RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 27030/2026
CNR: RJHC011028332026 | URN: CW / 46774U / 2026

Rajasthan High Court
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1. Moshin Khan S/o Gulam Mohammad, Aged About 37 Years, Resident Of Tambesara, Tehsil Sajjangarh , District Banswara(Raj.)
2. Smt. Khushboo Bee W/o Mohsin Khan, Aged About 32 Years, Resident Of Tambesara, Tehsil Sajjangarh, District Banswara (Raj.)

----Petitioners

Versus

1. Reserve Bank Of India, Through Its Chief General Manager, Department Of Regulation, Central Office, Mumbai, Maharashtra.
2. Au Small Fianance Bank Limited, Through Its Authorized Representative Having Its Address At 19-A, Dhuleshwar Garden, Ajmer Road, Jaipur(Rajasthan.)

----Respondents

For Petitioner(s) : Mr. Arpit Bhoot.
For Respondent(s) : Mr. Vijay Purohit.

HON'BLE DR. JUSTICE NUPUR BHATI

Order

23/11/2026

1. This writ petition has been filed by the petitioner with the following reliefs:-

> "(i) allow the present writ petition and quash and set aside the order dated 19.12.2025 (Annex.-9) passed in Debt Recovery Agent Case No.141/2025 by the learned authority under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
>
> (ii) quash and set aside the application under Section 14 of the SARFAESI Act dated 15.12.2025 (ANNEXURE-1) filed by the respondent-bank, being the very foundation of the proceedings culminating in the order dated 19.12.2025; (Annex.-9)
>
> (iii) quash and set aside all consequential proceedings and actions founded upon or arising out of the aforesaid application

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under Section 14 and the order dated 19.12.2025 (Annex.-9), whereby the respondent-bank seeks to take possession of and enforce the property in question as a secured asset;

(iv) declare that the respondent-bank cannot proceed against the property in question under the provisions of the SARFAESI Act on the basis of the alleged security interest relied upon by it, unless and until the existence of a valid and legally enforceable security interest in respect of the said property is established in accordance with law;

(v) pass any other order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the present case."

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2. That the brief facts giving rise to the present writ petition are that the respondent-Bank has initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act") in respect of the property in question, claiming the existence of a valid and enforceable security interest therein, which proceedings have culminated in the passing of the impugned order dated 19.12.2025 under Section 14 of the SARFAESI Act. However, the very foundation of the alleged security interest is seriously disputed by the petitioner, as the respondent-Bank relies upon the Patta dated 23.07.2022 and the purported Patta dated 27.01.2023, whereas the antecedent Gift Deed dated 18.04.2011 records the property in the names of Smt. Rohani, Mohsin Khan and Soiab Khan and describes its area as 720 sq. ft., while the subsequent documents relied upon by the respondent-Bank describe the property as measuring 810 sq. ft., thereby giving rise to a substantial dispute regarding the identity of the property and its correlation with the antecedent title documents. The matter is

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further aggravated by the communication dated 27.05.2026 issued by the competent registering authority upon the petitioner seeking verification of the document relied upon by the respondent-Bank, which does not substantiate the corresponding statutory registration record in the manner in which the said document has been relied upon by the respondent-Bank, thereby raising a serious question regarding its authenticity and statutory verifiability. The petitioner has also questioned the competence and authority of Shri Pankaj Shrivastava, who claims himself to be the Authorised Officer of the respondent-Bank and through whom the proceedings under Section 14 of the SARFAESI Act were instituted, particularly when the respondent-Bank's own checklist specifically refers to a "Board of Resolution", whereas the documents accompanying the application do not disclose the requisite resolution or other foundational instrument establishing the conferment and extent of the authority claimed by him. Thus, the petitioner has specifically challenged not merely the subsequent measures of recovery but the very jurisdictional foundation of the proceedings, namely, the existence, identity and enforceability of the alleged security interest and the competence of the person invoking the statutory machinery under Section 14 of the SARFAESI Act. Despite these serious and substantial objections, the impugned order dated 19.12.2025 has permitted the respondent-Bank to proceed against the property on the basis of the aforesaid disputed documents, thereby exposing the petitioner to the imminent threat of dispossession and other consequential coercive measures. The petitioner apprehends that

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if physical possession of the property is taken during the pendency of the present proceedings, irreparable loss and prejudice shall be caused to the petitioner and the subject matter of the writ petition itself may be materially altered. In these circumstances, the petitioner has been constrained to approach this Court by way of the present writ petition, seeking appropriate protection against coercive action, particularly the taking of physical possession of the property pursuant to the impugned order dated 19.12.2025, until the foundational questions concerning the validity and enforceability of the alleged security interest and the competence of the proceedings instituted under Section 14 of the SARFAESI Act are examined and adjudicated by this Court.

3. Learned counsel for the respondents raises a preliminary objection that the writ petition is not maintainable on the ground that the petitioner has laid challenge to the order dated 19.12.2025 passed by the Competent Authority under Section 14 of the SARFAESI Act, 2002, against which, the petitioner has an efficacious alternative statutory remedy available under the SARFAESI Act, 2002. He places reliance upon the judgment passed by the Hon'ble Apex Court in the case of ***S. Shobha Vs. Muthoot Finance Ltd. : Special Leave Petition (c) Nos.2625-2627 of 2025***, decided on 24.01.2025 and judgment passed in the case of ***Pheonix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir & Ors.: Civil Appeal Nos.257-259 of 2022***, decided on 12.01.2022.

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4. Per Contra, learned counsel for the petitioner submits that the patta dated 27.01.2023 relied upon by the respondent – Bank and the subsequent communication dated 27.05.2026 issued by the Competent Registering Authority shows that the document relied upon by the respondent – Bank does not exist, based on which, the respondent – Bank has granted loan to the tune of Rs.8,00,000/-. He submits that since the action of the respondents itself is *void ab-initio,* the petitioner has invoked the writ jurisdiction while laying challenge to the order dated 19.12.2025 passed by the Competent Authority under Section 14 of the SARFAESI Act, 2002. Learned counsel for the petitioner further submits that the respondent No.2-AU Small Finance Bank is a scheduled small finance bank and discharges public functions and, therefore, is amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. In support of his contentions, learned counsel for the petitioner places reliance upon the order dated 16.06.2026 passed in ***SBCWP No.12864/2026: Gulam Rashul Vs. Reserve Bank of India & Ors.*** He submits that in the case of Gulam Rashul (supra), the Coordinate Bench directed the respondents to treat the legal notice submitted by the petitioner as a representation and decide the same by passing a speaking order, in accordance with law, within a period of four weeks, while also granting a limited protection of not taking any coercive action against the petitioner till the period of said four weeks, under the SARFAESI Act, 2002. He thus prays that similar order may be passed in the instant case as well.

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5. Heard learned counsel for the parties and have perused the material available on record.

6. The principal question which arises for consideration at this stage is whether the present writ petition, directed against the proceedings initiated by a private banking institution under the SARFAESI Act, is maintainable before this Court under Article 226 of the Constitution of India, particularly when an alternative statutory remedy is available to the petitioner.

7. Before proceeding further, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in S. Shobha Vs. Muthoot Finance Ltd. (supra), wherein the Hon'ble Apex Court, while examining the scope of maintainability of a writ petition against a private entity, has summarised the relevant legal principles in the following terms:-

> "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

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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.

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(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.

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

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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.

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(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.

11. No case is made out for interference.

12. The petitions are dismissed. However, if the Petitioner has any grievance 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 Ombudsman of the RBI.

13. Pending application(s), if any, stands disposed of."

8. In the present case, learned counsel for the petitioner has submitted that the respondent No.2 – AU Small Finance Bank is a scheduled small finance Bank and, therefore, discharges to public function, however, merely because a banking institution is a scheduled small finance bank, the same would not automatically bring it within the ambit of 'State' or render every action taken by

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it amenable to the writ jurisdiction of this Court, as the same depends upon the nature of the function that it discharges. The Hon'ble Apex Court in the aforesaid judgment has held that 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.

10. In the present case, the petitioner has failed to demonstrate as to how the respondent-Bank, while initiating proceedings for recovery of its dues by invoking the provisions of the SARFAESI Act, is discharging any public function or public duty so as to make the action complained of amenable to the writ jurisdiction of this Court.

11. This Court also takes into consideration the judgment passed by the Hon'ble Apex Court in Pheonix ARC Pvt. Ltd. (supra), wherein the Hon'ble Apex Court has considered the maintainability of a writ petition against a private financial institution initiating proceedings under the SARFAESI Act and has held 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

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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.

13. Now, so far as the submission on behalf of the borrowers that in exercise of the powers Under Article 226 of the Constitution, this Court may not interfere with the interim/interlocutory orders is concerned, the decision of this Court in the case of Mathew K.C. (supra) is required to be referred to.

13.1. In the case of Mathew K.C. (supra) after referring to and/or considering the decision of this Court in the case of Chhabil Dass Agarwal (supra), it was observed and held in paragraph 5 as under:

> 5. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction Under Article 136 of the Constitution is loath to interfere with an interim order passed in a pending proceeding before the High Court, except in special circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in dispute. The discretionary jurisdiction Under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal Rule is that a writ petition Under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in CIT v. Chhabil Dass Agarwal [CIT v. Chhabil Dass Agarwal, MANU/SC/0802/2013 : (2014) 1 SCC 603], as follows: (SCC p. 611, para 15)
>
> > 15. Thus, while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [Thansingh Nathmal v. Supt. of Taxes MANU/SC/0255/1964 : AIR 1964 SC 1419], Titaghur Paper Mills case [Titaghur Paper Mills

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> Co. Ltd. v. State of Orissa, MANU/SC/0317/1983 : (1983) 2 SCC 433] and other similar judgments that the High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

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 ofthe 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.

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> 14. In view of the above and for the reasons stated above, present appeals succeed. The Writ Petition Nos. 35564 to 35566 of 2015 before the High Court are dismissed. Consequently, the ex-parte ad-interim order dated 26.08.2015 further extended by orders dated 28.02.2017 and 27.03.2018 stand vacated.
>
> Present appeals are accordingly allowed with costs to the Appellants to be paid by the original writ Petitioners quantified at Rs. 1 lakh in both the cases to be directly paid to the Appellant within a period of four weeks from today. Pending application(s), if any, also stand disposed of."

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12. The principle emerging from the aforesaid judgment is that where a private financial institution initiates proceedings under the SARFAESI Act in its capacity as a secured creditor for recovery of dues arising out of a commercial transaction, such action, in the absence of any independent public law element, does not ordinarily attract the writ jurisdiction under Article 226 of the Constitution of India. The aggrieved person is required to avail the statutory remedy provided under the SARFAESI Act.

13. It is also well settled that the existence of an alternative statutory remedy is a relevant consideration while exercising jurisdiction under Article 226 of the Constitution of India. Though the rule of alternative remedy is not an absolute bar and certain recognised exceptions exist, the mere raising of a dispute regarding the underlying documents or the alleged security interest would not, by itself, entitle a litigant to bypass the statutory mechanism provided under the enactment.

14. This Court is conscious of the fact that the petitioner has raised certain disputed questions concerning the purported Patta dated 27.01.2023, the identity and area of the property, the communication issued by the competent registering authority and

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the authority of the officer who instituted the proceedings under Section 14 of the SARFAESI Act, however, the examination of such disputed questions is not warranted in the present proceedings once this Court finds that the writ petition itself is not liable to be entertained in view of the nature of the action complained of and the availability of the statutory remedy.

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15. The petitioner would be at liberty to raise all such grounds and objections before the appropriate statutory forum, in accordance with law. Needless to observe that the competent forum shall consider the same independently, on their own merits and in accordance with law.

16. In view of the foregoing discussion and the law laid down by the Hon'ble Supreme Court in S. Shobha (supra) and Phoenix ARC Private Limited (supra), this Court is not inclined to entertain the present writ petition.

17. Consequently, the present writ petition is dismissed on the ground of maintainability. However, the petitioner shall be at liberty to avail the appropriate statutory or other remedy available under law, in accordance with law. All questions relating to the merits of the petitioner's objections and the validity or enforceability of the alleged security interest are left open to be adjudicated by the competent forum.

18. It is clarified that this Court has not examined or expressed any opinion on the merits of the rival claims of the parties. The dismissal of the present writ petition shall not prejudice the

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petitioner's right to raise all permissible grounds before the appropriate forum.

19. This order shall not be construed as an adjudication on the merits of the controversy involved.

(DR. NUPUR BHATI),J

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