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

112+281 ***2023:PHHC:066939-DB***

**CM-2165-CWP-2023 and
CM-2209-CWP-2023 in/and
CWP-19097-2022 (O & M)
Date of Decision: 08.05.2023**

M/s. Balaji Education Society and others .....Petitioner(s)

Versus

Authorized Officer, Avanse Financial Services Ltd. and another
....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: None for the petitioners.

Mr. Prateek Mahajan, Advocate,
for respondent No.1.

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G.S.SANDHAWALIA, J. (Oral)

CM-2165-CWP-2023

Application for placing on record replication on behalf of petitioner No.1 is allowed, subject to all just exceptions.

The same is taken on record.

CM stands disposed of.

CWP-19097-2022 (O & M)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the securitization proceedings including the order dated 01.07.2022 passed by the District Magistrate, Kaithal (Annexure P-1) on the ground that the matter had been referred to the sole arbitrator while invoking the arbitration clause and a lien had been created to the extent of Rs.12,70,542/- and, therefore, there was no cause of

action under the the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act').

2. In the written statement filed, firstly the plea taken is that the respondent is a private non-banking financial company which had loaned the amount and, therefore, reliance has been placed upon the judgment of the Apex Court in ***Phoenix ARC Pvt. Ltd. vs. Vishwa bharati Vidya Mandir and others, (2022) 5 SCC 345.***

3. It is not disputed that in the above said judgment, it has been held that the writ petition will not be maintainable where private companies and banks as such are availing the remedy under the SARFAESI Act and the alternative remedy lies under Section 17 of the Act. The law has been recently reiterated in ***SLP No. 22021-22022 of 2022, M/s. South Indian Bank Ltd. and others vs. Naveen Mathew Philip and another*** decided on 17.04.2023 wherein, it has been held that only in exceptional cases, the resort as such is to be taken to Articles 226 and 227 of the Constitution of India in financial matters.

4. A perusal of the paper book would go on to show that the affidavit was also filed, which was part of the Section 14 application wherein, it was mentioned that the company was entitled to take possession of the secured assets under the provisions of Section 13(4) and the provisions of the Act have been complied with. The application filed under Section 14 would also go on to show that there was a categorical mention regarding the demand notice dated 03.12.2021 under Section 13(4) and the fact that it was published in two local newspapers on 23.12.2021. In the written statement, it has been mentioned that there were two loan accounts, one of Rs.12,00,000/- and the other of Rs. 1,05,00,000/-. The outstandings as such are stated to be

Rs.1,05,78,635/- as on 30.11.2021.

5. In such circumstances, we are of the considered opinion that the petitioners' remedy lies elsewhere as per the law laid down in *South Indian Bank's case (supra).* Since the petitioners have shown no inclination to furnish a bank draft of even 25% of the amount to show his *bona fides,* we are not inclined to exercise our extra ordinary writ jurisdiction.

6. Accordingly, the petition stands dismissed with the aforesaid liberty.

(G.S. SANDHAWALIA)
JUDGE

08.05.2023 (GURBIR SINGH)
shivani JUDGE

Whether reasoned/speaking Yes
Whether reportable No