANK AND ANR

... RESPONDENT

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

Present:- Mr. Gaurav Chopra, Sr. Advocate (arguing counsel) with
Mr. Vaibhav Sharma, Advocate
Mr. Harsh Chopra, Advocate and
Ms. Darika Sikka, Advocate for the petitioner.

Mr. Gopal Jain, Sr. Advocate (arguing counsel through VC) with
Mr. C.S. Pasricha, Advocate for respondent-PNB.

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SANJIV BERRY, J.

1. The petitioner has filed the present civil writ petition under Article 226/227 of the Constitution of India in the nature of writ of Mandamus seeking quashing of the letters dated 12.06.2020 (Annexure P-32), dated 29.01.2022 (Annexure P-37), dated 31.01.2022 (Annexure P-38), dated 07.03.2022 (Annexure P-43) dated 31.03.2022 (Annexure P-48) whereby

respondent No.1-Bank has cancelled the sale bid of the petitioner w.e.f. 21.03.2020 and forfeited the amount of ₹1,07,00,000/- deposited with the respondent Bank under e-auction, besides seeking other reliefs.

2. In nutshell, the case of the petitioner, a private limited company is that in pursuance to sale notice dated 30.01.2020 (Annexure P-1), the petitioner participated in the auction held on 06.03.2020 and deposited the earnest money and gave the highest bid of ₹4,25,00,000/- and was declared highest bidder. Thereafter, on 06.03.2020 at about 1:48 PM, MSTC-ecommerce issued a auto generated e-mail under the heading "Sale Confirmation Letter" communicating to the petitioner that as per the decision of the authorized Officer the bid of petitioner amounting to ₹4,25,00,000/- is accepted as highest bid and petitioner is declared as successful bidder. It was mentioned in the e-mail that the same being from the Authorized Officer and being auto generated through computer system, hence needed no signature. It is averred that in this letter the respondent Bank omitted to provide the basic information such as detailed description of the property in question, area of property, name of village, Khasra numbers, title deed etc. rather only property ID was mentioned. The Bank details viz IFSC code, Name of Bank, account Number etc. were also not mentioned. However, through subsequent e-mails the respondent Bank provided/confirmed all these basic details. It is averred that in violation of the provisions contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short hereinafter referred to SARFAESI Act) and also Rule 9(2) of the Security Interest (Enforcement) Rules, 2002, (in short Rules of 2002) this system generated e-mail dated 06.03.2020 (Annexure P-3) did not comply

with the basic requirements. Despite the respondent Bank not supplying the requisite "sale confirmation letter", the petitioner deposited initial 25% payment before the stipulated date i.e. 07.03.2020 (Annexure P-10). Even though the respondent-Bank failed to fulfill its mandatory statutory obligations by issuing confirmation of sale as per Rule 9(2) of the Rules of 2002. The petitioner sent repeated e-mails seeking requisite information and requested for extension of time to make balance payment on 18.03.2020 (Annexure P-15) which was also not replied by the Bank. A reply by Bank dated 09.03.2020 was received asking the petitioner to deposit the balance amount up to 21.03.2020 i.e within 15 days of the system generated mail communicating the sale confirmation.

2.1 It is averred that on account of non compliance by the respondent-Bank, petitioner complained through e-mail dated 21.03.2020 (Annexure P-18) to the higher authorities of the respondent-Bank which was replied by the Bank intimating that earnest money of ₹1,07,00,000/- has been received and that "sale confirmation letter" had already been issued on 11.03.2020 by the Bank. It is stated that the respondent Bank had for the first time in its e-mail dated 30.03.2020 mentioned about the alleged "confirmation of sale" letter dated 11.03.2020 having been issued when even the 15 days period for making balance payment had already expired on 26.03.2020.

2.2 A fraud had been played by the Bank officials with the petitioner by not supplying him the correct description of the property despite repeated demands and issuing the alleged "sale confirmation letter" not in accordance with rules and regulations and to cover their own default, the respondent Bank had issued letter dated 12.06.2020 (Annexure P-32) intimating the petitioner

that on account of non deposit of 75% of the balance bid amount, the respondent Bank had cancelled the sale and amount already deposited had been forfeited. Hence the petition.

3. Upon notice, the respondent Bank has filed the response, refuting the allegations levelled in the petition and prayed for dismissal of the petition.

4. We have heard learned counsels for the parties and also perused the record.

5. Learned Senior counsel for the petitioner has *inter alia* submitted that pursuant to the auction notice dated 30.01.2020 (Annexure P-1) petitioner participated in the auction by depositing the requisite amount and later on being declared the highest bidder had deposited 25% of the earnest money within time. However, there being non disclosure of full description of the property and also Bank account details, the petitioner sent e-mails to the respondent Bank seeking clarification and complete details as required under the provisions of the SARFAESI Act and the Rules framed thereunder. Even the "sale confirmation letter" was not issued as required under the Rules.

5.1 He contends that three copies of alleged "sale confirmation letter" dated 11.03.2020 brought on record i.e. (Annexure P-20) supplied on 20.03.2020, (Annexure P-27) dated 12.05.2020 and Annexure R1/1 filed along with written statement all three different in mail contents. The confirmation of sale letter is required to be issued as per the format contained in the Bank circular, on the subject, which has not been done. The "sale confirmation letter" allegedly dated 11.03.2020 was conveyed by the Bank on 30.03.2020 when even the requisite period of 15 days for depositing of the

balance amount had already expired and the respondent Bank instead of rectifying their own mistake had proceeded to issue impugned communication dated 12.06.2020 (Annexure P-32), intimating the petitioner that on account of non deposit of the balance sale consideration the respondent Bank has cancelled the sale and forfeited the earnest money, which is manifestly illegal and against the provision of law.

5.2 He submits that even a FIR No. 58 dated 23.04.2025 (Annexure A-6) has been registered against the Bank officials for their illegal acts and fabricating the documents.

6. Per contra, learned Senior counsel for the respondent Bank has assailed these arguments by submitting that there is no merit in the contentions raised by the petitioner as the Bank has acted in accordance with procedure laid down by law. The petitioner had deposited the earnest money after he was declared the highest bidder. As per Rules, he was supposed to deposit balance amount of 75% within 15 days of the sale confirmation. They contend that sale intimation letter was sent through e-mail dated 06.03.2020 (Annexure P-2) followed by another e-mail of the same date (Annexure P-3) bearing subject "SALE CONFIRMATION LETTER (Property-PUNB388100220)" intimating the petitioner to deposit the balance amount of 75% of the bid amount on or before 21.03.2020 which was even responded too by the petitioner vide Annexure P-4. Later, petitioner had sent e-mails on hyper technical grounds to the respondent Banks seeking details of the property and also the Bank account, IFSC code, etc. which were nothing but an attempt to delay the deposit of the balance sale amount. The petitioner was well aware of the details of the property and also the factum of the sale being

confirmed and that he was required to deposit the balance amount within 15 days which he had not done and resultantly the respondent Bank had no option but to issue impugned letter (Annexure P-32) intimating the petitioner about the cancellation of sale and consequent forfeiture of the earnest money as per rules.

6.1 Learned Senior counsel further points out that sale was cancelled and the amount of earnest money was forfeited by the Bank vide Annexure P-32 dated 12.06.2020 in accordance with law and the petitioner has preferred the instant petition on 25.07.2022 without explaining the reasons for such a delayed approach to seek redressal of his alleged grievance. Moreover, the petitioner was declared highest bidder in the auction held on 06.03.2020 for an amount of ₹4,25,00,000/- and the petitioner defaulted in making the payment of the balance sale consideration, whereas presently the value of the property is more than ₹30 crores. Even the extension sought by the petitioner vide Annexure P-25 dated 28.04.2020 has been so done after the requisite period of 15 days from the date of intimation of sale confirmation had lapsed. He points out that the authorized officer has power to cancel the auction sale and forfeit amount on the failure of the highest bidder to deposit the balance sale amount. He contends that sale was cancelled and the earnest money was forfeited by the Bank as per the rules and the petitioner itself is responsible for the same, therefore he is not entitled concession of discretionary relief from this Court.

6.2. Learned Senior counsel for the respondent Bank has further submitted that the petitioner had efficacious remedy available under Section 17(1) of the SARFAESI Act to approach the jurisdictional Debt Recovery

Tribunal for redressal of his grievance and as such, present petition under Article 226 of the Constitution of India is not maintainable. In support of his contention he has referred to judgment of Hon'ble Apex Court passed in ***Agarwal Tracom Pvt. Ltd vs. Punjab National Bank & Ors; 2018 (1) SCC 626*** **.** Hence prayed for dismissal of the petition.

7. Considering the rival contentions and perusing the record, it transpires that so far as the factual position is concerned it is not disputed that the petitioner had participated in the auction held on 06.03.2020 qua the secure asset, pursuant to sale notice for e-auction dated 30.01.2020. It is also not disputed that the petitioner was declared highest bidder of ₹4,25,00,000/- for the property mentioned at Lot No.2 of the sale notice which was intimated to him vide MSTC-ecommerce email dated 06.03.2020 followed by another mail bearing the subject "SALE CONFIRMATION LETTER (Property-PUNB388100220)" (Annexure P-3). It is also not disputed that the petitioner had deposited 25% of the initial payment within the stipulated period.

8. The controversy thereafter arose on the petitioner claiming that formal "sale confirmation letter" as per the requisite format has not been transmitted by the respondent Bank and that period of 15 days for depositing of the balance sale consideration would count therefrom. The petitioner sent e-mail dated 07.03.2020 (Annexure P-10) depositing 25% of the amount in respect of property ID -PUNB388100220.

8.1 Whereas, according to the counsel for respondent Bank, in its own email dated 07.03.2020 (Annexure P-11), dated 09.03.2020 (Annexure P-12), dated 09.03.2020 (Annexure P-13) the petitioner itself has mentioned the details of the property alongwith the relevant Wasika numbers and Khasra

numbers of the property in question. Interestingly, the petitioner also sent e-mail dated 18.03.2020 (Annexure P-14) seeking extension of time for making the balance payment of 75% wherein the request was made for extension of 90 days to deposit the balance sale consideration, due to annual closing as well as effect of Corona on the Banking Economy etc. followed by another e-mails dated 19.03.2020 (Annexure P-15 to P-17) on the same subject.

9. In the backdrop of this communication, the petitioner has claimed that the Bank had not sent him the requisite "sale confirmation letter" in time. It is contended that the alleged "sale confirmation letter" dated 11.03.2020 was conveyed by respondent Bank on 30.03.2020 when even the requisite period of 15 days had already lapsed. It is further pointed out that three different sale confirmation letters have been received by the petitioner on different occasions which are not identical with each other. It is the contention of the petitioner that although they were ready to deposit the balance sale consideration but on account of non supply of the "sale confirmation letter" as per the rules of the Bank they could not do so, therefore, the action of the respondent Bank in canceling the sale and forfeiture of the earnest money is illegal. Whereas, the stand of the respondent Bank is that the sale confirmation was conveyed to the petitioner on the date of auction itself through MSTC-ecommerce auto generated email followed by the email dated 06.03.2020 (Annexure P-3) under the subject "SALE CONFIRMATION LETTER (Property-PUNB388100220)" and therefore, the petitioner on one pretext or the other avoided the payment of balance sale consideration and it is evident from the subsequent e-mail sent by the petitioner to the Bank that petitioner wanted extension of 90 days to deposit the amount due to annual closing as

well as influx of Corona. Respondent Bank also fairly claimed that the sale confirmation was duly conveyed to the petitioner and on the default by petitioner in not depositing the balance sale consideration it had to cancel the sale and forfeit the earnest money which is as per law and legally done by the respondent Bank.

10. The learned Senior Counsel on behalf of the respondent Bank has emphasized that the dispute raised by the petitioner essentially arises out of the action of the secured creditor i.e. the respondent Bank in taking measures under Section 13(4) of the SARFAESI Act, for which specific remedy is available to the petitioner, to approach the jurisdictional Debt Recovery Tribunal to seek redressal of his grievances under Section 17 of the Act and in this regard he has referred to ***Agarwal Tracom Pvt. Ltd vs. Punjab National Bank & Ors; 2018 (1) SCC 626.***

11. Learned counsel for the petitioner has assailed these arguments by raising the plea that forfeiture of the earnest money cannot be considered as a measure falling under Section 13(4) of the SARFAESI Act and therefore, provisions of Section 17 of the SARFAESI Act would not be applicable to the facts and circumstances of the present case and the arguments raised on behalf of the Bank is misconceived.

12. Considering the arguments of the respective counsels in the light of the judgment of Hon'ble Supreme Court cited in case ***Aggarwal Tracom's (supra),*** we find the same is fully applicable to the facts and circumstances of the present case being identical. The matter in issue therein also pertains to forfeiture of the amount deposited by the auction purchaser which the Hon'ble Apex Court has held to be part of measures taken under Section 13(4) of the

SARFAESI Act and the auction purchaser only entitled to challenge such action under Section 17(1) of the SARFAESI Act before the jurisdictional Debt Recovery Tribunal. The question for consideration in the said case before the Hon'ble Apex Court was as under:-

> *" 18. The short question that arise for consideration in this appeal is whether the High Court was justified in holding that the remedy of the appellant (auction purchaser) lies in challenging the action of the secured creditor (PNB) in forfeiting the deposit by filing an application under Section 17 of the SARFAESI Act before the DRT or the remedy of auction purchaser is in filing the writ petitioner under Article 226/227 of the Constitution of India to examine the legality of such action."*

13. The relevant paras of ***Aggarwal Tracom's case (supra)*** are reproduced here under:-

> *"19.* Section 13(4) *and Section 17 of the SARFAESI Act, Rules 8 and 9 of the Security Interest(Enforcement) Rules,2002 (hereinafter referred to as "the Rules") to the extent they are relevant for deciding the question involved in the appeal are quoted below:*
>
> ***Section 13 (4)***
>
> *13. Enforcement of security interest-*
>
> *(1) to (3A)……*
>
> *(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-*
>
> *(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;*
>
> *(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset:*
>
> *Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial*

part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Section 17

*"17. **Application against measures to recover secured debts**-(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorized officer under this Chapter, may make an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:*

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,-

(a) to (c)……

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other

law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A)……..

(5)……..

(6)……..

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993*(51 of 1993) and the rules made thereunder.*

Rule 8

8. ***Sale of immovable secured assets****- (1) to (8) ……*

Rule 9

9. ***Time of sale, issue of sale certificate and delivery of possession, etc.-***

(1) to (4)……

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules."

(Emphasis supplied)

26. So far as this case is concerned, sub-rule (5) of Rule 9 is relevant. It provides that, if the auction purchaser commits any default in payment of sale consideration within the time specified, the deposit made by auction purchaser shall be "forfeited" to the secured creditor and the auctioned property shall be resold and the defaulting purchaser shall "forfeit" all claims to the property or its part of the sum for which it may be sold subsequently.

27. Reading of the aforementioned Sections and the Rules and, in particular, Section 17(2) and Rule 9(5) would clearly go to show

that an action of secured creditor in forfeiting the deposit made by the auction purchaser is a part of the measures taken by the secured creditor under Section 13(4).

30. In our view, therefore, the expression "any of the measures referred to in Section 13(4)taken by secured creditor or his authorized officer" in Section 17(1)would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section13(4).

33. In United Bank of India vs. Satyawati Tondon & Ors., (2010) 8 SCC 110, this Court had the occasion to examine in detail the provisions of the SARFAESI Act *and the question regarding invocation of the extraordinary power under Article 226/227 in challenging the actions taken under the SARFAESI Act. Their Lordships gave a note of caution while dealing with the writ filed to challenge* the actions taken under the SARFAESI Act and made following pertinent observations which, in our view, squarely apply to the case on hand:

> *"42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.*
>
> *43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as*

they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

34. In the light of foregoing discussion, we are of the considered opinion that the Writ Court as also the Appellate Court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of SARFAESI Act before the concerned Tribunal to challenge the action of the PNB in forfeiting the appellant's deposit under Rule 9(5). We find no ground to interfere with the impugned judgment of the High Court."

14. Therefore, in view of the fact that in the present writ petition filed by the petitioner under Section 226 of the Constitution of India, a lot many disputed questions of fact are involved which cannot be looked into while exercising the power of judicial review under Article 226, especially

when a specific legislation i.e SARFAESI Act is providing for detailed mechanism for redressal of such grievances raised by the petitioner in the form of approaching the jurisdictional Debt Recovery Tribunal under Section 17 of the SARFAESI Act, therefore we decline to interfere in the matter and relegate the petitioner to approach the jurisdictional Debt Recovery Tribunal under Section 17(1) of the SARFAESI Act for redressal of its grievances.

15. In case the petitioner prefers an application under Section 17 of SARFAESI Act within a period of 45 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.

16. Accordingly, without commenting on the merits, the writ petition stands disposed of with aforesaid liberty. Needless to clarify that this order shall not come in way of any party aggrieved by any recourse/action taken under SARAFESI Act to avail appropriate remedy before DRT/DRAT as per law.

17. Pending application(s) if any shall stands disposed of.

(SANJIV BERRY)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

Dated: 08.05.2026
Gyan

i) Whether speaking/reasoned? Yes/No
ii) Whether reportable? Yes/No