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

**CM-11515-CWP-2023 in/and**
**CWP-18442-2021 (O&M)**
**Date of Decision: August 02, 2023**

**ASHOK KUMAR** ...... Petitioner

**Versus**

**SHUBHAM HOUSING DEVELOPMENT FINANCE COMPANY LIMITED AND OTHERS**
...... Respondents

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

Present: Mr. Vinod Gupta, Advocate for the petitioner.

Mr. Jai Singh Yadav, Advocate for the respondents.

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**LISA GILL, J.**

1. Prayer in CM-11515-CWP-2023 is for staying operation of order dated 20.02.2023 under Section 14(1) and 14(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 passed by District Magistrate, Karnal. Learned counsel for the parties are *ad idem* that hearing of writ petition, which is listed for 27.09.2023, be preponed for today itself and the matter be heard on merits.

2. At request and with the consent of learned counsel for the parties, hearing of the petition is preponed from 27.09.2023 for today itself.

3. Prayer in this petition is for setting aside possession notice dated 24.07.2021 (Annexure P8) and for directing the respondents to accept balance amount as per One Time Settlement dated 14.02.2020.

4. This writ petition has admittedly been filed against the respondent, which is a private Non-Banking Financial Company, therefore, no ground is made out for interference by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India, especially keeping in view the judgment of the Hon'ble Supreme Court in **Phoenix 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."

5. Hon'ble Supreme Court in the case of **State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2023(1) SCC 540**, has held that a borrower cannot claim extension of time period under One Time Settlement scheme as a matter of right.

6. In the facts and circumstances of the case, learned counsel for the petitioner is unable to point out any ground for interference by this Court in this case.

7. Accordingly, this writ petition is dismissed with liberty to the petitioner to avail remedy/remedies available to him in accordance with law.

8. Pending application(s), if any, stands disposed of.

**(LISA GILL)**
**JUDGE**

**(RITU TAGORE)**
**JUDGE**

**August 02, 2023**
rts

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