IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

115 **CWP-15992-2023**
Date of Decision: 19.09.2023

ANIL KUMAR AND ANOTHER

... Petitioners

VERSUS

IIFL HOME FINANCE LTD AND ANOTHER

....Respondents

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

Present: Mr. Balvinder Sangwan, Advocate
for the petitioners.

Mr. Vineet Sehgal, Advocate
for the respondents.

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LISA GILL, J.(Oral)

1. Prayer in this writ petition is for directing respondent No.1 to regularize the loan account of petitioners with a further direction to quash impugned order dated 14.03.2023 (Annexure P-2) passed by learned District Magistrate, Faridabad under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002

2. It is submitted that loan account of the petitioners was declared Non-Performing Asset (NPA) due to financial indiscipline and SARFAESI proceedings were initiated against the petitioners by the respondent-Private Financial/Housing Institution.

3. Learned counsel for the petitioners submits that proceedings as initiated under the SARFAESI Act are illegal and in violation of the provisions of law. Possession of the secured asset i.e.

house of the petitioners was taken illegally on 21.06.2023.

4. However, learned counsel for the petitioners is unable to deny that relief claimed in this writ petition is against a private housing/non-banking financial institution. It has been held by Hon'ble Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others***, 2022 (5) SCC 345, 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."*

5. Writ petition is accordingly dismissed with liberty to the

petitioners to avail the efficacious remedy/remedies as available to them in accordance with law for redressal of their grievances while taking all available pleas before the appropriate forum. It is clarified that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

19.09.2023
Rimpal

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