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

121 **CWP-7037-2023**
Date of Decision: 16.08.2023

MOHD. MUSTAFA

... Petitioner

VERSUS

**SHRIRAM HOUSING FINANCE LIMITED
AND OTHERS**

....Respondents

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

Present: Mr. Ashik Ali, Advocate for
Mr. Sudesh Kumar, Advocate
for the petitioner.

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LISA GILL, J.(Oral)

1. Prayer in this writ petition is for setting aside possession notice dated 03.10.2022 (Annexure P-2) under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act issued by respondents No.1 and 2 and order dated 20.03.2023 (Annexure P-3) passed by respondent No.3-District Magistrate, Yamunagar under Section 14 of SARFAESI Act.

2. Relief in this writ petition has been claimed qua Shriram Housing Finance Limited which is admittedly a private non-Banking Financial Company (NBFC). Therefore, in view of judgment of Hon'ble Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others***, 2022 (5) SCC 345, no ground for interference is made out in exercise of jurisdiction under Article 226 of

the Constitution of India. Relevant paragraph of above said judgment reads as under:-

> *"12. 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 (supra) and Ramesh Ahluwalia (supra) relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."*

3. Keeping in view the facts and circumstances, we do not find any ground for interference in this matter. Writ petition is accordingly dismissed with liberty to the petitioner to avail the remedy/remedies as available to him in accordance with law.

4. It is clarified that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

16.08.2023
Rimpal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No