

CWP-30168-2022 & CWP-7823-2024 - 1-

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.

256 Date of Decision: 14.10.2024.

1. CWP-30168-2022 (O&M)

M/s Shri Balaji Dairy and Sweets and another ...Petitioners.  
Versus  
District Magistrate, Ludhiana and others ...Respondents.

2. CWP-7823-2024 (O&M)

HDB Financial Services Ltd. ...Petitioner.  
Versus  
State of Punjab and others ...Respondents.

\*\*\*

CORAM: HON'BLE MRS. JUSTICE LISA GILL  
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

----

Present: Mr. H.S. Jagdev, Advocate for  
Mr. Aalok Jagga, Advocate  
for the petitioners (in CWP-30168-2022).

Mr. Vipul Dharmani, Advocate  
for the petitioners in CWP-7823-2024 and  
for respondent No.3 in CWP-30168-2022.

Mr. R.S. Pandher, Sr. DAG, Punjab.

\*\*\*\*

LISA GILL, J. (Oral)

1. CWP-30168-2022 and CWP-7823-2024 are taken up together for hearing and adjudication at request and with consent of learned counsel for parties as they arise from the same account.
2. CWP-30168-2022 has been filed by borrower for setting aside order dated 02.02.2021 passed by District Magistrate, Ludhiana under

CWP-30168-2022 &amp; CWP-7823-2024

- 2-

Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act), whereas CWP-7823-2024 has been filed by financial institution for restoration of physical possession of secured asset.

3. Learned counsel for the financial institution (petitioner in CWP-7823-2024) submits that though CWP-30168-2022 filed by borrower is not entertainable, the same along with CWP-7823-2024 are rendered infructuous inasmuch as commercial property mortgaged with the financial company has been auctioned for a sum of Rs.1,15,14,307/- and rest of the amount due i.e. Rs.2,30,10,577/- has been waived off to put an end to the lis. He further submits that certain articles belonging to the petitioner are lying at the property which stands auctioned due to which physical possession thereof could not be handed over to auction purchaser.

4. Learned counsel for the borrowers i.e. the petitioners in CWP-30168-2022 submits that petitioners are not aware about the sale of the property or any such waiver being granted.

5. However, in view of the specific stand as noted in foregoing paras of financial company, we do not find any justification for continuation of present proceedings in both the writ petitions.

6. CWP-30168-2022, it is to be noted in any case is not entertainable in view of the authoritative judgments of Hon'ble the Supreme Court in Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110; M/s South Indian Bank Ltd. and others Vs. Naveen Mathew Philip and another, 2023 (2) RCR (Civil) 771 and PHR Invent Educational Society Vs. UCO Bank and others, 2024, AIR (SC) 1893.

CWP-30168-2022 &amp; CWP-7823-2024

- 3 -

Furthermore, relief claimed in CWP-30168-2022 is qua a Non Banking Finance company. Gainful reference in respect to non-entertainability of such petition can be made to judgment of Hon'ble the Supreme Court in **Phoenix ARC Private Limited Vs. Vishwa Bharti Vidya Mandir and others, 2022 (1) R.C.R. (Civil) 888**, 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 **Praga Tools Corporation Vs. 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.”*

CWP-30168-2022 & CWP-7823-2024 - 4-

7. Keeping in view the facts and circumstances above, both writ petitions are disposed of as infructuous with liberty to petitioners in CWP-30168-2022 to file appropriate application in case any incorrect fact has been placed before us and pursue the pending SA No.264-2024 if so advised. It is agreed between the parties that articles lying in the property shall be removed by petitioner No.2 on 21.10.2024 at 11:00 A.M. in presence of authorized representative of financial institution.

(LISA GILL)  
JUDGE

(SUKHVINDER KAUR)  
JUDGE

14.10.2024.  
*komal*

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