



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-35252-2024 (O&M)
Reserved on: 11.12.2025
Pronounced on: 27.02.2026
Uploaded on: 27.02.2026**

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

M/S SHRI KRISHNA POULTRY FEED

... PETITIONER

Versus

CANARA BANK THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR AND OTHERS

... RESPONDENTS

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

Present:- Mr. Rajiv Kataria, Advocate (arguing counsel)
Ms. Neelam Chaudhary, Advocate for the petitioner/Borrower.

Ms. Rahish Pahwa, Advocate for the respondent/Bank.

SANJIV BERRY, J.

1. The present writ petition under Article 226/227 of the Constitution of India has been preferred by the petitioner seeking writ of Certiorari for setting aside of the order dated 13.12.2024 passed by Debt Recovery Appellate Tribunal, Delhi in appeal No. 279/2024, besides seeking writ of Mandamus directing the DRAT to hear the appeal without any further demand of deposits as the requisite amount of 50% pre-deposit stipulated in the second proviso to Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act, 2002) stands already deposited.



2. Brief facts of the case are that the petitioner firm was running poultry feed firm and had availed cash credit limit from the respondent Bank in the year 2015. Due to financial irregularity in the account, during Covid-19 Pandemic, the account was declared as Non Performing Asset (NPA), and proceedings under the SARFAESI Act, 2002 initiated by way of issuance of notice under Section 13(2) of the SARFAESI Act, followed by consequential proceedings. Notice under Section 13 (4) of the SARFAESI Act was issued on 16.04.2024 mentioning amount of ₹34,31,000/- to be outstanding against the petitioner (Annexure P-1). Thereafter, auction of the property was held for ₹39,24,000/-. The petitioner preferred SA No. 347-2024 before Debt Recovery Tribunal-II, Chandigarh and the same was dismissed vide order dated 30.10.2024 (Annexure P-3).The petitioner preferred an appeal (Annexure P-4) before the Debt Recovery Appellate Tribunal, New Delhi under Section 18 of the SARFAESI, Act wherein he deposited Rs. 31,00,000/- as pre-deposit and sought exemption from deposit of 50% amount as claimed by the petitioner but the learned DRAT vide order dated 13.12.2024 (Annexure P-5) rejected the application which has been assailed in the present petition.

3. We have heard learned counsel for the parties and perused the record.

4. It is *inter alia* contended by learned counsel for the petitioner that the impugned order dated 13.12.2024 (Annexure P-5) passed by the learned DRAT New Delhi is against the proviso contained under Section 18 of the SARFAESI Act itself. He submits that the petitioner being borrower was required to deposit with the appellate Tribunal 50% of the amount of debt due as claimed by the secured creditor or as determined by the DRT, which ever is lesser, as pre-deposit. He points out that in the present case the DRT while



adjudicating the Original Application (OA No. 4553/2017), vide order dated 29.12.2018 had issued the Recovery Certificate in favour of the respondent Bank against the petitioner to the extent of ₹35,49,723/- along with 12% simple interest per annum on reducing balance, which is Annexure P-4/A. He contends that the amount assessed by the DRT being lesser, therefore, under the provisions of Section 18 of the SARFAESI Act the learned DRAT was supposed to seek pre-deposit on the amount whichever is less. He submits that the petitioner under wrong legal advice had moved the application for seeking the pre-deposit @ 25% which infact was not required as the petitioner is entitled to pay pre-deposit in terms of the valuation as assessed by the learned DRT in Recovery Certificate (Annexure P-4/B).

5. Learned counsel representing the respondent Bank has assailed these arguments by submitting that the impugned order passed by the learned DRAT is justified and well reasoned and require no interference. She submits that the Recovery Certificate was never placed on record along with the appeal and as such there is no merit in the present petition. Hence prayed for dismissal of the writ petition.

6. After considering the rival contentions and perusing the record, it is observed that so far as the factual position is concerned, there is no dispute qua the same to the extent that the petitioner Firm was granted cash credit limit in 2015 which ultimately became NPA, leading to initiation of SARFAESI proceedings. It is also not disputed that OA No. 4553/2017 was filed by the respondent Bank before the DRT-II, Chandigarh on 13.07.2017 wherein the Recovery Certificate (Annexure P-4/B) dated 29.12.2018 was issued in favour of the respondent Bank and against the present petitioner to the extent of ₹35,49,723/- along with 12% interest. It is also not disputed that the property



was auctioned and the auction was challenged by the petitioner before the learned DRT-II vide SA No. 347/2024 which was declined vide order dated 30.10.2024 (Annexure P-3), against the same petitioner preferred appeal (Annexure P-4) before the DRAT, New Delhi, which however, was rejected vide order dated 13.12.2024 (Annexure P-5).

7. Before proceeding further, it would be apt to have a glance on the relevant provision regarding pre-deposit as contained in Section 18 of the SARFAESI Act, 2002, which reads as under:

“ [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.]”

8. In the present case, it is claimed by the petitioner that he had deposited ₹31,00,000/- towards pre-deposit while filing appeal before the DRAT, New Delhi and due to wrong advice, an application was moved for waiving of 25% amount of pre-deposit.

9. The short point of contention in the present petition is as to whether the petitioner was required to base the pre-deposit on the amount claimed by the secured creditor or the amount as assessed by the DRT.

10. In the present case the secured creditor i.e respondent Bank had claimed the amount due i.e. ₹1.25 crore whereas the DRT-II Chandigarh in the OA preferred by the respondent Bank against the petitioner had issued Recovery



Certificate dated 29.12.2018 (Annexure P-4/B) to the extent of ₹35,49,723/- with 12% interest per annum.

11. The issue in dispute is itself qualified from the plain reading of the provisions enshrined in Second proviso to Section 18 of the SARFAESI Act, which is reiterated hereunder:-

“18. Appeal to Appellate Tribunal.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [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. Applying the aforesaid provision to the facts and circumstances of the present case, it leaves no reason or doubt that the case of the petitioner is amply covered under the same. Phrase **“whichever is less”** mentioned in the aforesaid Proviso to Section 18(i) of the SARFAESI Act clearly lays down that the borrower has to make pre-deposit while preferring appeal under Section 18



of the SARFAESI Act which shall be 50% of the amount of debt due from him as claimed by the secured creditor or determined by DRT, whichever is less.

13. At the cost of repetition, in the present case the secured creditor i.e. Bank claims the due amount to be ₹1.25 crore approximately, whereas admittedly, DRT-II had crystalized the amount due and determined the same by issuing Recovery Certificate dated 29.12.2018 (Annexure P-4/B) while deciding OA No.347/2024 filed by the Bank against the petitioner. Therefore as per the scheme of the Act, the petitioner could have made the pre-deposit at the amount determined by the learned DRT-II, Chandigarh in OA No. 347/2024 vide Recovery Certificate dated 29.12.2018 (Annexure P-4/B) being the lesser amount, the same claimed by the secured creditor. Since, this aspect has not been considered by the learned DRAT while passing the impugned order, hence the same is liable and is thus set-aside.

14. In view of the above, the instant petition is hereby disposed of by setting aside the impugned order dated 13.12.2024 (Annexure P-5) passed by the Debt Recovery Appellate Tribunal, Delhi, thereby directing the learned DRAT, New Delhi to hear the appeal on the merits, on petitioner depositing the pre-deposit of the amount of debt due as determined by learned DRT-II, Chandigarh vide order dated 29.12.2018 passed in OA No. 4553/2017 being the lesser amount, if not already deposited, within 30 days of the passing of the present order.

15. Pending application(s) if any, shall also stand disposed of.

(SANJIV BERRY)
JUDGE

Dated: 27.02.2026

Gyan

i) Whether speaking/reasoned?
ii) Whether reportable?

(SHEEL NAGU)
CHIEF JUSTICE

Yes/No
Yes/No