2024:PHHC:006368-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-29385-2023
Date of Decision: January 18, 2024

SUDESH ..... Petitioner

Versus

M/S UMMEED HOUSING FINANCE PRIVATE LIMITED & ANOTHER ..... Respondents

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

Present: Dr. Naresh Kaushik, Advocate for the petitioner.

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LISA GILL, J.

1. Petitioner in this writ petition has challenged order dated 04.11.2023 passed by District Magistrate, Bhiwani under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act').

2. Availing of financial facility from respondent No. 1 i.e. M/s Ummeed Housing Finance Private Limited is a matter of record as is subsequent financial indiscipline, for reasons as may be. Apart from the fact of it being a settled position that interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India in such like matters has to be minimal and actuated only in extra-ordinary and exceptional circumstances, it is to be noted that relief claimed in this writ petition is qua Private Non Banking Housing Finance Company, therefore, present writ petition is not maintainable in any manner. Gainful reference in this regard can be made to 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."

3. Keeping in view the facts and circumstances as above but without expression of opinion on the merits of matter, this writ petition is dismissed with liberty to petitioner to avail remedy(ies) available to her in accordance with law.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

January 18, 2024
rts

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No