(2025) 12 P&H CK 1980

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18605 Of 2025 (O&M)

HDFC Bank Limited APPELLANT

Vs

State Of Punjab And Others RESPONDENT

Date of Decision : 17-12-2025

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4), 14, 26(E)
Recovery Of Debt And Bankruptcy Act, 1993 — Section 31
Punjab Value Added Tax, Act 2005 — Section 34, 35, 36

Citation : (2025) 12 P&H CK 1980

Hon'ble Judges : Sheel Nagu, CJ;Sanjiv Berry, J

Bench : Division Bench

Advocate : C.S. Pasrich, Sushil Kumar Bhardwaj, Saurabh Sudhir, Salil Sabhlok

Final Decision : Disposed Of

Judgement

Sanjiv Berry, J

1. The petitioner Bank has preferred the instant writ petition under Article 226/227 of the Constitution seeking writ of mandamus directing respondent No.2 to remove the lien entered vide rapat No. 251 dated 17.03.2025 (Annexure P-8) in the revenue record at the behest of respondent No.3 over the property which is a secured asset in the hands of the petitioner Bank thereby scuttling the rights of the secured creditor which are to be paid prior to that of all other debt/ charges secured by mortgage, with a further prayer seeking writ in the nature of certiorari quashing the lien entered vide rapat No. 251 dated 17.03.2025 (Annexure P-8) in jamabandi of the year 2021-2022, as the petitioner Bank is having priority of charge being secured creditor and also seeking issuance of writ of mandamus forbearing respondent No.3 from interfering in any manner with the Petitioner’s rights to proceed under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act) to enforce its security interest in

the secured asset.

2. In nutshell, the facts of the case are that the respondent No.4 had availed loan facility in the shape of Cash Credit Limit amounting to ☐ 12 crores with PSR facility of ☐ 16.32 lac and Term Loan facility of ☐ 1.80 crores, thereby availing total loan facility amounting to ☐ 13,96,32,000/- by securing the properties by way of mortgage in favour of petitioner Bank. The properties were equitably mortgaged on 18.04.2014 in favour of the petitioner Bank and even the properties were duly registered in Central Registry created under the SARFAESI Act in favour of the petitioner Bank since 03.05.2014, the copy of CERSAI report in this regard is Annexure P-1. The loan account of the borrower respondent No.4 turned NPA on 31.03.2018 on account of the default committed by the them, resulting in initiation of proceedings under the SARFAESI Act including the notices under Section 13(2) dated 24.08.2018 (Annexure P-2) demanding the amount, under Section 13(4) dated 30.10.2018(Annexure P-3) followed by order dated 04.12.2018 under Section 14 of the SARFAESI Act being passed by the Additional District Magistrate, Jagraon (Annexure P-4), modified vide order dated 13.03.2019 (Annexure P-5). In pursuance thereof the physical GYAN CHAND possession of the properties as mentioned in the para 2(i) and 2(ii) of the petition were taken over by the petitioner Bank on 05.04.2019 (Annexure P-6). Thereafter Original Application, OA No.2449/2018, was filed by the petitioner Bank before the DRT-III, Chandigarh on the basis whereof final orders/judgment dated 27.10.2022 (Annexure P-7) was passed which is pending execution before the Recovery Officer in Execution RC No.647/2022. Since no further appeal against the order passed in OA was preferred as such the same had attained finality.

3. It is averred that the petitioner Bank was in the process of liquidating the secured assets by putting them on auction, when it came to its notice that the secured assets had been attached at the instance of respondent No.3 vide rapat No. 251 dated 17.03.2025 (Annexure P-8). It is further averred that the charge created in favour of the petitioner-Bank qua the secured debt has been duly registered in the Central Registry way back on 18.04.2014 (Annexure P-1) on the basis of equitable mortgage, whereas the lien so created by respondent No.3 is much later, i.e. 17.03.2025. Reference is made to Section 26 (E) of the SARFAESI Act and Section 31 of Recovery of Debt and Bankruptcy Act, 1993 (in short RDB, Act) which makes the rights of secured creditors to realize the secured debts having priority over all Government dues and hence prayer for acceptance of the petition and issuance of the requisite writs.

4. Learned counsel representing State on behalf of respondent No.3 contested the petition by filing the written statement assailing the version of the petitioner by submitting that there had been outstanding dues GYAN CHAND from the borrower respondent No.4 to the respondent No.3 department on account of Punjab Value Added Tax, Act 2005 (in short Punjab VAT, Act) and as per Section 34 of the Punjab VAT Act “tax or any other amount due or payable by a person

under this Act, shall be a debt, due to the State Government and shall be payable or recovered as per the provisions of this Act, which under Section 35 of the said Act is liable to be considered as first charge of the property of such person from the date on which the amount became due and payable. It is stated that such arrears of VAT are recoverable as per as arrears of land revenue under Section 36 of the Act. It is contended that the answering respondent has lawfully created lien over the property of respondent No.4 vide rapat No. 251 dated 17.03.2025 (Annexure P-8). Hence prayed for dismissal of the present petition.

5. Learned counsel for the parties have been heard and record perused.

6. After considering the contentions raised by the rival parties and perusing the record the factual position emerging therefrom is that respondent No.4 had availed certain loan facility by executing equitable mortgage in favour of the petitioner Bank qua the properties mentioned in Para 2(i) and 2(ii) of the petition. The secured assets were duly registered in the Central Registry vide CERSAI report dated 03.05.2014 (Annexure P-1) by the petitioner Bank, and on account of default by the borrower SARFAESI Proceedings were initiated. OA No. 2449/2018 was filed which was finally decided on 27.10.2022 (Annexure P-7), recovery certificate was also issued which is pending execution in RC No. 647/2022, whereby the GYAN CHAND petitioner Bank intended to recover the outstanding dues by selling of the secured assets duly registered in the CERSAI vide order dated 03.05.2014(Annexure P-1).

7. On the other hand, it is the case of the respondent No.3 that there had been outstanding tax dues from respondent No.3 under the PVAT Act, 2005 and being recoverable as arrears of land revenue a lien vide rapat No. 251 dated 17.03.2025 (Annexure P-8) has been entered in the revenue record being the charge over the property.

8. Before Proceeding further, it will be apt to mention here the relevant Provisions regarding priority of charge incorporated in the SARFAESI Act, 2002 and also RDB, Act, 1993, which reads as under: -

"26E. Priority to secured creditors. --Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Explanation.--For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

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"31-B of RBD Act- Priority to secured creditors.— Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

9. This Court while assessing the question of priority of charge qua the secured assets, has recently passed the judgment in CWP No. 26875-2021 decided on 10.12.2025 titled as State Bank of India vs. Sub Registrar, Sub Tehsil Nighdu, Karnal and Others and CWP No. 6083-2024 decided on 10.12.2025 titled as State Bank of India vs. The Tax Recovery Officer-1, Income Tax Department and others .

9.1 In arriving at such conclusion, reliance has been placed by this court on the judgments of the Hon'ble Supreme Court in Dena Bank v. Bhikhabhai Prabhudas Parekh, (2000) 5 SCC 694 (Para 10), Union of India v. SICOM Ltd., (2009) 2 SCC 121 (Para 22), Rana Girders Ltd. v. Union of India, (2013) 10 SCC 746 (Para 21) and Punjab National bank v. Union of India and Ors., (2022) 7 SCC 260 (Paras 38-43).

10. The decisions so rendered supra apply with full force to the facts of the present case. In the present case it is not disputed that the charge vide equitable mortgage in favour of the petitioner Bank was created on 18.04.2014, which was duly registered in the Central Registry CERSAI registration on 03.05.2014 (Annexure P-1) whereas respondent No.3 had created lien over the property vide rapat No. 251 dated 17.03.2025 (Annexure P-8), therefore, it transpires that the charge created in favour of the petitioner bank is much prior in time being duly registered in the Central Registry on 03.05.2014 whereas the charge in favour of the respondent No. 3 was created on 17.03.2025 which is much later.

11. Thus, by applying the ratio laid down in the decisions rendered by this Court in CWP's (supra), on the subject is concerned, this Court has no manner of doubt that the petitioner Bank has a prior charge over the secured assets as reflected in the record, vis a vis the tax dues claimed by respondent No.3 department.

12. Resultantly, this petition preferred by the petitioner-Bank is hereby allowed in the following terms: -

(i) A Writ of Mandamus is issued to respondent No.1 and 2 to remove the lien dated 17.03.2025 in the revenue record entered at the behest of the respondent No.3 over the secured asset and file compliance report within a period of 02 months, before the Registry of this Court, failing which the Registry is directed to list the case as IOIN before appropriate Bench.

(ii) The charge created in the Revenue records vide rapat No.251 dated 17.03.2025 (Annexure P-8) in favour of respondent No.3/The State Tax Officer, (Ward No.32) Ist Floor, Treasury Office, Diet Building, Jagraon, District Ludhiana, Punjab is quashed by a Writ of Certiorari.

(iii) However, the State of Punjab is at liberty to recover its dues pertaining to respondent No.3- the State Tax Officer, after the petitioner Bank satisfies its outstanding dues, or by any other means permissible in law.

13. Resultantly, the instant writ petition stands disposed of in above terms, with no order as to costs.

14. Pending applications, if any, shall stand disposed of accordingly.