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

CWP-13998-2023
Date of Decision: July 27, 2023

CHARANJIT TRADING COMPANY ...... Petitioner

Versus

ICICI HOME FINANCE LTD. AND OTHERS ..... Respondents

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

Present: Ms. Komalpreet Kaur, Advocate for
Mr. Deepak Arora, Advocate for the petitioner.

Mr. D.K. Singal, Advocate and
Mr. Rahul Garg, Advocate for respondents No. 1 and 2.

Mr. Sandeep Jain, Addl.AG, Punjab.

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LISA GILL, J.

1. Prayer in this petition is for quashing notice dated 08.07.2022 (Annexure P1) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act'); notice under Section 13(4) dated 03.10.2022 of SARFAESI Act as well as letter dated 19.06.2023 (Annexure P3) issued by respondent No. 5 to recover the physical possession of the property of the petitioner.

2. Notice of motion was issued in this writ petition on 05.07.2023, while noting the statement on behalf of the petitioner that entire overdue

amount i.e. ₹4,49,000/- would be deposited within one week. Needful has admittedly not been done.

3. It is undeniable that the petitioner has an efficacious alternate remedy for redressal of the grievance/s raised in this writ petition. Moreover, petitioner is claiming relief qua respondent, 'ICICI Home Finance Limited', which is admittedly a private non-banking financial company, therefore, present writ petition is not maintainable. Gainful reference in this regard can be made to the judgment of the Hon'ble Supreme Court in **Pheonix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888**, wherein it has been 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 v. 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."

4. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail remedy/remedies as may be available to it in accordance with law.

5. It is clarified that there is no expression of opinion on the merits of the case.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

July 27, 2023
rts

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