

2023:PHHC:165689-DB

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

**Civil Writ Petition No. 8275 of 2022
with CM No.20609 -CWP of 2023 and
CM No.20613 -CWP of 2023**

Date of Decision: December 22, 2023.

Arvind Makkar and another

..... PETITIONER (s)

Versus

Union of India and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS.JUSTICE RITU TAGORE**

Present: Mr. Puneet Sharma, Advocate
for the petitioners.

Mr. Gaurav Sharma, Advocate
for respondent No.3.

Mr. D.K.Singal, Advocate and
Mr. Rahul Garg, Advocate
for respondent No.4.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

1. Prayer in this writ petition is for quashing of notice dated 18.04.2019 (Annexure P6) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'SARFAESI' Act), loan termination notice dated 23.07.2019 (Annexure P8) and order dated 15.12.2021 (Annexure P15) passed by Additional District Magistrate, Jalandhar under Section 14 of SARFAESI Act as well as loan recall notice dated 12.02.22 (Annexure P16) with a further prayer for stay of subsequent proceedings.

2. Learned counsel for petitioners submits that loan facility, i.e. two home loans were availed of by petitioners from respondent No.4 in December, 2005. The debt was assigned to respondent No.3 on 02.12.2013. It is submitted that terms and conditions of the loan facility have been changed unilaterally by respondent No.3 inasmuch as number of installments have also been increased from 156 to 271. The complete statement of accounts was also not supplied to petitioners.

3. Learned counsel for respondents submit that complete statement of accounts have been handed over to learned counsel for petitioner today itself, which is accepted by learned counsel for petitioners.

4. Learned counsel for respondents No.3 and 4 have opposed this writ petition while raising preliminary objection of entertainability of this writ petition against private non-banking financial institution which was later taken over by respondent No.3 (a private non-banking housing company) as well as denying averments on merits.

5. Heard.

6. Initiation of proceedings under SARFAESI Act have been challenged by petitioners in this case. Apart from the fact that petitioners have efficacious remedy/remedies in terms of specific provisions under SARFAESI Act, admittedly, relief claimed in this writ petition is qua a private non-banking financial institution (housing finance company), therefore, this writ petition is not entertainable. Interference by way of this writ petition is not called for in any manner. Hon'ble the Supreme Court in ***Phoenix ARC Private Limited. Vs. Vishwa Bharati Vidya Mandir and others, 2022 AIR (SC) 1045***, has held as under:-

“Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - appellant

herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of ***Praga Tools Corporation v. Shri C.A. imanual, (1969) 1 SCC 585*** and ***Ramesh Ahluwalia Vs. State of Punjab, (2012) 12 SCC 331*** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.”

7. Keeping in view the facts and circumstances as above, learned counsel for petitioners is unable to point out any ground calling upon for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

8. Writ petition is, accordingly, dismissed with liberty to petitioners to avail remedy/remedies as may be available to them in accordance with law.

9. At this stage, learned counsel for petitioners submits that interim order in favour of petitioners be directed to continue till final decision of

concerned Tribunal where petitioners may file/initiate appropriate proceedings.

10. Keeping in view the fact that this writ petition has remained pending before this Court since April, 2022, period of two weeks from the date of receipt of certified copy of order is afforded to petitioners to file appropriate petition/application before the concerned Forum/Tribunal alongwith requisite applications seeking exclusion of period for filing/interim relief. It is made clear that this interim order shall not enure beyond the period of two weeks in the absence of order being passed by appropriate Forum/Tribunal.

11. Needless to say, question of grant/continuance of interim order or exclusion of period of delay would be entirely in the realm of consideration of concerned Forum/Tribunal, which would decide the same in accordance with law without being influenced in any manner by interim order(s) earlier passed in this writ petition.

12. It is made clear that there is no expression of opinion on the merits of the controversy.

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December 22 , 2023.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No