CNR No:PHHC011201842026
2026:PHHC:101994-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-22599-2026 (O&M)
Date of decision: 23.07.2026

ORCHIDS KIDS PARADISE EDUCATION SOCIETY & ORS.

...PETITIONERS

VS.

AU SMALL FINANCE BANK LTD.

... RESPONDENT

CORAM:- HON'BLE MR. JUSTICE JASGURPREET SINGH PURI
HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Mahinder Singh Mavi, Advocate for the petitioners.

Mr. Nitin Thatai, Advocate for respondent -Bank.

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SANJIV BERRY, J.

1. The instant Civil Writ Petition under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Certiorari* for quashing the impugned auction notice, auction proceedings, sale confirmation, sale certificate (Annexure P-8) and all subsequent consequential proceedings arising therefrom under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as *'the SARFAESI Act'*) and with a further prayer for directing the respondents to refrain from taking any coercive action against the petitioners during the pendency of the present petition.

2. Mr. Nitin Thatai, Advocate has put in appearance on behalf of the respondent-Bank.

3. Brief facts arising out the present case are that the petitioner No.1-Orchid Kids Paradise Education Society, an educational society, had availed loan facility amounting to ₹80,00,000/- @ 12% from respondent-Bank against the secured assets comprising of two immovable properties- commercial/residential assets i.e Booth No. 108, Sector 55 and House No. MCF-37, Jain Colony situated at Ballabgarh, District, Faridabad, Haryana and due to non adherence to financial discipline, the respondent-Bank declared the account of the petitioners as Non-Performing Asset (NPA) and started SARFAESI proceedings, hence the petition.

4. We have heard respective submissions made by learned counsel for the parties and perused the record.

5. It is the contention of the learned counsel for the petitioners that the petitioner No.1 is an Educational Society registered as Orchid Kids Paradise Education Society, who had availed a loan facility amounting to ₹80,00,000/- @ 12% from the respondent-Bank and had made substantial repayments amounting to ₹57,00,000/- to the respondent Bank and requested them to regularize the account, however the respondent Bank continued to levy charges, interest and penal components and declared the loan account of the petitioners as Non-Performing Asset (NPA) and initiated proceedings under the SARFAESI Act in an arbitrary and illegal manner without affording any meaningful opportunity to the petitioners.

5.1 Learned counsel for the petitioners further submits, aggrieved by the action of the respondent-Bank petitioners approached learned Debt Recovery Tribunal-II, Chandigarh by filing Securitisation Application bearing SA No. 98-2024 titled as Orchids Kids Paradise Education & Anr. Vs. AU Small Finance

Bank Ltd. & Anr., however the same was dismissed on the ground of limitation vide order dated 18.12.2024 (Annexure P-5). Thereafter petitioners filed Appeal No. 47-2025 before learned Debt Recovery Appellate Tribunal, Delhi which was also dismissed vide order dated 11.03.2025 (Annexure P-6) on the ground of non-compliance of condition of pre-deposit under Section 18 of the SARFAESI Act. He submits that the petitioners were denied adjudication on merits and hence, preferred the instant writ petition.

5.2 He submits that the petitioners had approached the learned Debt Recovery Tribunal, and learned Debt Recovery Appellate Tribunal seeking redressal of the grievance qua non adherence to the provisions of law governing the taking of possession and subsequent auction of the secured asset but unfortunately in both the forums its petition as well as appeal were dismissed on technical grounds rather than addressing them on the merits of the case. He submits that the appeal preferred before the DRAT was dismissed vide order dated 11.03.2025 (Annexure P-6) on the ground of non compliance of condition of pre deposit and as such the petitioner has filed the instant writ petition seeking redressal of his grievance.

6. *Per contra,* learned counsel representing respondent-Bank submits that the respondent-Bank has acted in accordance with the procedure and law while dealing with the loan account and on account of non-adherence of financial discipline the same was correctly declared as Non Performing Asset. He contends that the Bank had followed the procedure laid down in the SARFAESI Act and had lawfully issued notice under Section 13(2) of the SARFAESI Act followed by the proceedings carried out in pursuance to Section 13(4) of the SARFAESI Act. He submits that the petitioner has agitated before

the learned Debt Recovery Tribunal questioning the validity of the SARFAESI action by filing SA No. 98-2024 titled as *Orchids Kids Paradise Education & Anr. Vs. AU Small Finance Bank Ltd. & Anr.*, which however was dismissed vide order dated 18.12.2024 (Annexure P-5) and against the same appeal preferred by the petitioners before learned Debt Recovery Appellate Tribunal also stood dismissed vide order dated 11.03.2025 (Annexure P-6), as it failed to comply with the condition of pre-deposit.

6.1 He contended that the petitioners have already approached and availed remedy under the SARFAESI Act and therefore the instant writ petition is not maintainable and prayed for dismissal of the same.

7. Considering the rival contentions and perusing the record, it transpires that admittedly the petitioners had availed the loan facility from the respondent and as per averments the account was declared as Non Performing Asset due to non adherence of the financial discipline and the proceedings under the SARFAESI Act were initiated in the form of issuance of notice under Section 13(2) and 13(4) and then proceeded with the auction of the property.

8. It is not disputed that the petitioners had preferred SA No. 98-2024 titled as *Orchids Kids Paradise Education & Anr. Vs. AU Small Finance Bank Ltd. & Anr.,* before the Debt Recovery Tribunal-II, Chandigarh, challenging the validity of the SARFAESI action initiated by the respondent Bank which however was dismissed vide order dated 18.12.2024 (Annexure P-5).

9. Thereafter petitioners challenged the same by filing an appeal before the learned Debt Recovery Appellate Tribunal, Delhi vide appeal No. 47-2025 which too was dismissed vide order dated 11.03.2025 (Annexure P-6) primarily on account of non-compliance of the condition of pre-deposit as

envisaged under Section 18 of the SARFAESI Act. It is not out of place to mention here that the petitioner has also moved an application seeking details of the auction proceedings before the Court of Chief Judicial Magistrate, Faridabad vide Anexure P-11, which is still pending.

10. The primary grievance of the petitioner had been that although he had knocked the doors of the forums provided under the SARFAESI Act for the redressal of the grievance of the borrower but neither before Debt Recovery Tribunal nor in appeal his grievance was redressed on the merits of the case because the Debt Recovery Tribunal dismissed the Securitisation Application on account of being barred by limitation while the appeal was dismissed by Debt Recovery Appellate Tribunal on account of non compliance of the condition of pre-deposit, and now petitioner prefers their claims through the instant petition.

11. The, legislature in its wisdom has enacted specific legislation in the form of SARFAESI Act to regulate Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, to provide for a central data base of Security interest created on the property rights and for matters connected therewith or incidental thereto.

11.1 The petitioner being aggrieved by the proceedings initiated by the secured creditor/respondent Bank after its account was declared Non Performing Asset (NPA), had opted and availed remedies provided under Section 17 and 18 of the SARFAESI Act. The petitioner essentially claims that the learned Debt Recovery Appellate Tribunal should have decided its appeal rather then dismissing the same on the ground of non compliance of pre-deposit. In this regard, as per the Scheme of the SARFAESI Act, Section 18 provides for appeal to the Appellate Tribunal which reads as under:-

*"**18. Appeal to Appellate Tribunal**.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal1 [under section 17, may prefer an appeal along with such fee, as may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.*

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.]

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

12. It is evident from the bare perusal of the provisions of Section 18 of the SARFAESI Act that no appeal shall be entertained unless the borrower has deposited the requisite percentage of the amount due which is 50% but can be reduced up to 25% by the Appellate Tribunal for reasons to be recorded in writing. Perusing the impugned order dated 11.03.2025 (Annexure P-6) passed by Debt Recovery Appellate Tribunal, Delhi, in the backdrop of the aforesaid statutory provisions would reveal that the petitioner had miserably failed to satisfy the condition of pre-deposit.

13. It is apt to mention here that Hon'ble Supreme Court in its landmark judgment ***Kotak Mahindra Bank Pvt. Limited vs Ambuj A. Kasliwal &***

Ors.,2021 SCC 549; has held that Debt Recovery Appellate Tribunal cannot totally waive off the mandatory pre-deposit requirements to file an appeal and it has discretion only to reduce this amount from 50% of the debt due to 25% there of, in a fit case for the reasons to be recorded in writing. It is observed by Debt Recovery Appellate Tribunal, that pre-deposit was required then without finding fault with such conclusion of the Debt Recovery Appellate Tribunal, the High Court was not justified in setting-aside the order passed by Debt Recovery Appellate Tribunal.

14. It was held there that the High Court does not have the power to waive the pre-deposit in its entirety, nor can it exercise discretion which is against the mandatory requirement of the statutory provision as contained in Section 21, of the Recovery of Debts and Bankruptcy Act,1993 and such order passed by the High Court in that case was held to be not sustainable in the eyes of law and hence was set-aside.

15. In the backdrop of the aforesaid observations by the Hon'ble Supreme Court in ***Ambuj A.Kasliwal's case (supra)*** the perusal of the impugned order order dated 11.03.2025 (Annexure P-6) passed by the Debt Recovery Appellate Tribunal, Delhi would reveal that it had primarily dismissed the appeal on the ground that the petitioner had failed to satisfy the mandatory condition of pre-deposit. No infirmity or illegality in the said order is at all observed.

16. The relief claimed by the petitioners, by filing the instant writ petition under Article 226 of the Constitution of India viz quashing of the impugned auction notice, sale confirmation, sale certificate, declaration of auction as void etc., are all available to the petitioner to challenge before the appropriate forum by filing SA under Section 17 of the SARFAESI Act which

they had unsuccessfully done by filing SA No. 98-2024, however the same was dismissed vide order dated 18.12.2024 (Annexure P-5). Even the Appeal to Debt Recovery Appellate Tribunal, Delhi bearing Appeal No. 47-2025 also stood dismissed vide order dated 11.03.2025 (Annexure P-6) under Section 18 of the SARFAESI Act. No infirmity or illegality in the order dated 11.03.2025 (Annexure P-6) passed by Debt Recovery Appellate Tribunal, Delhi could be observed so as to call for any interference by this Court in exercise of the jurisdiction under Article 226 of the Constitution.

17. Moreover, the practice of entertaining the writ petition by the High Courts in exercise of Article 226 of the Constitution of India without exhausting the alternative remedy available under the law has been strongly deprecated by the Hon'ble Supreme Court. It has been held by the Hon'ble Supreme Court that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained, ignoring the statutory dispensation.

18. In the light of the above discussion, we find no ground to entertain the present petition, as a consequent, the instant writ petition is hereby dismissed.

(SANJIV BERRY)
JUDGE

(JASGURPREET SINGH PURI)
JUDGE

Dated: 23.07.2026
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i)	Whether speaking/reasoned?	Yes
ii)	Whether reportable?	Yes