

Som Nath Jain v. Authorized Officer, Kogta Financial India Limited , 2023 PLRonline 0132
[ID# 443601]

PUNJAB AND HARYANA HIGH COURT

Before :- Justice Lisa Gill, Justice Ritu Tagore

SOM NATH JAIN – Petitioner(s)

Versus

THE AUTHORIZED OFFICER, KOGTA FINANCIAL INDIA LIMITED AND OTHERS –
Respondent(s)

CWP-19258-2023 (O&M)

Date of Decision: 02.11.2023

SARFAESI Act, S. 13(4) - Writ - NBFC - Writ petition filed seeking relief qua respondent-institution, which is admittedly a non-banking financial institution - Petitioner also has an efficacious remedy under SARFAESI Act - Writ is not entertainable against a private non-banking financial institution. *Phoenix ARC Private Ltd. v. Vishwa Bharati Vidya Mandir*, [2022 Scej 0505](#) , [2022 PLRonline 1605](#),, relied.

Present: Mr. K.S. Brar, Advocate for the petitioner.

LISA GILL, J.

1. Prayer in this writ petition is for quashing demand notice dated 09.02.2023 (Annexure P-1) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act) and possession notice dated 25.04.2023 (Annexure P-3) under Section 13(4) of SARFAESI Act. There are further prayers for directing respondents no.1 and 2 to settle loan account of petitioner and not to take physical possession of mortgaged property of petitioner.

2. Heard learned counsel for the parties.

3. Admittedly this writ petition has been filed seeking relief qua respondent-institution, which is admittedly a non-banking financial institution. Apart from the fact that petitioner has an efficacious remedy for redressal of his grievance(s) qua proceedings initiated against him under SARFAESI Act, present writ petition is not entertainable against a private non-banking financial institution. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in *Phoenix ARC Private Ltd. v. Vishwa Bharati Vidya Mandir and others*, [2022 SCeJ 0505](#) , [2022 PLRonline 1605](#), 2022 AIR (SC) 1045, 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 Vs. 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."*

4. Keeping in view the facts and circumstances of the matter, this writ petition is dismissed with liberty to petitioner to avail statutory remedy(ies) available to him, in accordance with law. Needless to say, all pleas/arguments as raised on behalf of petitioner are in the realm of consideration by learned Tribunal. There is no expression of opinion on merits of the controversy.