IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18275 of 2018

Fatema Hussain Wife of Mr. Zakir Hussain, Resident of House no. 68, South Gandhi Nagar, Boring Road, P.S. Sri Krishna Puri, Town @ District-Patna-800001.

... ... Petitioner/s

Versus

1. A X I S Bank Ltd. having its registered office at Trishul, Opposite Samartheshwar Temple, Law Gardan, Elisbridge, Ahmadabad (Gujrat) through its Chairman-cum Managing Director.
2. Axis Bank Ltd. having its Corporate Office at Bombay Dying Mills Compound, Pandurang Budhkar Marg,Worli, Mumbai – 400052 throught its Director
3. Axis Bank Ltd. Zonal Office, Corporate Banking Branch, 4th Floor, A.C. Market Building, 1, Shakespeare Sarini, Kolkata through Zonal Manager.
4. The Branch Manager, Axis Bank Ltd. Retail Asset Centre, 3rd Floor, Kamini Centre, Boring Patliputra Road, Patna - 800013
5. The S M E and Mini Credit Management Centre, through its Branch In Charge, MCMC 148-B, UPA Complex, 2nd Floor, Mahendra Narain Path, Rajendra Nagar, Patna - 800016

... ... Respondent/s

Appearance :

For the Petitioner/s	:	M/s Ajay Kumar Sinha, Sr. Advocate Rajesh Mohan, Advocate
For the Respondent (Axis Bank Ltd.)	:	Mr. Dhananjay Kashyap, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 11-04-2025

1. The petitioner has filed the writ petition seeking the issuance of a writ or writs commanding the respondents to grant permission to the petitioner/borrower to sell her flat at her convenience, at the market value, and to repay the outstanding loan amounting to Rs. 71 lakhs against her home loan account. The petitioner also seeks

any further relief as may be deemed appropriate in the facts and circumstances of the case.

2. Heard the Learned Senior counsel for the petitioner and the Learned counsel for the respondent Axis Bank Ltd.

3. At the outset, the Learned counsel for respondent Axis Bank Ltd draws attention of this Court to the judgment passed by the Hon'ble Supreme Court of India reported in (**2022) 5 SCC 345 (Phoenix ARC Private Limited Versus Vishwa Bharati Vidya Mandir & Others)** (paragraph 18). The paragraph No. 18 of the Phoenix ARC Private Limited (supra) is reproduced hereinbelow:

> "**18.** Even otherwise, it is required to be noted that a writ petition against the private financial institution — ARC — the 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 *Praga Tools Corpn.* [*Praga Tools Corpn.* v. *C.A. Imanual*, (1969) 1 SCC 585] and *Ramesh Ahluwalia* [*Ramesh Ahluwalia* v. *State of Punjab*, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715] relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

4. The Learned counsel for the petitioner has placed reliance on the judgment in ***Anandi Mukta Sadguru Shree Mukta v. V.R. Rudani & Ors.***, reported in 1989 AIR 1607. However, this case does not assist the petitioner

5. In **Phoenix ARC Private Limited (supra)**, their Lordships clearly held that a writ petition against the private financial institution 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.

6. In light of the order passed in **Phoenix ARC Private Limited (supra),** this Court is of the considered view that during the course of a commercial transaction and under the contract, the respondent Axis Bank Ltd. lent the money to the borrower herein and therefore the said activity of the Axis Bank Ltd. 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, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, in the opinion of this Court, this writ petition is not maintainable.

7. The writ petition is, accordingly, dismissed as not maintainable in light of the law laid down by the Hon'ble Supreme Court of India in **Phoenix ARC Private Limited (supra).**

8. The petitioner may approach the appropriate forum in accordance with the law laid down by the Hon'ble Supreme Court of India in **Phoenix ARC Private Limited (supra)**.

9. It is made clear that this Court has neither expressed any opinion nor has it gone into the merits or demerits of the present case.

10. It is pertinent to note that by order dated 03.07.2023, a Coordinate Bench of this Court had directed the respondent-Bank not to proceed further with the physical possession of the

property, pending further orders of this Court. However, since the writ petition is found to be not maintainable and has been dismissed, the stay granted by the order dated 03.07.2023 stands automatically vacated.

11. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2025
Transmission Date	