2024:PHHC:092645-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

236 **CWP No.18572 of 2021 (O&M).**
Date of Decision: 23.07.2024.

Akshay Jain ....Petitioner.

VERSUS

Aditya Birla Finance Limited ....Respondent.

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CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE LAPITA BANERJI

Present: Mr. Aalok Jagga, Advocate and
Mr. Ashish Soi, Advocate for the petitioner.

Mr. Gaurav Chopra, Senior Advocate, with
Mr. Reshabh Bajaj, Advocate and
Mr. Nitin Sansanwal, Advocate for the respondent.

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ANUPINDER SINGH GREWAL, J. (Oral)

The petitioner has *inter alia* impugned the notice date 09.09.2021 (Annexure P-6) issued under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'Act, 2002').

2. Learned counsel for the petitioner submits that the petitioner had moved representation to the respondent-bank to objectively consider the matter, but the respondent-bank arbitrarily declined the representation without application of mind.

3. Heard.

4. It is manifest that the notice under Section 13(4) of Act, 2002, has been issued by respondent-Aditya Birla Finance Limited, which appears

to be a private body and not amenable to the writ jurisdiction as it does not fall under the definition of 'State' under Article 12 of the Constitution of India.

5. We draw support from the judgment in the case of **Phoenix ARC Private Limited** vs. **Vishwa Bharati Vidya Mandir & Ors., (2022) 5 SCC 645**, wherein it has been held that writ petition challenging the action of the private non banking financial corporation (NBFC) under Section 13 of Act, 2002, would not be maintainable. The relevant extract of the judgment is reproduced hereunder:-

> *“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. xxx xxx xxx.”*

6. Consequently, we are of the considered view that the instant writ petition, which challenges the proposed action by the respondent under Section 13(4) of Act, 2002, is not maintainable. Accordingly, the petition is dismissed. Needless to observe that we are not examining the issue on merits and it would be open to the petitioner to raise his grievances before appropriate forum in accordance with law.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

23.07.2024
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No