IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

WP No.20740 of 2026
and WMP Nos.23911 and 22358 of 2026

Zulaikha Motors Pvt Ltd
Having Address at No.808/15
Old Door No.407/15, GR Complex,
Anna Salai, Nandanam, Chennai,
Tamil Nadu-600 035
Also at New Door No.5,
Old Door No.7A,
Devakiammal Street, Shenoy Nagar,
Aminjikarai Village, Aminjikarai Taluk,
Chennai-600 030.

Petitioner(s)

Vs

ARKA Fincap Limited
A Non-Banking company incorporated under
the provisions Companies Act, 2013 and
Registered under 45 IA of the RBI Act, 1934
and having its registered office at 2504,
25th floor, One Lodha Place,
Senapati Bapat Marg, Lower Parel,
Mumbai - 400 013
Rep through its Authorized Officer
Rajkumar S.

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records pertaining to impugned conditional order dated 20.11.2025 passed in I.A.1522/2025 in AIR No.2374 of 2025 by the Debt Recovery Appellate Tribunal at Chennai and to quash the same and consequently to direct the DRAT, Chennai to number the AIR No.2374 of 2025 and to consider the same on merits.

For Petitioner(s): Mr.Samir S.Shah
for Mr. S.John Josh

ORDER
(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, challenging the conditional order dated 20.11.2025 passed by the Debt Recovery Appellate Tribunal (DRAT) in I.A.No.1522 of 2025 in AIR No.2374 of 2025. The DRAT had directed the petitioner to deposit 25% of the outstanding debt as a pre-deposit to entertain the appeal against the rejection of the Securitization Application.

2. A Coordinate Bench of this Court, vide order dated 29.05.2026, admitted the writ petition. Simultaneously, an interim stay was granted on the confirmation of the auction sale, subject to

the strict condition that the petitioner deposits a sum of Rs.50,45,595.25 within ten days from the date of the order. The order explicitly states that "*In case, the amount is not deposited, the stay petition will stand dismissed without further reference to this Court*."

3. Today, the matter is listed for hearing the interim application filed by the petitioner seeking an extension of time to comply with the interim order dated 29.5.2026. The petitioner contends that due to severe viral fever and health issues arising from the heat wave, it was unable to arrange the funds and complete the formalities within the stipulated ten-day period. The petitioner undertakes to deposit the amount if an extension of two weeks is granted.

4. We have heard learned counsel appearing for the petitioner and perused the records, including the affidavit filed in support of the application seeking extension of time.

5. At the outset, we must address a fundamental jurisdictional issue that goes to the root of the maintainability of this writ petition. The respondent herein, Arka FinCap Limited, is a private Non-Banking Financial Company (NBFC). It is not an instrumentality of the State as defined under Article 12 of the Constitution of India. The dispute between the petitioner and the respondent arises out of a loan agreement and the subsequent enforcement of security interest under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act].

6. 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 sovereign duty. Therefore, a writ petition against a Non-Banking Financial Institution 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 *S.Shobha v. Muthoot Finance Ltd*[1], wherein it was held thus:

> *"9. We may sum up thus:*
>
> *(1)* ***For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental****.*
>
> *(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.*
>
> *(3)* ***Although a non-banking finance company like the Muthoot Finance Ltd. with which we are***

1 *2025 SCC OnLine SC 177*

***concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company**.*

*(4) **A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.***

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statue or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law

remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."

[emphasis supplied]

7**.** From the law enunciated by the Supreme Court, it is lucid that a private entity, such as an NBFC, cannot be subjected to writ jurisdiction unless there is a clear violation of public law duties or statutory obligations imposed by the State. In the present case, the grievance is essentially contractual and financial in nature, relating to the recovery of dues and enforcement of mortgage and the remedy of the petitioner lies before specialized forums empowered to adjudicate such disputes.

8. Furthermore, regarding the specific prayer for extension of time, it is to be noted that the interim order dated 29.05.2026 was passed with a specific self-operative clause. It clearly stipulated that non-compliance within ten days would result in the automatic vacation of the stay. The petitioner failed to deposit the amount within the stipulated time. While the petitioner cites health reasons, there is no medical certificate produced to substantiate the claim of incapacitation during the entire ten-day period. More importantly, the obligation to deposit the amount was a condition precedent for the continuation of the interim relief. By failing to comply, the interim stay stands vacated automatically by operation of the order itself.

9. Granting an extension at this stage, after the stay has already stood vacated due to non-compliance, would amount to rewriting the conditions imposed vide earlier order of the Coordinate Bench of this Court and would prejudice the respondent, who is entitled to proceed with the legal consequences of the auction confirmation.

10. As the writ petition is not maintainable against a NBFC, we dismiss the same. No costs. Since the interim stay stood vacated automatically due to non-compliance with the order dated 29.05.2026, WMP No.22358 of 2026 is dismissed. Consequently, WMP No.23911 of 2026 seeking extension of time is closed.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)
16.06.2026

Index : Yes/No
Neutral Citation : Yes/No
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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

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