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

CWP-19065-2023
Date of Decision: September 06, 2023

RAKESH KUMAR ..... Petitioner

Versus

TATA HOUSING FINANCE LTD. ..... Respondent

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

Present: Mr. Atul Prataap Dhankhar, Advocate for the petitioner.

Ms. Puja Chopra, Advocate for the caveator-respondent.

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LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice dated 15.10.2022 under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act'); notice dated 11.01.2023 (Annexure P3) under Section 13 (4) of SARFAESI Act as well as order dated 07.03.2023 (Annexure P4) under Section 14 of SARFAESI Act passed by District Magistrate, Karnal.

2. Learned counsel for the petitioner submits that default had occurred due to outbreak of pandemic COVID-19. Petitioner's account was declared Non-Performing Asset (NPA) on 03.09.2022 and he duly received notice under Section 13(2) of SARFAESI Act, copy of which is, however, not available with the petitioner. Notice under Section 13(4) of SARFAESI Act was also received.

3. Learned counsel for the petitioner submits that vide communication dated 08.08.2023, petitioner had requested for OTS with petitioner ready to deposit 10% of the amount immediately for which the bank may be ready to settle after grant of concession and deductions, as may be available as per the prevalent OTS policy. However, same has not been considered by the respondent – Tata Capital Housing Finance Company.

4. Learned counsel for the respondent on advance notice, informs that physical possession of the property was taken on 06.07.2023, pursuant to order dated 07.03.2023, a fact which is not revealed in the writ petition. Moreover, petitioner did not come forward with any specific proposal for OTS except for sending letter dated 08.08.2023 which is evidently bereft of any proposal by the petitioner. It is submitted that even as of now, in case, petitioner is ready to deposit at least the reserve price, for which property has to be auctioned on 25.09.2023, respondent would consider the One Time Settlement, in case petitioner approaches well before the date of auction.

5. Having heard learned counsel for the parties, we do not find any ground to interfere in exercise of jurisdiction under Article 226 of the Constitution of India especially keeping in view the fact that petitioner has efficacious alternate remedy under the SARFAESI Act for challenging the proceedings thereunder. Furthermore, in view of judgment of Hon'ble the Supreme Court in ***The Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others, 2022 AIR (SC) 56***, there is no occasion of issuing a direction to the respondent for accepting a particular OTS, as is sought to be urged. Learned counsel for the respondent has, in any case, stated that a

specific proposal if submitted by the petitioner well before the date of auction alongwith the reserve price, such proposal would be considered in accordance with applicable provisions. Thus, it is open to the petitioner to take necessary steps.

6. It is further to be noted that petitioner is claiming relief qua respondent, 'Tata Housing Finance Limited', which is admittedly a private non-banking financial institution, therefore, no ground for interference is called for in view of the judgment of Hon'ble the Supreme Court in **Pheonix 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."

7. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail statutory remedy/remedies as available to him in accordance with law. Needless to say, parties are at liberty to arrive at any mutual agreeable settlement.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

September 06, 2023
rts

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