

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

CWP-19348-2023

Date of Decision: September 06, 2023

M/S SIYONA ENTERPRISES AND OTHERS Petitioners

Versus

SHRI RAM FINANCE LTD. Respondent

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

Present: Mr. Deepam Raghav, Advocate for the petitioners.

Mr. Harsh Chopra, Advocate for the respondent.

LISA GILL, J.

1. Prayer in this petition is for quashing notice dated 20.12.2021 (Annexure P3) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) as well as order dated 10.02.2023 (Annexure P4) passed by Chief Judicial Magistrate, Gurugram under Section 14 of SARFAESI Act.

2. This writ petition has admittedly been filed against the respondent, which is a private Non-Banking Financial Institution, 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. 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.

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 Accordingly, this writ petition is dismissed as withdrawn with liberty as aforementioned.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

September 06, 2023

rts

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No