

(2026) 01 RAJ CK 1817

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 20117 Of 2025

Rajeev Bhandari

APPELLANT

Vs

Jodhpur Development Authority

RESPONDENT

Date of Decision : 22-01-2026

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(3), 13(4), 17

Citation : (2026) 01 RAJ CK 1817

Hon'ble Judges : Sunil Beniwal, J

Bench : Single Bench

Advocate : Manish Patel, Nandipna Gehlot

Final Decision : Disposed Of

Judgement

Sunil Beniwal, J

1. By way of the present writ petition, the petitioner has challenged the notice/order dated 24.09.2025 (Annexure-3) and has also sought quashment of all further proceedings initiated pursuant to the said notice. The petitioner has further prayed that the flat in question may not be put to auction and that any recovery sought to be made be effected from the original borrower.

2. The facts, in brief, as pleaded in the writ petition, are that the petitioner purchased Flat No. C-97(A) situated at Parshvanath City, Jodhpur (hereinafter referred to as "the purchased flat") on 21.08.2018. The said flat was constructed by the developer on a plot, the sub-division whereof was approved by the Jodhpur Development Authority (JDA) on 30.08.2017. Since the purchase of the said flat, the petitioner has been residing therein along with his family.

2.1 On 24.09.2025 (Annexure-3), a notice came to be issued to the petitioner under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the

Act of 2002") by respondent No.2. Being aggrieved by the said notice, the petitioner also lodged an FIR against the developer (respondent No.5 herein) alleging commission of forgery.

2.2 The petitioner has preferred the present writ petition challenging the aforesaid notice on the ground that the same is illegal and that proceedings under Section 13(4) of the Act of 2002 could not have been initiated against him, as he is neither a borrower nor a guarantor.

3. Learned counsel for the petitioner submitted that the proceedings initiated by respondent No.2 are mandatorily required to follow the procedure prescribed under Sections 13(2) and 13(3) of the Act of 2002. However, in the present case, without adhering to the said statutory provisions, respondent No.2 has straightaway issued the impugned notice by invoking powers under Section 13(4) of the Act of 2002.

3.1 Learned counsel further contended that the petitioner has invoked the writ jurisdiction of this Court as no alternative efficacious remedy is available to him. It was submitted that the remedy of approaching the Debt Recovery Tribunal is not available, since the petitioner is neither a borrower nor a guarantor, and therefore, the impugned notice has rightly been challenged by way of the present writ petition.

3.2 Learned counsel placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Central Bank of India & Anr. vs. Prabha Jain & Ors. [(2025) 4 SCC 38] and contended that the remedy of approaching the Debt Recovery Tribunal is not available in cases involving a title dispute, as is involved in the present writ petition.

4. Heard learned counsel for the petitioner and perused the material available on record.

5. This Court is of the considered view that the action initiated by respondent No.2, who is a private financial institution, is not amenable to the writ jurisdiction. Upon a specific query being raised, learned counsel for the petitioner was unable to satisfy this Court as to how respondent No.2 is amenable to the writ jurisdiction as it is not "State" within the meaning of Article 12 of the Constitution of India. The Apex Court in the case of Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir and Ors.; (2022) 5 SCC 345, has also taken this view while observing as under:-

"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.”

7. It is noted that the impugned notice has been issued under Section 13(4) of the Act of 2002 and is not addressed to the petitioner. However, the description contained in the notice indicates that the flat belonging to the petitioner has been treated as a secured asset, and it appears that the said flat was mortgaged by the developer. In these circumstances, the impugned notice can be questioned by availing remedy under Section 17 of the Act of 2002, which reads as under:

“17. Application against measures to recover secured debts.

(1) 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 alongwith 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 measures had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

xxx xxx xxx

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-

section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order-

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.”

Although, the petitioner is neither a borrower nor a guarantor, however, since his rights are grievously affected by the impugned notice, he is an aggrieved person and can very well approach the Debt Recovery Tribunal.

7.1 The Apex Court, in the case of *United Bank of India vs. Satyawati Tondon and Ors.*; (2010) 8 SCC 110, while considering the scope of Section 17 of the Act of 2002, held that borrower, guarantor or any other person who may be affected, can approach the Tribunal. It was observed in para No.17 as under:-

"17. There is another reason why the impugned order should be set aside. If respondent No. 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective."

Thus, the petitioner has an alternative and efficacious remedy before the Tribunal under Section 17 of the Act of 2002.

7.2 The Apex Court has, time and again, made the pronouncements that the High Courts should not entertain the writ petitions when alternative and efficacious remedy is available under the Act of 2002. In the case of *PHR Invent Educational Society vs. UCO Bank & Ors.*; AIR 2024 SC 1894, the Apex Court has held as under:-

"33. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of *Satyawati Tondon (supra)* since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy:

"55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.""

7.3 In view of the above, this Court is of the firm view that the present writ petition cannot be entertained under its extraordinary writ jurisdiction.

8. So far as the judgment relied upon by the learned counsel for the petitioner in the case of *Central Bank of India (supra)* is concerned, the same is not applicable

to the facts of the present case, as no title dispute is involved herein.

9. In view of the above, the writ petition is dismissed as not maintainable on account of the availability of an alternative remedy.

10. Needless to observe that the petitioner would be at liberty to avail appropriate remedy before the appropriate forum, in accordance with law.

11. All pending application(s), if any, shall also stand disposed of.a