

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-1256-2024

Date of decision: 19.01.2024

Pardeep Singh Brar and Ors.

..... Petitioners

V/S

Indiabulls Asset Reconstruction Company Ltd. And Ors.

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Kulwinder Singh, Advocate and
Mr. R.K.Kachura, Advocate for petitioners.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for setting aside order dated 17.08.2022 (Annexure P-1) passed by Additional District Magistrate, Moga (incorrectly mentioned as Amritsar in petition) under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act.

2. Various pleas have been raised in this writ petition claiming proceedings under SARFAESI Act initiated against petitioners to be illegal, arbitrary and in complete violation of applicable provisions of law. It is to be noted at this stage that relief claimed in this writ petition is against India Bulls Asset Reconstruction Company, therefore, this writ petition is not entertainable. Reference in this regard 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 AIR (SC) 1045** 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 v. Shri C.A. Imanuel 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. Keeping in view the facts and circumstances as above, this writ petition is disposed of with liberty to the petitioners to avail their remedy/remedies available to them in accordance with law.

4. It is clarified that there is no expression of opinion on merits of matter. Furthermore, it is always open to the parties to arrive at any mutually acceptable settlement.
5. Pending application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

19.01.2024
Sunil Devi

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