IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

120 **CWP No.17533 of 2024.**
Date of Decision: 05.08.2024.

Manjit Kaur Malhotra ....Petitioner.

VERSUS

Reserve Bank of India and others ....Respondents.

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

Present: Mr. Akhilesh Vyas, Advocate for the petitioner.

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ANUPINDER SINGH GREWAL, J. (Oral)

The petitioner is seeking a direction to respondent No.3 to decide her settlement proposal dated 20.06.2024 (Annexure P-8), which is pending with respondent No.4.

2. Learned counsel for the petitioner submits that petitioner has sent a proposal to respondent No.3 on 20.06.2024, but the same has not been decided. He further submits that only request of the petitioner to the respondents is to consider her proposal.

3. Heard.

4. The petitioner is seeking a direction to respondent No.3, which is a private non-banking financial corporation and not amenable to the writ jurisdiction as it does not fall under the definition of 'State' as set out under Article 12 of the Constitution of India.

5. We draw support from the judgment of the Supreme Court 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 would not be maintainable against the action of the private financial institution. 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. We may also refer to the judgment of the Supreme Court in the case of **Federal Bank Ltd. vs. Sagar Thomas, (2003) 10 SCC 733.** The relevant extract thereof is set out hereunder:-

> *"32. Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private*

companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."

7. Consequently, we do not find the writ petition to be maintainable and the same stands dismissed accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

05.08.2024
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No