

CM-11004-2023 in/and
CWP-23953-2022

:1: 2023:PHHC:108527-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112+217

CM-11004-2023 in/and
CWP-23953-2022 (O&M)
Date of Decision: 16.08.2023

RAKESH SHARMA

... Petitioner

VERSUS

M/S CAPRI GLOBAL LTD AND ANOTHER

....Respondent

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

Present: Mr. Jangvir Singh Hooda, Advocate
for the petitioner.

Mr. Harsh Chopra, Advocate
for respondent No.1.

Mr. Deepak Grewal, DAG, Haryana.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing of order dated 07.07.2022 (Annexure P-3) passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act.

2. Apart from the fact that the petitioner has an alternate efficacious remedy for redressal of his grievance, it is noticed that relief claimed in this writ petition is qua a private non-Banking Financial Company. It has been held by Hon'ble Supreme Court in **Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others**, 2022

(5) SCC 345, as under:-

“12. 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 (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.”

3. Learned counsel for the petitioner is unable to point out any ground which calls for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. In the given factual matrix, the fact that notice of motion had been issued and interim relief had been granted to the petitioner thereafter, cannot in any manner be a ground for interference and final disposal of the writ petition on merits, as has been urged before us by learned counsel for the petitioner.

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4. However, the fact that dispossession of the petitioner from the secured asset had been stayed by the co-ordinate Bench on 19.10.2022, we direct that dispossession of the petitioner shall remain stayed for two weeks from today to enable the petitioner to approach the DRT along with the prayer of condonation/exclusion of the period of delay as well as prayer for interim relief in accordance with law.

5. It is made clear that beyond the period of two weeks, aforesaid interim order shall not subsist a day further and grant or otherwise of interim relief in the matter would be within the realm of consideration of DRT itself, in accordance with law.

6. Accordingly, this writ petition is dismissed with liberty to the petitioner to avail his remedy in accordance with law. Pending applications, if any, also stand disposed of accordingly.

7. It is clarified that there is no expression of opinion on the merits of the controversy.

**(LISA GILL)
JUDGE**

**(RITU TAGORE)
JUDGE**

16.08.2023
Rimpal

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