

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

109

CWP-1227-2024

Date of decision: 19.01.2024

Naresh Kumar and Anr.

..... Petitioners

V/S

IIFL Home Finance Ltd. and Anr.

..... Respondents

**CORAM : HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MS. JUSTICE AMARJOT BHATTI**

Present: Mr. S.S.Nain, Advocate for petitioners.

Mr. Vineet Sehgal, Advocate for respondents.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for setting aside notice dated 13.12.2023 issued by respondent No.2, pursuant to order dated 23.11.2023 passed by District Magistrate, Faridabad under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act.

2. Availing of loan facility by petitioners, is matter of record as is the financial indiscipline for reasons as may be. Account of petitioners was declared Non Performing Asset (NPA) on 04.08.2022 with an outstanding of Rs.22,46,423/-. Notice(s) under Section 13(2) and 13(4) were issued on 27.08.2022 and 18.11.2022 respectively. Admittedly, petitioners have been provided specific remedies for redressal of their grievance qua proceedings initiated under SARFAESI Act. Moreover, relief claimed in this writ petition is qua a Private Non Banking Home Finance Company. Therefore, this writ petition in any case is not entertainable. Gainful

reference in this regard can be made to judgment of Hon'ble the Supreme Court in **Phoenix ARC Private Limited. Vs. Vishwa Bharati Vidya Mandir and others, 2022 AIR (SC) 1045**, has 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 v. Shri C.A. Imanual and others, (1969) 1 SCC 585** and **Ramesh Ahluwalia vs. 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.”*

3. At this stage, learned counsel for petitioners submits that petitioners are ready and willing to deposit a sum of Rs.2 lakhs today and outstanding amount within next three months.
4. Learned counsel for respondents submits that this is only a method of trying to delay proceedings for taking possession which are slated for today itself as there is an outstanding of over thirty lakhs against petitioners. It is further submitted that in case petitioners do submit a proposal for One Time Settlement (OTS), same can be considered even after taking over of possession and in case OTS is arrived at, possession can be restored on terms as agreed upon.
5. Keeping in view facts and circumstances as above, we do not find any ground whatsoever to interfere at this stage. Accordingly, this writ petition is dismissed with liberty to petitioners to avail remedy/remedies available to them in accordance with law. It is always open to the parties to arrive at any mutually acceptable settlement.
6. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

19.01.2024
Sunil Devi

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No