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WP No.13655 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2026

CORAM

THE HON'BLE MR.SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

WP No.13655 of 2024

S.Karikalacholan
Flat No.B1, Srivari Mayaa, T.S.No.166, Site
No.18, Near Eye Foundation Ward No.19, New
Ward No.H (8), Block No.Z, New Block No.4,
Bashyakaralu, R.S.Puram, Coimbatore- 641 002. Petitioner

Vs

The Authorized Officer
Edelweiss Asset Reconstruction Company
Limited, Edelweiss House, Of Cst Road, Kalina,
Mumbai-400 098. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration to declare the Respondent 2nd possession notice vide EdelARC/Retail 4822/ 2023- 2024 dated 03.04.2024, is null and void, consequently forbearing the respondent from invoking Sarfeasi proceedings against the petitioner's property which is situated at Coimbatore Reg and Sub Registration District, Coimbatore corporation limits in R.S. Puram, West Bashyakarlu Road, Ward No.19, New Ward No.H (8), Block No.Z, New Block No.4, T.S.No.166 Site No. 18, measuring 9,088 Sq., Ft, in that with the undivided Share of 1097.08 Sq., ft and Flat / Apartment bearing No. 18 on the first floor having a super built up area of about 2255 Sq., ft., along with double covered reserved cark park in the residential complex SRIVARI MAYAA till the disposal of S.A. No.722 of 2022.

For Petitioner : Mr. Saravanan.P.

For Respondent : Mr. M.Arunachalam
for the first respondent

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ORDER

WEB COPY (Order of the Court was made by the Hon'ble Chief Justice)

The petitioner has filed this writ petition, under Article 226 of the Constitution of India, to declare the possession notice issued by the respondent under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as null and void.

2. In *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir*¹, the Supreme Court emphatically held that the remedy against an order passed under Section 13(4) of the Act of 2002 is under Section 17 of the Act before the Debts Recovery Tribunal and a writ petition is not maintainable. The observations of the Supreme Court are extracted herein below:

"10. In United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110, it was observed and held by this Court that the remedies available to an aggrieved person against the action taken under Section 13(4) or Section 14 of the SARFAESI Act, by way of appeal under Section 17, can be said to be both expeditious and effective. On maintainability of or entertainability of a

¹ (2022) 5 SCC 345



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writ petition under Article 226 of the Constitution of India, in a case where the effective remedy is available to the aggrieved person, it is observed and held in the said decision in paras 43 to 46 as under : (SCC pp. 123-24)

'43. Unfortunately, the High Court [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] overlooked the settled law that the *High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*



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45. *It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but **it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.***

46. *It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. **In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. ...'***



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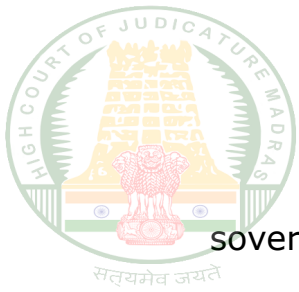
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12. In *Kanaiyalal Lalchand Sachdev v. State of Maharashtra*, (2011) 2 SCC 782, after referring to the earlier decisions of this Court in *Sadhana Lodh v. National Insurance Co. Ltd.*, (2003) 3 SCC 524, *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675 and *SBI v. Allied Chemical Laboratories*, (2006) 9 SCC 252 **while upholding the order passed by the High Court dismissing the writ petition on the ground that an efficacious remedy is available under Section 17 of the SARFAESI Act, it was observed that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person."**

[emphasis supplied]

3. That apart, it is a well-settled proposition of law that a writ petition under Article 226 of the Constitution of India can only be issued against a State, its instrumentalities, or a private body discharging a public function or statutory public duty. The respondent, in initiating proceedings under the SARFAESI Act, is merely enforcing a private contractual right and security interest created by the borrower. It is not discharging any public function or

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sovereign duty. Therefore, a writ petition against a private bank enforcing a private debt is not maintainable under Article 226 of the Constitution of India. The said view of ours is fortified by a decision of the Supreme Court in *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir*², wherein it is held as under:

"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

² (2022) 5 SCC 345



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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. ..."

[emphasis supplied]

4. In view of the law enunciated by the Supreme Court, the writ petition is dismissed leaving it open to the petitioner to work out its rights before the appropriate forum. There shall be no order as to costs. Consequently, WMP No.14822 of 2024 is closed.

(SUSHRUT ARVIND DHARMADHIKARI, CJ.) (G.ARUL MURUGAN, J.)
23.06.2026

Index : Yes/No
Neutral Citation : Yes/No
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THE HON'BLE CHIEF JUSTICE
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