2026:AHC:60240-DB

A.F.R.

Reserved on 11.02.2026
Delivered on 24.03.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 5496 of 2026

Rakesh Kumar And Another

.....Petitioner(s)

Versus

Union Of India And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Jagannath Singh, Surendra Nath Singh
Counsel for Respondent(s)	:	A.S.G.I., Akshat Jaiswal, Ashish Kumar Mishra

Court No. - 1

HON'BLE AJIT KUMAR, J.
HON'BLE SWARUPAMA CHATURVEDI, J.

(Per : Swarupama Chaturvedi,J.)

1. Heard Shri Jagannath Singh, learned counsel appearing for the petitioner and Ashish Kumar Mishra, learned counsel for the Union of India.

2. By means of this petition filed under Article 226 of the Constitution, petitioner is challenging the initiation and continuation of recovery proceedings against the petitioner and has prayed for quashing the demand notice dated 13.11.2025 and all consequential recovery proceedings initiated by the respondent no.3 under Chapter III of Act, 2002 regarding recovery of the loan.

3. The brief facts of the present case, as borne out from the pleadings on record, are that Petitioner No.1 had availed two separate loan facilities from Respondent No.4, namely Save Financial Services Private Limited, for the purposes of business expansion and meeting working capital requirements. The said facilities were sanctioned vide sanction letters dated 12.12.2018 and 21.12.2018 for amounts of Rs. 4,50,000/- and Rs. 8,80,000/- respectively. In order to secure the aforesaid credit facilities, the petitioner have created a security interest over an immovable property bearing Municipal No. 25/269, situated at Bodh Vihar, Chakkipat,

Chhipitola Road, Agra, by way of deposit of title deeds, including the original sale deed dated 14.01.1998.

4. The respondent-company issued computer-generated repayment schedules dated 30.07.2019 and 23.01.2020 specifying the disbursement details and the repayment structure, which was initially followed by the petitioner, however, defaults occurred in the loan accounts subsequently. Upon continued default, the loan accounts of the petitioner were classified as Non-Performing Assets (hereinafter referred as “NPA”).

5. After account of petitioner became NPA, Respondent Nos. 3 and 4 issued notice dated 13.08.2025, followed by a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as “SARFAESI Act”) on 13.11.2025, claiming an outstanding amount of Rs. 22,33,573.73/-. The said notice also stated that the respondent-company stood authorized as a financial institution pursuant to notification dated 12.02.2021 issued by the Central Government. After failure of the petitioner to comply with the demand notice, the respondents proceeded to issue possession notice dated 15.01.2026 under Section 13(4) of the SARFAESI Act, thereby taking symbolic possession of the secured asset.

6. Learned counsel for the petitioners assailed the impugned proceedings primarily on the ground of lack of jurisdiction. It was contended that Respondent No. 4 does not fall within the definition of a “Financial Institution” as contemplated under Section 2(1)(m)(iv) of the SARFAESI Act, 2002. It was argued that the government notification dated 12.02.2021, relied upon by the respondents, did not include or cover Save Financial Services Private Limited, and therefore the very initiation of proceedings under the SARFAESI Act was without authority of law. In support of the argument, reliance had also been placed upon earlier government notification dated 05.08.2016.

7. It was further submitted that the security interest created in favour of the respondent had not been registered with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI). Learned counsel drew attention to an online search result dated 26.01.2026 to contend that no such registration existed. It was thus

argued that in view of the statutory mandate contained in Section 26-D of the SARFAESI Act, the respondents were precluded from exercising any enforcement rights under Chapter III of the Act against the petitioner.

8. Another limb of the petitioner's argument pertained to the admissibility of the underlying loan documents. It was contended that the loan agreements were insufficiently stamped as per Article 15 and Article 40(b) of Schedule 1-B of the Indian Stamp Act, 1899, and consequently, in view of Section 35 of the said Act, the same were inadmissible in evidence and cannot be relied upon to sustain the recovery proceedings. Allegations of forgery regarding the co-borrower status of petitioner no. 2 and discrepancies in property description of the secured asset were also raised by the counsel appearing for the petitioner to contend that the entire recovery proceeding was vitiated by fraud and procedural illegality.

9. *Per contra,* learned counsel appearing for the respondent has opposed the maintainability of the writ petition under Article 226 of the Constitution of India and supported the proceedings impugned by the petitioner. It was submitted that the existence of debt and default is admitted and it appeared from record that the petitioner had voluntarily availed the loan facilities and created a valid security interest by deposit of title deeds, thereby conferring enforceable rights upon the respondent financial institution.

10. With regard to the petitioner's contention on jurisdiction, it was contended by learned counsel that Respondent No. 4 was duly covered under the notification dated 24.02.2020 and later under 12.02.2021 issued by the Central Government and was, therefore, competent to invoke the provisions of the SARFAESI Act. It was further submitted that the petitioners appeared to have overlooked the notification dated 24.02.2020 or misunderstood the notifications dated 12.02.2021 and 05.08.2016. He urged that the notification dated 24.02.2020, had come in supersession of the notifications of the Government of India, Ministry of Finance numbers S.O. 2641(E), dated the 05.08.2016 and the notification dated 12.02.2021 had come to amend the notification dated 24.02.2020 only upto the extend of reduction of the amount for which the action could be initiated.

11. On the issue of non-registration with CERSAI, it was submitted that such registration was procedural in nature and did not invalidate the creation of the security interest or the right of enforcement, particularly in between the borrower and the secured creditor, it was an undisputed fact that there was a loan against the secured property for which the action was being initiated by the financial institution, and if there was any factual grievance then the petitioner could have invoked Section 17 SARFAESI before Debt Recovery Tribunal as an aggrieved person.

12. Dealing with the objection relating to insufficient stamping, allegations of fraud and discrepancies, learned counsel submitted that allegations of fraud and discrepancy were vague, unsubstantiated, and raised only as an afterthought to evade repayment of legitimate dues. It was argued that no material had been placed on record to substantiate the plea of forgery in creating the secured asset. Dealing with argument regarding stamp duty, learned counsel for the respondents submitted that such a plea could not defeat substantive rights arising out of admitted financial transactions, especially in proceedings under the SARFAESI Act. It was contended that the issue of stamp duty was curable and did not render the transaction void nor take away the jurisdiction of the Debts Recovery Tribunal (hereinafter referred to as “DRT”) regarding the action under SARFAESI Act, if the action was regarding an admittedly defaulted loan amount taken against a secured asset.

13. Lastly, learned counsel appearing for the respondents submitted that the present writ petition was not maintainable in view of the availability of an efficacious alternative remedy under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, and on this ground alone, the petition deserved to be dismissed. It was further submitted that the Supreme Court in ***S. Shobha v. State Bank of India & Ors., 2025 SCCOnline SC 177,*** had categorically held that where a complete statutory mechanism was provided under the SARFAESI Act, the High Court ought not to entertain a writ petition in a routine manner. Learned counsel contended that the present petition, being directed against recovery proceedings initiated by a private financial institution and involving disputed questions of fact, was not maintainable under Article 226 of the Constitution of India, and the petitioners ought to have been

relegated to the statutory remedy available under the Act.

14. At the outset, we are of the view that the existence of the loan transaction and the subsequent default is not disputed by the petitioners, and the challenge raised is primarily legal in nature, touching upon the jurisdiction of the respondent to invoke the provisions of the SARFAESI Act as well as the maintainability of the present writ petition.

15. Considering rival submissions advanced by learned counsel for the parties, following two sets of questions arise for consideration:

> *"(i) whether Respondent No. 4 qualifies as a "Financial Institution" within the meaning of Section 2(1)(m)(iv) of the SARFAESI Act, 2002 and is thereby competent to initiate proceedings thereunder, and whether the present writ petition is maintainable in view of the availability of an efficacious alternative statutory remedy under the provisions of the said Act; and*
>
> *(ii) whether non-registration of the security interest with CERSAI in light of Section 26-D of the Act vitiates the enforcement measures adopted by the respondents, and whether the alleged insufficiency of stamp duty on the loan agreements, coupled with allegations of fraud including the purported wrongful inclusion of Petitioner No. 2 as a co-borrower and discrepancies in the description of the secured asset, renders the recovery proceedings legally unsustainable."*

16. Upon consideration of the pleadings and submissions advanced by learned counsel for the parties, this Court proceeds to examine first question framed hereinabove.

17. Insofar as the first set of issues is concerned, this Court deems it appropriate to first examine whether Respondent No. 4 qualifies as a "financial institution" and thereunder falls within the ambit of SARFAESI Act, 2002. The question regarding the maintainability of the present writ petition under Article 226 of the Constitution of India shall be considered thereafter. For this purpose, it becomes necessary to advert to the statutory scheme of the SARFAESI Act. In this regard, this Court, in ***Hinduja Housing Finance Ltd. v. State of U.P. and Others, 2026 SCC***

OnLine All 32, has observed as under:

> "*19. The Supreme Court while interpreting Section 14 of the SARFAESI Act 2002 in* ***NKGSB Cooperative Bank Limited Vs Subir Chakravarty and others (2022) 10 SCC 286****, discussed the object of the Act and emphasized that the intention of law makers is to empower financial institution. Relevant paragraph of the judgement is reproduced below for ready reference:*
>
> "*29. The underlying purpose of the 2002 Act is to empower the financial institutions in India to have similar powers as enjoyed by their counterparts, namely, international banks in other countries. One such feature is to empower the financial institutions to take possession of securities and sell them. The same has been translated into provisions falling under Chapter III of the 2002 Act…"*

18. Considering the aforesaid objective of the enactment, particularly the provisions governing its applicability and the definition of entities, which are entitled to invoke its provisions, the applicability of the SARFAESI Act to Respondent No.4 is required to be examined. In this context, reference may be made to Section 2(1)(m)(iv) of the Act, which empowers the Central Government to notify such institutions as "financial institutions" for the purposes of the Act.

> "*2. Definitions.—(1) In this Act, unless the context otherwise requires,—*
>
> *(m) "financial institution" means—*
>
> *(iv) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), which the Central Government may, by notification, specify as financial institution for the purposes of this Act;"*

19. Definition of the financial institution in SARFAESI Act, 2002 leads to section 45-I of the Reserve Bank of India Act (hereinafter referred as "RBI Act"). Section 45-I falls in chapter IIB of the RBI Act, which makes the provisions relating to non-banking institutions receiving deposits and financial institution. To understand the definition of financial institution under SARFAESI Act, Section 45-I of the RBI Act is reproduced below for easy reference:

> "*45-I. Definitions.- In this Chapter, unless the context otherwise requires,-*
>
> *(f) "non-banking financial company" means-*
>
> *(i) a financial institution which is a company;*

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify."

20. After reading statutory provisions, dealing with the definition of the financial institution, the controversy in the present case also necessitates a consideration of the notifications issued by the Central Government in exercise of powers under Section 2(1)(m)(iv) of SARFAESI Act. In this regard, the notification dated 05.08.2016 referred to by the petitioners and the notification dated 12.02.2021 relied upon by the respondents are required to be examined to ascertain whether Respondent No.4 falls within the ambit of a notified financial Institution. Firstly the notification dated 05.08.2016, which was relied upon by the petitioner is reproduced below:

"MINISTRY OF FINANCE
(Department of Financial Services)
NOTIFICATION
New Delhi, the 5th August, 2016

S.O. 2641(E).— In exercise of the powers conferred under sub-clause (iv) of clause (m) of sub-section (1) of section 2 read with section 31A of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby specifies the following non-banking financial companies, which are covered under clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and registered with Reserve Bank of India, having asset of five hundred crore rupees and above as per their last audited balance sheet, as "financial institutions" and hereby directs in public interest that all provisions of the said Act, shall apply to such financial institutions with the exception that the provisions of sections 13 to 19 shall apply only to such security interest which is obtained for securing repayment of secured debt with principal amount of rupees one crore and above, namely:

…."

21. The above-mentioned notification list out name of financial institutions in the tabular form and it is a matter of fact that the name of the respondent no. 4 is not found in that list. Subsequently the notification

dated 24.02.2020 got notified, which is most relevant to adjudicate this controversy as the same has got notified in supersession of the notification dated 05.08.2026, and therefore complete notification is reproduced below:

"MINISTRY OF FINANCE
(Department of Financial Services)
NOTIFICATION
New Delhi, the 24th February, 2020

S.O. 856(E).—In exercise of the powers conferred by sub-clause (iv) of clause (m) of sub- section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), and ***in supersession of the notifications of the Government of India, Ministry of Finance numbers S.O. 2641(E), dated the 5th August, 2016****, S.O. 4176 (E) dated the 27th August, 2018, and S.O. 5391(E) dated 24th October, 2018, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies such nonbanking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), having assets worth rupees one hundred crore and above, which* ***shall be entitled for enforcement of security interest in secured debts of rupees fifty lakh and above, as financial institutions for the purposes of the said Act****.*

[F. No. 31/52/2018-DRT]
VANDITA KAUL, Jt. Secy."

22. With the plain reading of the notification, it is clear that through the above notification the Central Government specifies that all such nonbanking financial companies as defined in clause (f) of section 45-I of the RBI Act, 1934, having assets worth rupees one hundred crore and above, shall be entitled for enforcement of security interest in secured debts of rupees fifty lakh and above, as financial institutions for the purposes of the said Act and therefore presence or absence of the name of the respondent no.4 in the notification dated 05.08.2016 becomes irrelevant after the notification dated 24.02.2020, which still holds the field regarding definition of the financial institution because the notification dated 12.02.2021 is only regarding the amount for which the action can be initiated under SARFAESI Act. The notification dated 12.02.2021 is reproduced below:

"MINISTRY OF FINANCE

(Department of Financial Services)

NOTIFICATION

New Delhi, the 12th February, 2021

S.O. 652(E).—In exercise of the powers conferred by sub-clause (iv) of clause (m) of subsection (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby makes the ***following amendment in the notification*** *of the Government of India, Ministry of Finance (Department of Financial Services), number S.O. 856 (E),* ***dated the 24th February, 2020****, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 25th February, 2020, namely:—* ***In the said notification, for the words, "rupees fifty lakh and above" the words "rupees twenty lakh and above" shall be substituted.***

[F. No. 31/52/2018-DRT]
VANDITA KAUL, Jt. Secy."

23. After above-mentioned statutory provisions and notifications under SARFAESI Act, there is no iota of doubt that the respondent no.4 is a financial institution and therefore, it can invoke provisions of the SARFAESI Act within its statutory framework, rules and regulations. The arguments advanced by the petitioner on this issue find no legal base and therefore deserve to be rejected.

24. Once the aforesaid aspect is examined, the question of maintainability of the present writ petition would fall for consideration. In this regard, Section 17 of the SARFAESI Act becomes relevant, which provides a comprehensive and efficacious remedy to any person aggrieved by measures taken under Section 13(4) of the Act before the Debts Recovery Tribunal. Relevant part of Section 17 of the SARFAESI Act is reproduced below:

"*17. Application against measures to recover secured debt- Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:*

…."

25. The DRT is required to examine whether the measures taken by the secured creditor under Section 13(4) of the SARFAESI Act are in accordance with the provisions of the Act and the rules made thereunder. If, upon such examination, the Tribunal finds that the action of the secured creditor is not in accordance with law, it may declare such measures invalid, restore possession or management of the secured assets to the borrower or aggrieved person, and pass such further orders as may be necessary. On the other hand, if the Tribunal finds that the action of the secured creditor is lawful, the secured creditor shall be entitled to proceed with the recovery of the secured debt in accordance with the provisions of the Act. Therefore, the petitioner has an effective alternate remedy.

26. The SARFAESI Act is a comprehensive enactment dealing with the issues arising in the present case and, in fact, all matters connected with its underlying objective. The Act also provides, under Section 18, a statutory remedy of appeal before the Appellate Tribunal against orders passed by the Debts Recovery Tribunal. It is a settled principle that where a statute provides for an efficacious alternative remedy, the High Court would ordinarily refrain from exercising its jurisdiction under Article 226 of the Constitution of India, except in exceptional circumstances such as patent lack of jurisdiction or violation of principles of natural justice. The said principle has been consistently reiterated by the Hon'ble Supreme Court in a catena of decisions.

27. In this regard, learned counsel for the respondents has specifically placed reliance upon the judgment of the Hon'ble Supreme Court in ***S. Shobha (supra),*** wherein the Supreme Court has settled the legal position regarding the limited scope of interference under Article 226 of the Constitution of India in relation to private financial institutions. The relevant observations made therein are reproduced hereinbelow for ready reference:

> "*8. A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connection with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.*

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 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."

28. Having regard to the findings on the first set of issues, this Court refrains from examining the second set of issues, as those issues can be appropriately examined by the DRT in proceedings under Section 17 of the SARFAESI Act, 2002.

29. Since this court holds that respondent no.4 is a financial institution for the purposes of SARFAESI Act, 2002, this writ petition is not maintainable in view of the availability of an efficacious alternative statutory remedy and in the light of the judgement of the supreme Court in ***S. Shobha (supra)***.

30. Accordingly, the petition is **dismissed**. However, if the petitioner has grievances to redress against the finance company it shall be open for the petitioner to avail appropriate legal remedy before the appropriate forum in accordance with law including approaching the DRT to avail the statutory remedy available under Section 17 of the SARFAESI Act. No order as to costs.

(Swarupama Chaturvedi,J.) (Ajit Kumar,J.)

March 24, 2026
Shiv