

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

142

CWP-19891-2023

Date of decision: 11.09.2023.

SHREE SHYAM EDUCATION SOCIETY

..... Petitioner

V/S

CLIX CAPITAL SERVICES PVT. LTD. AND OTHERS

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Pankaj Maini, Advocate for the petitioner.

Mr. Nitin Jain, Advocate for respondent Nos. 1 and 2.

LISA GILL J. (ORAL)

1. Prayer in this writ petition is for setting aside notice issued under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) by the respondent No.1 on 28.09.2022 along with Possession Notice dated 29.12.2022 (Annexure P-4), Sale Notice dated 29.12.2022 (Annexure P-6) and sale certificate dated 24.01.2023 (Annexure P-7).

2. Admittedly, petitioner has filed SA No.213 of 2022 for challenging proceedings under the SARFAESI Act, initiated against the petitioner by respondents No.1 and 2. It is further a matter of record that CWP-20146-2022 earlier filed by the petitioner with similar prayer was dismissed as withdrawn on 30.09.2022 with liberty to pursue alternate remedy already availed by the petitioner before the learned DRT.

Thereafter, subsequent CWP-25872-2022 filed by the petitioner-Society and others was also disposed of vide order dated 14.11.2022 which reads as under:-

“Since the petitioners have already availed their remedy before the Debt Recovery Tribunal-II, Chandigarh, we are not inclined to entertain the Writ Petition and permit the petitioners to pursue the said remedy.

Accordingly, this Writ Petition is disposed of.”

3. Present writ petition has now been filed challenging notice dated 28.09.2022 (Annexure P4) issued under Section 13(4) alongwith sale notice dated 29.12.2022 (Annexure P6). Learned counsel for the petitioner submits that property in question has been auctioned in complete violation of the applicable guidelines and without even associating the petitioner at the time of valuation of the said property. It is thus prayed that this writ petition be allowed.

4. Heard.

5. Keeping in view the facts and circumstances as above, no ground whatsoever is made out for interference in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. Petitioner has availed its remedy under the SARFAESI Act and is at liberty to pursue the same. Parallel proceedings are not to be countenanced in this manner. Further, relief claimed in this writ petition is against a Non Banking Financial Institution. Therefore no interference in any case is called for. Gainful reference can be made to judgment of Hon'ble Supreme Court in **Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others**, 2022 (5) SCC 345, wherein it has been held as under:-

“12. Even otherwise, it is required to be noted that a writ petition against the private financial institution –

2023:PHHC:118496-DB

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.”

6. Writ petition is accordingly dismissed. Needless to say petitioner is at liberty to pursue the SA filed by it before the learned DRT while taking up all available pleas and avail the statutory remedy/ies available to challenge subsequent proceedings.

**(LISA GILL)
JUDGE**

**(AMARJOT BHATTI)
JUDGE**

11.09.2023.

Sunil Devi

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No