

CWP-16579-2023
Date of Decision: August 07, 2023

RAJESH AND OTHERS Petitioners

Versus

POONAWALLA HOUSING LTD. AND ORS Respondents

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

Present: Ms. Veena Hooda, Advocate for the petitioners.

LISA GILL, J.

1. Prayer in this petition is for quashing notice under Sections 13(2) and 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’). Further prayer is for restraining the respondents from taking physical possession of residential house of the petitioners in compliance with order 03.01.2023 (Annexure P3) under Section 14 of SARFAESI Act passed by Annexure R3.
2. Learned counsel for the petitioners seeks relief qua respondent – Poonawalla Housing Limited, which is admittedly 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. Imanuel, (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.”

3. Accordingly, present petition is dismissed with liberty to the petitioners to avail the remedy/remedies available to them in accordance with law.
4. There is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

August 07, 2023
rts

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