
(2025) 12 P&H CK 0013

Punjab And Haryana HC

Case No: Civil Writ Petition No. 9580 Of 2025 (O&M)

AU Small Finance Bank Ltd

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision: Dec. 16, 2025

Acts Referred:

- Constitution Of India, 1950-Article 226, 227
- Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002-Section 2(zc), 2(zf), 13, 26B, 26C, 26D, 26E, 35

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

Bench: Division Bench

Advocate: Pritinker Diwaker, Nitin Thatai, Monika Thatai, Shruti Sharma, Karan Sharma, Neeraj Gupta, Pankaj Midha, Jatin Bansal

Final Decision: Allowed

Judgement

Sheel Nagu, CJ

1. This petition under Article 226/227 of the Constitution of India has been filed by AU Small Finance Bank (Bank for brevity) praying for issuance of a Writ of Mandamus directing Respondent Nos. 4 and 5 to remove additional charge on properties of Respondent Nos. 6 to 13 which are already mortgaged in favour of Petitioner Bank since 2022 and to further restrain respondents from interfering with the petitioner Banks process of recovering its dues under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act for brevity).

1.1 The Bank has approached this Court aggrieved due to the above and the fact that Haryana State Cooperative Supply and Marketing Federation Ltd. (HAFED) has put restrictions on sale and purchase etc. of said properties on 01.08.2024 and has illegally taken symbolic possession vide attachment order on 28.11.2024, having been passed by Deputy Commissioner as outstanding dues against borrowers and

guarantors, causing grave prejudice to the petitioner-Bank as it is unable to recover the outstanding dues standing against the borrowers and guarantors (Respondent Nos. 6 to 13), who had availed 3 different credit facilities qua 3 separate firms in the year 2022 by mortgaging a total of 6 different properties but had later defaulted in repayment, leading to initiation of proceedings under SARFAESI Act.

2. The petitioner-Bank had made representations dated 12.02.2025 and 25.02.2025 in this regard to respondent Nos. 4 and 5 requesting for removal of charge in respect of the secured assets marked as lien prior in time in favour of Petitioner Bank, but to no avail.

3. It is pertinent to mention herein that vide order dated 22.05.2025, a clarification in the order dated 04.04.2025 has been made by this Court that status quo shall be maintained qua three properties on which HAFED has a charge, while on other three properties as pointed out in the order dated 22.05.2025, on which HAFED does not have any charge, the order of status quo stood vacated.

4. Learned counsel for the rival parties are heard on the question of admission and also final disposal.

5. It is undisputed at the Bar that the charge in favour of Respondent Nos. 4 and 5 (HAFED), was created vide rapat no. 141 as late as on 28.11.2024 after putting restrictions on 01.08.2024 over the secured assets, whereas the first charge/lien (by way of mortgage) of the petitioner-Bank over the secured assets was created much earlier by the borrowers with the petitioner-Bank by way of equitable mortgage, on 26.04.2022.

6. As such, this Court has to ascertain as to which authority i.e. either the HAFED or the petitioner-Bank, has priority of charge over the secured assets.

6.1 It is undisputed that the charge/lien in favour of petitioner-Bank was created in 2022. It is also not in dispute that the petitioner Bank had duly registered the said security interests with CERSAI in 2022, thereby completing statutory perfection of charge under Chapter IV-A of SARFAESI Act.

6.2 Prior to the Amendment Act No.44 of 2016, the concept of priority of charge in favour of a particular secured creditor was not statutorily codified. A generic kind of assistance could be had from Section 35 read alongwith Sec 2(zc) to (zf) and Sec. 13 of SARFAESI Act which stipulated that the provisions of SARFAESI Act shall have effect notwithstanding anything inconsistent contained in any other law or instrument having effect by virtue of such law. Incidentally, by an amendment carried out on 01.09.2016 (notified subsequently for its implementation), the SARFAESI Amendment Act No.44 of 2016 was promulgated which inserted Chapter IV-A between Chapter IV and Chapter V. Section 26B, 26C, 26D and 26E were included in this newly inducted chapter.

6.3 Section 26E of SARFAESI Act being relevant is to the following effect:-

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.

The object behind introduction of Section 26E of SARFAESI Act was to give priority of security interest due to any secured creditor under SARFAESI Act over all other debts including revenue taxes, cesses and other rates payable to Central or State Government or local authority, except in cases where the Insolvency and Bankruptcy Code, 2016 (IBC, 2016 for brevity) became applicable.

6.4 Section 26E was notified in 2020, whereas in this case both the charges of Bank and Federation were created thereafter.

6.5 The petitioner has relied upon decisions of Apex Court and a Coordinate Bench of this Court rendered in the cases of Punjab National bank v. Union of India and Ors., (2022) 7 SCC 260, Kotak Mahindra Bank Ltd. Vs. Girnar Corrugators Private Ltd. And Others, (2023) 3 SCC 210, and of M/s Kamla Engg.

And Steel Industries, Ludhiana vs. Punjab National Bank, Ludhiana and others, 2020(4) PLR 669, wherein the charge in favour of secured creditor was allowed.

7. The rapat entry itself does not decide rights of parties, it is merely an administrative note and cannot defeat a prior statutory right of mortgage of petitioner Bank. Therefore, the restriction or stay on purchase and sale etc. of secured assets and later in time attachment by HAFED itself cannot decide rights of parties.

8. Consequent upon the above said discussion and on the anvil of Section 26E, this Court has no manner of doubt that the present petition filed by the Bank, which has prior charge over the dues of the State of Haryana, deserves to be and is hereby allowed in the following terms:-

i. A Writ of Mandamus is issued to respondent No.4 and 5 to remove charge in respect of three secured assets, and file compliance report within a period of two (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 prior charge created by putting restrictions on secured assets dated 01.08.2024 and on 28.11.2024 in favour of respondent No.4 and 5 (HAFED), State of Haryana is quashed by a Writ of Certiorari.

iii. However, the State of Haryana is at liberty to recover its dues of the HAFED/respondent No.4 and 5, after the petitioner-Bank satisfies its outstanding dues, by any other means permissible in law.

9. The cost of the petition is quantified at Rs.25,000/-, out of which Rs.10,000/- to be paid to the petitioner-Bank and Rs.15,000/- to be paid to Bar Association of Punjab and Haryana High Court, by the State of Haryana for having delayed the liquidation of secured asset for no justified cause and wasting the precious time of this Court, which could have been utilized in more pressing matters.

10. Before parting, we feel it apt to mention that there are lot many litigations involving the question of priority of charge pertaining to the transactions where the charge was created after the stipulated date i.e. 24.01.2020, when Section 26E of SARFAESI Act was notified. It is made clear that in such cases, 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 in terms of the provisions contained in Section 26E of the SARFAESI Act. This direction in rem is being issued to avoid multiplicity of litigation on the point of law.

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