



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 28422 OF 2025 (GM-DRT)

BETWEEN:

1. MR. NADEEM PASHA
S/O MOHAMMED SHAFI ULLA,
AGED ABOUT 45 YEARS
2. MRS. ANEES SALMA
W/O MR. NADEEM PASHA,
AGED ABOUT 39 YEARS
BOTH ARE R/ AT NO. 4, F
6TH MAIN ROAD, SAGAYAPURAM,
BENGALURU-560 045

...PETITIONERS

(BY SRI. NAVEED AHMED, ADVOCATE)

AND:

1. THE AUTHORIZED OFFICER
M/S. IIFL HOME FINANCE LIMITED
FORMERLY KNOWN AS
INDIA INFOLINE HOUSING FINANCE LTD.,
REPRESENTED BY ITS
AUTHORISED OFFICER
HAVING REGISTERED OFFICE AT
IIFL HOUSE, SUN INFOTECH PARK,
ROAD NO. 15 V PLOT NO B-23 MIDC,
THANE INDUSTRIAL AREA, WAGLE ESTATE,
THANE-400 604
2. MRS. FARZANA ALMAS,
AGE 63 YEARS
W/O MOHAMMED ANWAR MOOSA (LATE)





R/AT NO.17, CENTRAL STREET,
SHIVAJINAGAR
BENGALURU-560 001

3. MR. MOHAMMED SUHAIL,
AGE 36 YEARS
S/O MOHAMMED ANWAR MOOSA (LATE)
R/AT NO.17, CENTRAL STREET,
SHIVAJINAGAR
BENGALURU-560 001
4. MR. MOHAMMED SALMAN,
AGE 30 YEARS
S/O MOHAMMED ANWAR MOOSA (LATE)
R/AT NO.17, CENTRAL STREET,
SHIVAJINAGAR
BENGALURU-560 001

...RESPONDENTS

(BY SRI. SATISH V., ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE POSSESSION NOTICE DATED 12-08-2025 ISSUED BY RESPONDENT NO.1 UNDER SECTION 13(4) OF SARFAESI ACT IN RESPECT OF SCHEDULE PROPERTY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 24.02.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



CAV JUDGMENT

The present writ petition is filed seeking the following prayer:

"PRAYER

WHEREFORE, the Petitioners humbly pray that this Hon'ble Court may be pleased to:

a) Issue a writ of certiorari quashing the possession notice dated 12-08-2025 issued by Respondent No.1 under Section 13(4) of SARFAESI Act in respect of Schedule Property at Annexure - B

b) Issue a writ of mandamus restraining Respondent No.1 and its agents from dispossessing the Petitioners from the Schedule Property except in accordance with law;

c) Direct Respondents Nos.2 to 4 to refund the security deposit of Rs.50,00,000/- to the Petitioners forthwith;

D) Pass such other orders as this Hon'ble Court deems fit in the interest of justice and equity."

2. It is the case of petitioners that the petitioners under a registered Lease Deed dated 30.09.2021 had obtained the lawful possession of the commercial premises from respondent Nos.2 to 4 for a term of 3 years commencing from 01.10.2021 to 30.09.2024. The petitioners had paid a refundable security deposit of Rs.50,00,000/- and agreed to pay monthly rent of Rs.2,50,000/- which has been regularly paid without default till the expiry of lease. The petitioners upon expiry of the lease on 30.08.2024 expressed their willingness to vacate the subject



property and for refunding the security deposit. The Lessors, however, have failed and neglected to refund the amount. During the subsistence of the lease, without disclosure or consent, respondent Nos.2 to 4 created a mortgage over the leased property in favour of respondent No.1 i.e., IIFL Home Finance Ltd. and upon default in repayment of loan, respondent No.1 invoked provisions under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act') and issued possession notice on 12.08.2025. The petitioners had issued legal notice on 10.09.2025 to the respondent Nos.2 to 4 calling upon them to refund the security deposit of Rs.50,00,000/- subject to refund, petitioner will vacate the premises. After affixture of the notice, petitioner applied for encumbrance and learnt that the respondent Nos.2 to 4 mortgaged the property in favour of respondent No.1 and obtained financial assistance. It is stated that the petitioners being lawful tenants in possession of the registered lease are gravely prejudiced by the arbitrary action of respondent No.1, who has ignored the petitioner's tenancy rights and threatened



to dispossess them without authority of law. Hence, they have come up before this Court.

3. Learned counsel appearing for the petitioners submits that the action of the respondent No.1 in seeking to dispossess the petitioners without adjudication of their lawful tenancy rights is arbitrary, unfair and violative of Articles 14 and 21 of the Constitution of India. He submits that the protection of Lease under Section 65A of the T.P. Act. The Lease Deed being a registered instrument executed prior to initiation of SARFAESI proceedings, petitioners' rights as lawful tenants cannot be defeated by unilateral action of the secured creditor. Learned counsel has relied on the judgment of the Hon'ble Apex Court in case of **Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co. Ltd.**¹ and **Vishal N. Kalsaria Vs. Bank of India**² and submits that lawful tenancies created prior to the mortgage/notice under the SARFAESI are protected and eviction of tenants can only be in accordance with Rent Control Laws and not the SARFAESI proceedings. It is stated that the petitioners have a subsisting monetary claim of Rs.50,00,000/-

¹ (2014) 6 SCC 1

² (2016) 3 SCC 762



refundable deposit, which creates an equitable interest in the property. The dispossession of the petitioners without resolution of such interest is wholly illegal. It is stated that the alternative remedy is not a bar. Though the SARFAESI Act provides remedy under Section 17 before the DRT, the jurisdiction of this Court under Article 226 of the Constitution of India is attracted where fundamental rights are violated, particularly when the secured creditor proceeds against lawful tenants in disregard to the judgment of the Hon'ble Apex Court.

4. The respondent No.1/Bank has filed their objections. It is stated that respondent Nos.2 to 4 being the owners of the schedule property had approached respondent No.1/Bank for availing mortgage loan and respondent No.1 sanctioned loan amount of Rs.60,00,000/-. Respondent No.2 to 4 executed registered deed on 25.04.2022 in favour of respondent No.1. Since the respondent Nos.2 to 4 defaulted in clearing loan and their loan account was declared as NPA and respondent No.1 initiated SARFAESI proceedings against respondent Nos.2 to 4 by issuing 13(2) notice, later followed by 13(4) notice. It is stated that based on lease deed dated 30.09.2021, the



petitioners are claiming charge over the property. It is stated that respondent Nos.2 to 4 had mortgaged the property stating that they are running business of sofa and furniture under the name 'Reesha Furnitures' and the petitioners are also claiming that they have taken the premises for the purpose of running sofa business. But very surprisingly, they have not disclosed in the lease deed under what name and banner the business is run in the schedule premises. It is stated that respondent Nos.2 to 4 are hand-in-glove and the said lease agreement was entered between them only to derail the process of recovery and respondent Nos.2 to 4 have intentionally defaulted in making payment. It is stated that though the lease is for a period of 3 years commencing from 30.09.2021 which culminates on 30.09.2024, but thereafter there is no communication either by the petitioners seeking renewal of the lease agreement nor is any termination notice issued by respondent Nos.2 to 4. It is submitted that the Bank has charge over the property and the proceedings that are initiated by the Bank are in accordance with law.



5. Having heard the learned counsels on either side, perused the material on record. Both the counsels have submitted their arguments at length on the merits of the matter. In this case, the respondent No.1 is IIFL Home Finance Ltd. The Hon'ble Apex Court in case of ***Phoenix Arc Private Limited Vs. Vishwa Bharati Vidya Mandir and Others***³ had observed as follows:

"18. 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 (supra) and Ramesh Ahluwalia (supra) relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.

21. Applying the law laid down by this Court in the case of Mathew K.C. (supra) to the facts on hand, we are of

³ (2022) 5 SCC 345



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 24 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."

6. The Hon'ble Apex Court in case of **S.Shobha Vs.**

Muthoot Finance Ltd.⁴ had observed as follows:

"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

⁴ 2025 INSC 117



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 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 statute 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.

10. Even while rejecting the writ petition on the ground of its maintainability, the High Court has protected the interest of the parties by observing in paras 6.1 as under:-

"6.1 Following order shall govern,

(i) It would be open for the respondent – original petitioner to have recourse to civil remedy before the appropriate Court in relation to the claim and grievance which she agitated by filing the writ petitions.

(ii) The appellant-Company is not precluded from taking any recourse in law, if it is of the view that it has any claim against the respondent – party-in-person.

(iii) It is also open to either side to invoke arbitration clause and engage in the process of arbitration to resolve the disputes.

(iv) The amount of Rs.24,39,085/-, which has been realized from sale of the gold pursuant to the auction conducted by the appellant-Company, shall remain deposited with the Registry of this Court.

(v) The Registry shall invest the said amount in a Fixed Deposit in a Nationalized Bank initially for a period of one year and renewable.

(vi) Such Fixed Deposit shall continue to renew for a maximum period of three years.

(vii) The amount of interest which may accrue on such deposit shall be receivable by the respondent– petitioner.

(viii) However, the petitioner shall not be entitled to raise any loan on the Fixed Deposit.

(ix) The Fixed Deposit kept shall remain in custody of the Registry of this Court.

(x) It would be open for either party to take recourse of civil remedy or before the arbitration within a period of three months from today."

7. The Hon'ble Apex Court had held that writ petition against a private finance company or Asset Reconstruction



Company is not maintainable before the High Court. However, in this case, an interim order was granted directing the respondents not to take any coercive steps. In that view of the matter, this Court is passing the following order:

ORDER

- i. Accordingly, the writ petition is ***disposed of*** giving liberty to the petitioners to avail the appropriate remedy before the Debts Recovery Tribunal as the writ petition against a private finance company is not maintainable.
- ii. The petitioners shall have the benefit of Section 14 of the Limitation Act.
- iii. The petitioners are having protection from 30.10.2025, as such, the respondents shall not take any coercive steps for a period of 4 weeks from the date of receipt of a copy of this order.
- iv. All I.As. in this petition shall stand closed.

**SD/-
(LALITHA KANNEGANTI)
JUDGE**

MEG