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

237 **CWP-26469-2021
Date of Decision: 27.07.2023**

SHARIEF ALIAS SHAREEF ALIAS SHARIF KHAN

... Petitioner

VERSUS

DISTRICT MAGISTRATE GURUGRAM AND OTHERS

....Respondents

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

Present: Mr. Arjun Atri, Advocate
for the petitioner.

Mr. J. S. Yadav, Advocate
for respondent No.2.

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LISA GILL, J.(Oral)

1. Petitioner has filed this writ petition challenging proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act initiated by respondent No.2 namely, Shubham Housing Development Finance Company Limited.

2. Loan facility was availed of by the petitioners in 2016. Due to financial indiscipline their account was declared NPA on 04.12.2017. Notice under 13 (2) and 13 (4) of SARFAESI Act was issued on 22.06.2018 and 24.08.2018 respectively and order under Section 14

SARFAESI Act was passed on 01.12.2021. Aggrieved therefrom this writ petition has been filed.

3. Admittedly, respondent No.2 is a private non-Banking Financial Company (NBFC). Therefore, in view of judgment of Hon'ble Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others***, 2022 (5) SCC 345, no ground for interference is made out in exercise of jurisdiction under Article 226 of the Constitution of India. Relevant paragraph of above said judgment reads 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."

4. Keeping in view the facts and circumstances, we do not find any ground for interference in this matter. Writ petition is accordingly dismissed with liberty to the petitioners to avail the remedy/remedies as may be available to them in accordance with law.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

27.07.2023
Rimpal

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