

2023:PHHC:135770-DB

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

CWP-23716-2023

Date of Decision: October 18, 2023

VINOD AND OTHERS

..... Petitioners

Versus

POONAWALLA HOUSING LTD. AND OTHERS

..... Respondents

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

Present: Mr. Gourav Jain, Advocate for the petitioner.

None for respondents No. 1 and 2.

Mr. Himmat Singh, Addl. AG, Haryana.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice(s) dated 25.04.2022 (Annexure P4) and 11.05.2022 (Annexure P4A) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’); notice(s) dated 27.09.2022 (Annexure P5 and P5A) as well as order dated 14.06.2023 (Annexure P8) under Section 14 of SARFAESI Act passed by respondent No. 3.

2. Relief claimed in this writ petition is qua private Non-Banking Housing Company namely Poonawala Housing Limited. Learned counsel for the petitioners, when faced with judgment of Hon'ble the Supreme Court

in **Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888**, submits that this writ petition should be entertained because action of respondent – Housing Company is absolutely illegal and arbitrary. Amount and number of installments were increased unilaterally in an arbitrary manner. Petitioners had filed a complaint under Consumer Protection Act, which is pending before District Consumer Dispute Redressal Commission, Fatehabad. However, in an illegal and arbitrary manner proceedings under SARFAESI Act have been initiated against the petitioners qua loans taken by them in 2016 and 2018. District Magistrate, Fatehabad, without taking in account the facts and circumstances, it is submitted has passed the order under Section 14 of the SARFAESI Act. It is thus prayed that this writ petition be allowed.

3. Having heard learned counsel for the petitioners, we do not find any ground whatsoever to interfere in this writ petition. First and foremost, petitioners admittedly have an efficacious remedy under the SARFAESI Act itself for challenging proceedings thereunder. No exceptional or extraordinary circumstance has been carved out which calls for interference in exercise of jurisdiction under Article 226 of Constitution of India. It has been held by Hon'ble the Supreme Court in number of cases that High Court should refrain from interfering in such like matters. Gainful reference in this regard can be made to judgments of Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110; Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34** and **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**. Hon'ble the

Supreme Court in the case of **M/s South Indian Bank** (supra) held as under:-

“13. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.

14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations.

15. The object and reasons behind the Act 54 of 2002 are very clear as observed by this Court in **Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311**. While it facilitates a faster and smoother mode of recovery sans any interference from the Court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range of powers to set aside an illegal order and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression “any person”, who could approach the Tribunal.

18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”

4. Moreover, relief claimed in this writ petition is qua private Housing Company, therefore, in any case, no ground is made out for interference. Gainful reference in this regard can be made to judgment of Hon'ble the 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.”

5. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioners to avail remedy/remedies available to them in accordance with law.

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

October 18, 2023
Rts

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