

233

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17132-2022

Date of Decision: 15.02.2024

Rakha Ram

..... Petitioner

Versus

Shubham Housing Development Finance Company Limited and Anr

..... Respondents

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

Present: Mr. Amandeep Singh Jawandha, Advocate
for the petitioner.

Mr. K.P.S. Dhillon, Advocate
for respondents (through Video Conferencing).

LISA GILL, J.(oral)

1. Petitioner has challenged proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') initiated against him by respondent-Financial Institution including notice dated 18.06.2022 (Annexure P-2) and sale notice dated 22.06.2022 (Annexure P-3), claiming the same to be illegal, arbitrary and in violation of applicable provisions of law.

2. Admittedly, petitioner has specific remedies for redressal of grievance(s) raised in this writ petition in view of proceedings initiated under SARFAESI Act against him under the said act itself. Gainful reference in this respect can be made to judgments of the Hon'ble Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110, M/s South Indian Bank Ltd. and others v. Naveen Mathew**

Philip and another, 2023(2) RCR (Civil) 771 and Phoenix ARC Private Limited vs. Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888. It is further to be noticed that relief claimed in this writ petition is qua a private housing finance company, therefore, present writ petition in any case is not entertainable. Gainful reference in this respect can be made to judgment of the Hon'ble Supreme Court in ***Phoenix ARC Private Ltd. Vs. Vishwa Bharati Vidya Mandir and others (supra)*** 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. imanual, (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. Learned counsel for petitioner, at this stage reiterates that there is a possibility of amicable resolution of dispute between the parties. Be that as it may, same is not a ground or justification for continuation of present proceedings. Pendency or otherwise of writ petition has no relevance for amicable resolution to be arrived at between the parties for which they are always free.

4. Keeping in view the facts and circumstances of the matter, this writ petition is dismissed with liberty to petitioner to avail the statutory remedy(ies) available to him in accordance with law.

5. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

15.02.2024

lalit

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