

CWP-10329-2022

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2023:PHHC:135776-DB

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

206

CWP-10329-2022 (O&M)

Date of Decision: 17.10.2023

SUNDARI AND ANOTHER

... Petitioners

VERSUS

HINDUJA HOUSING FINANCE LTD AND OTHERS

....Respondents

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

Present: Mr. Vimal Kumar Gupta, Advocate with
Mr. Sahil Goyal, Advocate
for the petitioner.

Mr. Harsh Chopra, Advocate and
Mr. Aashish Chopra, Advocate
for respondent No.1.

Mr. Sukhdeep Parmar, Senior DAG, Haryana.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing impugned order dated 20.04.2022 (Annexure P-3) passed by learned Additional Civil Judge (Senior Division) Gurugram under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act and for setting aside impugned notice (Annexure P-4) issued by respondent No.2 to execute order dated 20.04.2022.

2. Main grievance raised by learned counsel for petitioners is that order dated 20.04.2022 under Section 14 of SARFAESI Act has not

been passed by Chief Judicial Magistrate, Gurugram but by the Additional Civil Judge (Senior Division), Gurugram.

3. Learned counsel for respondent while referring to order dated 21.01.2020 of the High Court submits that post of Additional Civil Judge (Senior Division) has been amalgamated with that of Chief Judicial Magistrate. It is submitted that both posts are manned by the same official and in any case no prejudice is shown to have been caused to petitioners in view thereof.

4. Learned counsel for the petitioners is unable to deny that the said officer is duly vested and is exercising powers of the Chief Judicial Magistrate.

5. Therefore, the grievance qua competence of the officer who had passed order dated 20.04.2022 (Annexure P-3) clearly does not subsist. Chief Judicial Magistrate is empowered to pass the order under Section 14 of SARFAESI Act. Gainful reference in this respect can be made to judgment of Hon'ble the Supreme Court in **M/s R. D. Jain and Co. Vs. Capital First Ltd. And others, 2022(3) R.C.R. (Civil) 781.**

6. Petitioners, in so far as their grievance in respect to proceedings under SARFAESI Act initiated against them are concerned had efficacious remedy under the SARFAESI Act itself. It is further to be noted that relief claimed in this writ petition is qua respondent No.1- Hinduja Housing Finance Limited which is a Private non-Banking Housing Finance Company. Therefore, present writ petition in any case is not entertainable. Gainful reference can be made to judgment of Hon'ble the Supreme Court in **Phoenix ARC Private Limited Vs.**

Vishwa Bharati Vidya Mandir and others, 2022 (5) SCC 345, wherein

it has been held 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.”

7. At this stage, learned counsel for the petitioners submits that petitioners are ready and willing to settle the matter with respondent No.1.

8. Be that as it may, the same cannot be a ground for causing interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India. This writ petition is accordingly disposed of with

CWP-10329-2022

:4:

2023:PHHC:135776-DB

liberty to petitioners to avail remedies available to them for challenging proceedings under SARFAESI Act. It is always open to the parties to arrive at any mutually acceptable settlement.

9. Learned counsel for the petitioners submits that interim protection afforded to petitioners should be continued till they avail their remedy. Keeping in view the fact that interim order granted in favour of the petitioners is subsisting since May 2022, it is directed that the same shall enure for next fifteen working days to enable petitioners to avail the remedy available to them in accordance with law. In the absence of any order by competent forum, said order shall not subsist any longer.

10. Pending applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

17.10.2023
Rimpal

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