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

215 **CWP-26319-2022**
Date of Decision: 06.11.2023

AARHAT TRADERS AND ANR.

... Petitioners

VERSUS

HDB FINANCIAL SERVICES LTD. AND ORS.

....Respondents

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

Present: Mr. Gurcharan Dass, Advocate
for the petitioners.

Mr. Puru Gupta, Advocate for
Mr. Vipul Dharmani, Advocate
for respondents No.1 and 2.

Mr. Sandeep Jain, Addl. AG, Punjab.

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<u>LISA GILL, J.(Oral)</u>

1. Prayer in this writ petition is for quashing notice dated 09.12.2021 (Annexure P-8) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act, communication dated 18.02.2022 (Annexure P-10) and possession notice dated 28.02.2022 (Annexure P-12) issued by respondents under Section 13(4) of SARFAESI Act.

2. It is submitted that petitioners had availed of loan facility(ies) from respondent-Bank. Due to financial indiscipline on account of circumstances beyond the control of petitioners, proceedings under SARFAESI Act were initiated against them. Notice(s) under Section 13(2) and 13(4) of SARFAESI Act were issued for recovery of a

sum of Rs.38,63,522.22/- against Account No.3956833 (Annexure P-5) and Rs.1,49,00,608.25/- against Account No.1651514 (Annexure P-6) as outstanding on 25.12.2020.

3. Learned counsel for petitioners submits that proceedings initiated under SARFAESI Act against petitioners by respondents No.1 and 2 are absolutely illegal and arbitrary. The second account in which outstanding is of Rs.1,15,00,000/- approximately as on date, was not even declared NPA but recovery is sought to be made. It is further submitted that one of petitioner's property was also sold, though by petitioners themselves for a sum of Rs.95 lakhs after seeking requisite permission from the respondent-Bank, out of which amount of Rs.83,18,921/- was duly received by respondent No.1. Secured asset now left with petitioners is a residential house. It is further submitted that earlier notice dated 19.09.2020 was recalled by the respondent.

4. Learned counsel for petitioner while pointing to communication dated 18.02.2022 (Annexure P-10) submits that earlier notice dated 19.09.2020 was recalled while stating that contents of said notice Annexure P-8 should be read as demand of the respondent pertaining to the account under reference. Therefore, proceedings now undertaken by the respondents are absolutely illegal and arbitrary. It is thus prayed that this petition be allowed.

5. Learned counsel for respondents No.1 and 2 has opposed this writ petition while firstly taking an objection qua entertainability of this writ petition itself. It is submitted that action has been taken under SARFAESI Act without there being any violation of provisions thereunder. Total outstanding, due from petitioners is approximately

Rs.1,13,48,127/- as on 04.11.2023 and petitioners are not coming forward to deposit the same. Thus dismissal of writ petition is sought.

6. Heard learned counsel for the parties and have gone through the file with their able assistance.

7. Keeping in view the facts and circumstances of the case, we do not find any ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. No exceptional or extra ordinary circumstance has been pointed out by learned counsel for the petitioners which calls for interference. Apart from the fact that petitioners have efficacious alternate remedy for redressal of their grievance under SARFAESI Act itself, it is to be noted that relief claimed in this writ petition is qua a private non-Banking financial institution. Thus writ petition is not entertainable. In this respect gainful reference can be made to the judgment of Hon'ble the 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 – 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."*

8. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioners to avail the remedy/ies as are available to them in accordance with law. Needless to say it is always open to parties to arrive at a mutually acceptable settlement. There is no expression of opinion on merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

06.11.2023
Rimpal

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