HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 3083/2026

CNR: RJHC010143232026 | URN: CW / 5712U / 2026

1. Late Vijendra Singh, S/o Chandran Nair, Aged About 38 Years, Resident Of Plot No. 100, Shyam Nagar, Baba Ramdev Mandir Ke Pass, Borana, District Jodhpur (Raj.). Through-
2. Jamna Devi W/o Chandran Nair, Aged About 66 Years, Plot No. 294 Khasra No. 58/01, Block No. 16 Shyam Nagar Yojana Village Borana, Tehsil Luni, District Jodhpur (Raj.).
3. Laxmi W/o Late Vijendra Singh, Aged About 34 Years, Plot No. 100, Shyam Nagar, Baba Ramdev Mandir Ke Pass, Borana, District Jodhpur (Raj.).
4. Divyanshu Singh S/o Late Vijendra Singh, Aged About 20 Years, Plot No. 100, Shyam Nagar, Baba Ramdev Mandir Ke Pass, Borana, District Jodhpur (Raj.).
5. Manshi Singh D/o Late Vijendra Singh, Aged About 17 Years, Through Laxmi (Mother) R/o Plot No. 100, Shyam Nagar, Baba Ramdev Mandir Ke Pass, Borana, District Jodhpur (Raj.).
6. Rajveer Singh S/o Late Vijendra Singh, Aged About 10 Years, Through Laxmi (Mother) R/o Plot No. 100, Shyam Nagar, Baba Ramdev Mandir Ke Pass, Borana, District Jodhpur (Raj.).

----Petitioners

Versus

1. India Shelter Finance Corporation Limited, Through Its Authorized Officer, Having Its Registered Office - 6Th Floor, Plot No 15, Institutional Area, Sector 44, Gurugram - 122002 And Branch At No. A/94/95, 1St Floor, Shiv Gauri Plaza, Akhaliya Circle, Jodhpur, Rajasthan, India.
2. Icici Prudential Life Insurance Company Limited, Through Its Chief Compliance Officer, Registered Office - 1089, Appasaheb Marathe Marg, Prabhadevi, Mumbai-400025, India.

----Respondents

For Petitioner(s)	:	None present
For Respondent(s)	:	Mr. Vijay Purohit Mr. Bhavit Sharma

HON'BLE MR. JUSTICE SAMEER JAIN

<u>Order</u>

<u>22/07/2026</u>

1. The present writ petition has been filed in the year 2026 challenging the proceedings initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act').

2. When the matter was called, none marked appearance on behalf of the petitioners.

3. Relying upon the dictum enunciated by the Hon'ble the Supreme Court in the case of **United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110**, learned counsel for the respondent raised a strong objection *qua* the maintainability of the present petition in light of the alternate and efficacious remedy available with the petitioner before the appropriate forum. The relevant extract of the above referred dictum is reproduced as under:-

> *"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. <u>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</u>*

*should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in **Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad [AIR 1969 SC 556], Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107]** and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."*

(emphasis supplied)"

4. This Court is conscious of the fact that the controversy involved herein is no more *res integra* and the same is covered by the ratios laid down by the Hon'ble Supreme Court in **Satyawati Tondon (supra)** and **Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir, 2022 INSC 44**, wherein *qua* the maintainability of such writ petitions it has categorically held that High Courts ought to be extremely careful and circumspect in exercising their discretion under Article 226 of the Constitution of India in such financial matters pertaining to financial debt/bank recovery/SARFAESI wherein disputed questions of fact are involved. The relevant extract of the **Phoenix ARC (supra)** is reproduced as under :-

"*13.2 Applying the law laid down by this Court in the case of **Mathew K.C. (supra)** to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the Court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13.08.2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way*

> *of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs.1 crore only (in all Rs.3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs.117 crores. The ad-interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of Court. It appears that the High Court has initially granted an ex-parte ad-interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."*
>
> *(emphasis supplied)*

5. It is the settled proposition of law that entertaining such writ petitions will frustrate the scheme and the legislative intent/wisdom behind the creation of special legislation and that the writ petitions cannot be filed directly bypassing the alternate remedy of appeal before the appropriate forum available under the provisions of the relevant statute.

6. Considering the facts and circumstances involved in the matter in hand, taking note of the settled position of law, relying

upon the judgments as referred above, this Court deems it appropriate to dispose of the present petition as none marked appearance on behalf of the petitioner.

7. However, liberty is granted to the petitioner to avail alternate and efficacious remedy within a period of 30 days from the date of passing of this order and if availed, the same can be considered by appropriate authority/tribunal/forum, strictly in accordance with law.

9. In light of the aforesaid observations, the present petition stands disposed of. Pending application(s), if any, shall stand disposed of.

(SAMEER JAIN),J

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