125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16561-2023
Date of Decision: **August 07, 2023**

M/S KISSAN TRACTORS THROUGH ITS PROP AND ORS
..... Petitioners

Versus

HDB FINANCIAL SERVICES LTD AND ORS ..... Respondents

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

Present: Mr. Naresh Kumar, Advocate for
Mr. K.S. Dadwal, Advocate for the petitioners.

Mr. Harsh Chopra, Advocate for respondent No. 3.

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LISA GILL, J.

1. Prayer in this petition is for quashing order dated 19.04.2023 (Annexure P6) under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') passed by respondent No. 4. Further prayer is for directing respondents No. 2 and 3 to regularize the account of the petitioner by deleting all objectionable entries, reschedule the instalments while waiving off penal charges or in alternate to accept request of the petitioners for One Time Settlement.

2. 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.

4. Faced with the above, learned counsel for the petitioners seeks to withdraw this petition with liberty to the petitioners to avail remedy/remedies available to them in accordance with law.

5. Accordingly, this writ petition is dismissed as withdrawn with liberty as aforementioned.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

August 07, 2023
rts

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