

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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CWP-9306-2025 (O&M)**Date of decision :01.04.2025****M/s Summer Estate & Builder and others****...Petitioners****Versus****Phoenix ARC Private Limited and others****...Respondents****CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Brijeshwar Singh Bhalla, Advocate for the petitioners.

Mr. Manan Jain, Advocate for respondent No.1.

Anupinder Singh Grewal, J. (Oral)

The petitioners have challenged the sale certificate dated 11.03.2025 (Annexure P-16) issued by respondent No.1 whereby the secured property has been sold to respondent No.4.

2. Learned counsel for the petitioners submits that the petitioners had earlier entered into One Time Settlement with the respondent-secured creditor on two occasions and had paid a total sum of Rs.5 crores but the respondent-secured creditors have erroneously ignored the same and put the secured asset to auction. He also submits that the petitioners are ready to pay the outstanding amount under the One Time Settlement along with interest thereon. He further submits that the petitioners are ready to deposit a demand draft for a sum of Rs.5 crores today itself and are willing to pay the outstanding amount as per any schedule set out by the respondent-secured creditors.

3. Heard.

4. The petitioners are stated to be the borrowers, who had initially taken a loan for a sum of Rs. 21 crores on 29.04.2014 from Punjab National Bank. Later, this loan was taken over by Federal Bank and the credit facility amount was enhanced to the tune of Rs.23.75 crores vide sanction letter dated 25.06.2014. The petitioners had defaulted in repaying the EMIs and therefore, the respondent-secured creditor had initiated proceedings under the Securitization Act and notice under Section 13(2) was issued on 07.05.2016 for a sum of Rs.23,93,32,858/-. The petitioners did not pay the outstanding amount and therefore, the petitioners had issued possession notice on 17.09.2016 and thereafter, preferred an application under Section 14 of the Securitization Act seeking possession of the secured asset which was allowed by the District Magistrate on 29.12.2016 (Annexure P-4). In the year 2022, the petitioners are stated to have entered into One Time Settlement with the respondent-secured creditor but admittedly they did not make the complete payment in terms of the settlement.

5. It is trite that it is not open to the writ Court to direct the respondent-secured creditor to accept the One Time Settlement proposal or to extend the date of payment or the schedule of payment arrived at between the parties under the One Time Settlement. Reference can be made to the judgment of the Supreme Court in the case of ***State Bank of India Vs. Arvindra Electronics Pvt. Ltd., (2023) 1 SCC 540***, wherein the principles set out in the case of ***Bijnor Urban Cooperative Bank Ltd Vs. Meenal Aggarwal, (2023) 2 SCC 805***, were reiterated.

The relevant extract of the judgment is reproduced hereunder:-

“13. Therefore, the short question which is posed for consideration of this Hon’ble Court is whether in the facts and circumstances of the case the High Court is justified in extending the period to make the payment of balance amount under sanctioned OTS Scheme beyond the time granted under the sanctioned OTS Scheme, while exercising the powers under Article 226 of the Constitution of India?”

14. While considering the aforesaid issue the recent decision of this Court in *Meenal Agarwal* is required to be referred to.

15. In *Meenal Agarwal* this Court answered the following two questions: (SCC para 6)

“6.1. (i) Whether benefit under the OTS Scheme can be prayed as a matter of right?”

6.2. (ii) Whether the High Court in exercise of powers under Article 226 of the Constitution of India can issue a writ of mandamus directing the Bank to positively consider the grant of benefit under the OTS Scheme and that too de hors the eligibility criteria mentioned under the OTS Scheme?”

16. On a detailed analysis of the OTS Scheme, it is observed and held by this Court in *Meenal Agarwal* that:

(i) No borrower can, as a matter of right pray for a grant for the benefit of One-Time Settlement scheme;

(ii) No writ of mandamus can be issued by the High Court in exercise of Article 226 of the Constitution of India, directing the financial institution/bank to positively grant a benefit of OTS to a borrower;

(iii) The grant of benefit of OTS Scheme is subject to the eligibility criteria and the guidelines issued from time to time.”

6. Furthermore, the property has already been put to auction and the sale certificate had been issued to the auction purchaser. The right of redemption is available to the borrower only till the issuance of notice under Section 13(8) of the Securitization Act. The relevant extract of Section 13(8) is reproduced hereunder:-

“Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.”

7. In the instant case, the property has already been auctioned and sale certificate has also been issued in favour of the respondent No.4 the auction purchaser. It is apt to notice that the petitioners are seeking issuance of a writ for quashing the action initiated by the respondent No.1 which is a private asset reconstruction company and does not constitute State within the definition of

Article 12 of the Constitution of India and therefore, a writ petition against action of the respondent No.1 would not be maintainable. Reference can be made to the judgment of the Supreme Court in the case of **Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir & Ors., (2022) 5 SCC 645**, wherein it has been held that writ petition challenging the action of the private non banking financial corporation (NBFC) under Section 13 of Act, 2002, would not be maintainable.

The relevant extract of the judgment is reproduced hereunder:-

“12. 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. xxx xxx xxx.”

8. Consequently, we do not find any merit in the instant petition which stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

01.04.2025

Sapna

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No