112 2024:PHHC:047107-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CWP-28254-2023**
**Date of Decision: April 08, 2024**

**AMANDEEP SINGH SANDHU AND ANOTHER** ...... Petitioners

**Versus**

**STATE OF HARYANA AND OTHERS** ..... Respondents

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

Present: Mr. Ashish Bakshi, Advocate for the petitioners.

Mr. Sukhdeep Parmar, Senior DAG, Haryana.

Mr. Harsh Chopra, Advocate for respondent No.3.

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**LISA GILL, J.**

1. Prayer in this writ petition is for setting aside proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') initiated against petitioners.

2. It is a matter of record that petitioners availed of loan facility from respondent No. 3 in June, 2017. Petitioners' loan account was declared Non Performing Asset (NPA) on 12.05.2022 on account of financial indiscipline for reasons as may be. Notice under Section 13(2) of SARFAESI Act was issued on 21.06.2022 and notice under Section 13(4) of SARFAESI Act was issued on

07.11.2022. Order dated 21.09.2023 under Section 14 of SARFAESI Act was passed by District Magistrate, Yamuna Nagar. It is submitted that proceedings under SARFAESI Act have been undertaken illegally and in complete violation of applicable provisions. Description of property is also incorrect. It is, thus, prayed that this writ petition be allowed.

3. Learned counsel for respondent No. 3 raises objection regarding entertainability of this petition itself while submitting that action has been taken in complete consonance with applicable provisions. Dismissal of writ petition is sought.

4. It is recorded in order dated 28.02.2024 passed in this writ petition that as per instructions received by learned counsel for respondent No. 3, in case petitioners deposit amount of Rs.7 lakhs within first week of March, 2024, their account can be regularized/made standard subject to further undertaking that they would deposit the amount as and when it fall due. Learned counsel for respondent No. 3 points out that said amount has not be deposited by petitioners.

5. Apart from the fact that petitioners have an effective alternate statutory remedy under SARFAESI Act, relief claimed is admittedly qua respondent, 'Piramal Capital and Housing Finance Limited', which is a private Housing Financial (Non-banking) institution, therefore, no ground, in any case, is made out for interference in the present writ petition, in any case. Gainful reference in this regard can be made to the judgment of Hon'ble the Supreme Court in **Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (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 of **Praga Tools Corporation v. Shri C.A. Imanual, (1969) 1 SCC 585** and **Ramesh Ahluwalia v. 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."

6. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioners to avail statutory remedy/remedies available to them in accordance with law.

7. It is clarified that there is no expression of opinion on the merits of the case.

**(LISA GILL)**
**JUDGE**

**(AMARJOT BHATTI)**
**JUDGE**

**April 08, 2024**
rts

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