

**HIGH COURT OF TRIPURA
AGARTALA
WA No.51 of 2023**

- 1. Smt. Purabi Debbarma(Ghosh),** wife of late Biswajit Ghosh, village & P.O.- Salema, Kamalpur, District- Dhalai, PIN- 799278.
- 2. Shri Gourab Ghosh,** son of late Biswajit Ghosh, village & P.O.- Salema, Kamalpur, District- Dhalai, PIN- 799278.
- 3. Shri Sourabh Ghosh,** son of late Biswajit Ghosh, village & P.O.- Salema, Kamalpur, District- Dhalai, PIN- 799278.

.....**Appellant(s)**

Versus

- 1. Shri Mantosh Deb,** son of late Nripendra Kumar Deb, resident of village & P.O., P.S.- Salema, District- Dhalai Tripura, PIN- 799278.
.....(Writ petitioner in the writ petition)
- 2. The State of Tripura,** represented by the Commissioner & Secretary to the Revenue Department, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O.- Kunjaban, P.S. New Capital Complex, Sub- Division- Sadar, District- West Tripura.
- 3. The Commissioner & Secretary to the Revenue Department, Government of Tripura,** having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O.- Kunjaban, P.S. New Capital Complex, Sub-Division- Sadar, District- West Tripura.
- 4. The Sub-Divisional Magistrate & Collector,** Ambassa, District- Dhalai Tripura.

.....**Respondent(s)**

(Respondents in writ petition)

For the Appellant(s)	: Ms. K. Samajpaty, Advocate. Ms. S. Jangra, Advocate. Mr. S. Datta, Advocate. Mr. Tanmay Debbarma, Advocate.
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For the Respondent(s)	: Mr. DR Chowdhury, Sr. Advocate. Mr. M. Debbarma, Addl. G.A. Mr. S. Sarkar, Advocate. Mr. D. Deb, Advocate.
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Date of hearing and delivery of Judgment & Order	: 03.04.2024.
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Whether fit for reporting	: Yes
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**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R (O R A L)**

[T. Amarnath Goud, J]

Heard Ms. K. Samajpaty, learned counsel appearing for the appellants. Also heard Mr. DR Chowdhury, learned senior counsel assisted by Mr. D. Deb, learned counsel appearing for the private respondent No.1.

[2] This present writ appeal has been filed under Rule 2 (iii) of Chapter-V and Rule-R Sub-Rule-17 of Chapter VIII of the High Court of Tripura Rules, 2023 read with Article 226 of the Constitution of India against the judgment and order dated 02.02.2021 passed by the learned Single Judge in W.P.(C) No.154 of 2020.

[3] The brief fact of this case is that the husband of the appellant no.1 and father of appellants no. 2 & 3, namely, Biswajit Ghosh (deceased) was a government contractor, who took loan from Tripura Gramin Bank for enhancement of his business and after making good payment in the loan account, became defaulter due to non-disbursement of the bill towards work order by the State Government of Tripura. Tripura Gramin Bank initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act for short) against the husband of the appellant no.1 for which he filed S.A. No.29 of 2019 under Section 17 of the SARFAESI Act, 2002 before the learned Debts Recovery Tribunal(DRT), Guwahati challenging the Sale Notice dated 20.02.2019 issued by the Tripura Gramin Bank, including the entire SARFAESI proceedings initiated

by the said bank, which was dismissed by an order dated 21.06.2019 passed by the learned Tribunal, Guwahati. The husband of the appellant no.1, died on 28.07.2019 and thereafter the names of the appellants were substituted in the appeal before the learned Debts Recovery Appellate Tribunal (DRAT), Kolkata as the legal heirs of the borrower i.e., late Biswajit Ghosh.

[4] It is contended in the present writ appeal that after death of the husband of appellant No.1, writ petition vide No. W.P.(C) 1199 of 2019 was filed before the Division Bench of this High Court and upon hearing all the parties, this Court was pleased to direct the appellant No.1 to deposit Rs.5 lakhs in the loan account of the deceased husband, which was deposited by the appellant No.1 to the respondent bank and thereafter, this Court granted an order of status quo in respect of the mortgaged property of the said loan by order dated 26.11.2019. For the purpose of reference, the order dated 26.11.2019 passed by the Division Bench of this Court in W.P.(C) 1199 of 2019 is reproduced herein-below:

"This petition is filed by the legal heirs of the original borrower who had defaulted in making repayment of the loan obtained from the respondent-Bank. He unfortunately expired in a vehicular accident. The Bank had instituted proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for recovery through sale of their secured asset in terms of Section 13(4) of the Act. The petitioners had first approached the Debts Recovery Tribunal (DRT) challenging such proceedings on several grounds including non-service of notice under Section 13(2) of the Act. Such petition was dismissed by the DRT against which we are informed that appeal before the DRT is also filed and is pending. However, in the meantime since the Bank was proceeding with the auction sale of the secured asset and on the ground that the Bench of DRT was not immediately available for hearing, this petition was filed for interim protection. On 27.09.2019, this Court had passed an order requiring the petitioners to deposit a sum of Rs.5,00,000 (rupees five lakhs) within one week subject to which the Bank was prevented from taking coercive action and to make them status quo with respect to the property in question. We are informed that such amount has been deposited.

Learned counsel for the Bank, however, submitted that before the said order was passed, the Bank had proceeded further in terms of the provisions contained in the said Act and put the secured asset to auction sale. The offer of the highest bidder has been accepted.

In view of such developments, we do not propose to pass any further order in this petition, but leave it to the petitioners to pursue its remedies in the pending appeal before the DRT.

Learned counsel for the petitioners submitted that despite the auction, the petitioners' grounds for challenge to the action taken by the Bank under Section 13 of the Act would not be rendered infructuous. We are sure that DRT would consider such contention also.

This petition is, therefore, disposed of leaving it to the parties to raise all contentions in the pending appeal before the DRT. However, the order of status quo granted by this Court shall continue for a period of 2(two) months from today. It would be thereafter for the petitioners to seek appropriate orders from the DRT including interim orders if so desired, in the said pending appeal. Continuation of the order of status quo is not an indication from us of the merits or demerits of any other contentions of the petitioners or the respondents.

Petition is disposed of accordingly.

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

[5] It is mentioned in the instant appeal that the appellants further approached before the Hon'ble High Court, Calcutta by filing a Civil Revisional Application being no.673 of 2020 for early disposal of the pending appeal and applications before the learned Appellate Tribunal, Kolkata and in compliance of the order of the Hon'ble High Court, Calcutta, learned Chairperson of the learned Debts Recovery Appellate Tribunal, Kolkata granted status quo as on 01.09.2021 regarding physical possession of the mortgaged property of the said loan and also directed the respondent bank not to take any coercive actions against the property in question and to maintain status quo as on 01.09.2021 regarding the physical possession of the said property.

[6] According to the appellants they are the absolute owners of the land measuring about 0.370 Acres of land and structured thereon,

situated under Khatian no. 1197 of Mouza- Kanchanpur, Dag no. 1481, 1483,(Hal) & 543(P), 543/1419 (P) (Sabek), P.S. Ambassa, District-Dhalai (Tripura) which was purchased by late Biswajit Ghosh, husband of the appellant No.1 and father of the appellants No.2 & 3 by a sale deed being no.1-143 dated 01.06.2007.

[7] Mention may be made here that as the deceased borrower became defaulter due to non-disbursement of the bill towards work order by the State Government of Tripura, auction sale notice was issued on 28.02.2019 pursuant where to the auction was held on 29.03.2019 in which respondent No.1, namely, Mantosh Deb turned out to be successful auction purchaser. A sale Confirmation Advice dated 02.04.2019 was issued allotting the said property in favour of the auction purchaser against the bid amount of Rs.2,40,00,255/-. Thereafter, bank proceeded to issue sale certificate in his favour on 25.06.2019 acknowledging receipt of the sale price of Rs.2,40,00,255.00 (Rupees Two Crore Forty Lac Two Hundred Fifty Five) only. Respondent No.1, thereafter, had filed a petition before the Sub-Divisional Magistrate & Collector, Ambassa, Dhalai Tripura under Section 46 of the Tripura Land Revenue & Land Reforms Act, 1960 for entering his name in Column No.6 of the Khatian No.1197 by substituting the name of Sri Biswajit Ghosh without insisting for registration of any sale deed in connection with the said property in question, but did not get any response. Being aggrieved, respondent No.1 i.e. the auction purchaser approached before the learned Single Judge of this Court by filing WP(C) 154 of 2020 seeking the below quoted reliefs:

“(i) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, for transmitting the records, lying with the

respondents, for rendering substantive and conscionable justice to the petitioner;

(ii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/commending them, to exercise the statutory duties, cast under Section 46 of the Tripura Land Revenue & Land Reforms Act, 1960, and thereupon, forthwith enter the name of the petitioner in Column No.6 of the Khatian No.1197 (Annexure-1 Supra), by substituting the name of Sri Biswajit Ghosh, without insisting for registration of any Sale Deed, in connection with the said property in question;

(iii) Call for the records, appertaining to this writ petition;

(iv) After hearing the parties, be pleased to make the Rule absolute in terms of (i) to (ii) above;

(v) Costs of and incidental to this proceeding....."

[8] Having heard the submissions made by the learned counsel for the parties, learned Single Judge has allowed the writ petition being WP(C) 154 of 2020 (filed by the auction purchaser) on 02.02.2021. The relevant portion of the said order is quoted herein-below:

".....[21] The decision of the High Court, contrary to the above proposition was reversed by the apex court in B. Arvind Kumar holding that no registration is required for sale certificate issued by the revenue officer or the civil officer.

Having appreciated the submission made by the learned counsel for the parties, this court does not have any hesitation to hold that in view of the precedents as placed before this court, the recovery officer or the authorized officer under the SARFAESI Act can be termed as the revenue officer for purpose of attracting the exemption as provided by Section 17(2)(xii) of the Registration Act. Therefore, the sale certificate as issued by the authorized officer/recovery officer of Tripura Gramin Bank in favour of the petitioner (Annexure-4 to the writ petition) is a document evidencing the transfer of perfect and no further registration of the sale certificate or by any other means is required. Hence, the respondent No.3 having denied to act upon it for purpose of mutation as provided under Section 46 of the TLR & LR Act has acted illegally. As such, the respondent No.3 is directed by this court to mutate the name of the petitioner in the records of right following the procedure under Section 46 of the TLR & LR Act without further delay. But the respondent No.3 or any other revenue officer shall not be entitled to question the sale certificate as the deed of title or ask further for its registration. The said certificate shall be accepted as the deed of title for all purposes.

In view of the discussion made above, this writ petition stands allowed.

There shall be no order as to costs."

[9] Thereafter, the appellants herein, filed a review petition being Review Pet. No.40 of 2021 for review of the above-mentioned order dated 02.02.2021 passed in WP(C) 154 of 2020 to which, the appellants were not made parties. Learned Single Judge, by order dated 25.03.2022, dismissed the aforesaid review petition with the following observation:

".....08. Having appreciated the submission of the counsel for the parties and having keenly scrutinized the grounds for seeking review, this court is of the view that the grounds are inadequate for allowing this petition seeking review inasmuch as nowhere in the judgment any embargo has been created so far the interest of the review petitioner is concerned. That apart, his presence in the proceeding was not remotely required and as such the grounds falls through.

Having observed thus, this review petition stands dismissed.

Interim order of stay stands vacated.

No order as to costs."

[10] Aggrieved by the order dated 02.02.2021 passed by the learned Single Judge in WP(C) 154 of 2020, the appellants have preferred this present writ appeal seeking following reliefs:

"A. Admit Appeal and call for records.

B. Pass Order setting aside the Judgment & Order dated 02.02.2021 passed in W.P.(C) No.154 of 2020.

C. Pass Order staying the operation of the Judgment & Order dated 02.02.2021 passed in W.P.(C) No.154 of 2020.

D. Pass any other Order or Orders as deem fit and proper having regard to the facts & circumstances of the case....."

[11] Ms. K. Samajpaty, learned counsel appearing for the appellants contends that on 02.02.2021 while disposing the instant writ petition, learned Single Judge passed the judgment allowing the reliefs sought for by the petitioner who is the auction purchaser and respondent No.1 in the instant writ appeal. In the writ petition, neither the original borrower nor the legal heirs of the original borrower i.e. the appellants

herein were arrayed as respondents and the writ petitioner obtained order in writ petition directing the competent authority for incorporating the changes in record of rights on the strength of sale certificate issued to the writ petitioner. The judgment was passed in the absence of the present appellants, which is erroneous in the eye of law. She further submits that for that reason, the appellants herein, also filed a petition for reviewing/recalling the judgment dated 02.02.2021 being no. Rev. Pet. 40 of 2021, which was dismissed on 25.03.2022. It is also contended on behalf of the appellants that the proceedings under the SARFAESI Act cannot be entertained by the High Court in writ petition under Article 226 of the Constitution. Ms. Samajpaty, learned counsel, to support her case on behalf of the appellants, placed reliance on the judgments of the Hon'ble Supreme Court, the contents of the following said judgments as referred by learned counsel is quoted herein-below:

I. *Authorized Officer, State Bank of Travancore and Another v. Mathew K.C.* reported in (2018) 3 SCC 85:

".....3. The SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on United Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110, and General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Ikbali and others, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same.*****

17. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd., 1997 (6) SCC 450, observing :-

"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops....."

II. Kanaiyalal Lalchand Sachdev and others v. State of Maharashtra and others reported in (2011) 2 SCC 782:

"...23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: Sadhana Lodh Vs. National Insurance Co. Ltd., (2003) 3 SCC 524; Surya Dev Rai Vs. Ram Chander Rai, (2003) 6 SCC 675 and SBI v. Allied Chemical Laboratories, (2006) 9 SCC 252). *****

25. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution.

26. For the foregoing reasons, the impugned judgments cannot be flawed, warranting interference by this Court. Accordingly, the appeals, being devoid of any merit, are dismissed with costs, quantified at Rs.20,000/-."

III. United Bank of India v. Satyawati Tondon and others reported in (2010) 8 SCC 110:

"....43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases,

the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*****

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...."

[12] On the other hand, Mr. DR Chowdhury, learned senior counsel appearing along with Mr. D. Deb, learned counsel on behalf of private respondent No.1 opposes the contention raised by the learned counsel for the appellants. He submits that the property in question is a commercial cum residential property and the appellants are well aware of the facts that auction was done, sale certificate was issued and the possession was handed over by the bank to the Auction Purchaser. In the writ petition, the dispute was between the auction purchaser and the revenue authorities of the State. In that proceeding, the appellants were not the necessary parties as learned Single Judge has only interfered with the action of the revenue authorities by which they have denied to accept the sale certificate as the instrument of title for purpose of mutation. It is further submitted on behalf of respondent No.1 that the case of the appellants has already been decided by the learned Single Judge on 16.02.2024 in case no. CRP 37 of 2023 rejecting the reliefs sought for by them. Learned senior counsel, therefore, prays that the instant writ appeal filed by the appellants herein be dismissed.

[13] It is brought to our notice that the appellants herein had also preferred a civil revision petition being CRP No.37 of 2023 which was dealt by the learned Single Judge. On perusal of records and upon

hearing of the submissions made by the learned counsel for the parties, learned Single Judge dismissed the CRP No.37 of 2023 by order dated 16.02.2024. For the purpose of reference, the relevant paragraphs of the said order dated 16.02.2024 passed by the learned Single Judge in CRP No.37 of 2023 is reproduced below:

".....19. The respondents-Bank in the present case after serving notice to the borrower under Section 13(2) chose to initiate auction proceedings for realisation of the debts from the mortgaged assets of the borrower. The borrower had failed to file any objection to such notice. The proceedings initiated by the secured creditor i.e. the bank in this case were subjected to challenge before the learned DRT in a SARFAESI application under Section 17 of the SARFAESI Act. The learned DRT dismissed the application, which became the subject matter of appeal before the learned DRAT. The relevant documents which have been enclosed by the respondents-Bank indicate that the borrower had made a proposal for liquidation of the outstanding dues by making paying of Rs.1.37 crores on his own in instalments by a particular date i.e. 30.06.2017. Even by the statement made on behalf of the petitioners that the borrower had paid a sum of Rs.1,13,00,000/- to the bank, the amount proposed to be liquidated through a compromise settlement by the borrower remained unpaid. In such an event, the bank was left with no option rather than to take recourse to the measures provided under Section 13(4) of the SARFAESI Act by going for auction sale of the mortgaged assets of the property.

20. The auction sale of the mortgaged assets of the property was undertaken by issuance of 30 days notice on 28.02.2019. The auction was held on 29.03.2019 which fructified in favour of the respondent No.4 herein upon payment of Rs.2.40 crores. A question has been raised on behalf of the petitioners that the physical possession of the property was not taken by the bank, and that the order of the Sub-Divisional Magistrate enabling the bank to take over possession was without jurisdiction. However, on a perusal of the possession notice, which is dated 10.03.2017 at Annexure-R/1 to the Counter Affidavit, it is evident that the physical possession of the mortgaged property was taken in the presence of the borrower without any protest and he had countersigned on the possession notice. If that be so, any question as to illegal taking over of the physical possession of the property from the borrower or the possession remaining with the legal heirs of the borrower, i.e. the petitioner recedes into the background. The instant plea seems to have been raised at the fag end of the proceedings before the learned DRAT.

21. So far as the plea relating to computation of the outstanding dues against the borrower is concerned, this Court under Article 227 of the Constitution of India is not called upon to enter into the computation of outstanding dues by the secured creditor i.e. the respondents-Bank in the present case. It is also pertinent to refer to the recent decision of the Apex Court rendered in the case of *Bafna Motors (Mumbai) Pvt. Ltd.* relied upon by learned counsel for the respondents-Bank at this stage. In a SARFAESI proceeding

where the borrower has failed to liquidate the outstanding dues before the expiry of 60 days notice under Section 13(2) of the SARFAESI Act and even after holding out a promise to settle the matter through compromise as back as 13.03.2017, the recourse taken by the Bank to realise the outstanding dues by sale of the mortgaged assets of the borrower through auction mode which is permissible under Section 13(4) of the SARFAESI Act cannot be faulted upon. Further, if the auction process has fructified by sale of the mortgaged assets of the borrower in favour of a successful auction purchaser i.e. the respondent No.4 herein, then in view of the decision rendered by the Apex Court in *Bafna Motors (Mumbai) Pvt. Ltd.*, it is not open for the borrower in any case to redeem the mortgaged property by resorting to payment of any balance dues either. This Court also appreciates the gesture of the respondent-Bank in offering to remit the remaining balance of Rs.92,40,275.30 after deducting the legal and ancillary charges of Rs.7,83,360.00 in favour of the borrower by issuing a notice upon him on 09.09.2019. The Bank has also not encashed the demand draft of Rs.5 lakhs which was deposited as a condition of interim stay by the Writ Court in WP(C) No.1199/2019 which however was disposed of finally on 26.11.2019 on appearance of the bank and taking note of the fact that DRAT proceedings were underway.

22. In substance, none of the grounds raised by the petitioners are worth acceptance calling for interference by this Court under Article 227 of the Constitution of India. As such, this Court does not find any merit in this revision petition. It is accordingly dismissed.

23. Stay order, if any, stands vacated.

Pending application(s), if any, shall stand disposed of."

[14] It is seen from record that the auction purchaser (respondent No.1 herein) had filed an application on 04.12.2019 before the SDM & Collector, Ambassa, Dhalai Tripura for entering his name by substituting the name of the borrower and subsequently, he filed the writ petition being WP(C) 154 of 2020 on 24.02.2020. Thus, it can be reasonably presumed that the auction purchaser had no knowledge about the DRT/DRAT proceedings since neither the original borrower nor the legal heirs of the original borrower brought him on record as a respondent and no notice was served upon him about the filing of said proceedings. In view of the same, the contention raised by the appellants that the auction purchaser preferred the impugned writ petition being WP(C) 154 of 2020

without impleading the borrower/owners of the mortgaged property as respondent(s), cannot be appreciated.

[15] The argument advanced by the learned counsel for the appellants and the judgments cited in that regard contending that under Article 226 of the Constitution of India, no High Court can intervene in the proceedings under SARFAESI Act is not applicable to the facts and circumstances of the present case as it will be applicable only when the borrower approaches the Court as petitioner under Article 226 of the Constitution of India against any SARFAESI proceedings. But, in the case in hand, the writ petition being WP(C) 154 of 2020 was not filed challenging any proceedings under SARFAESI Act. The writ petitioner who is the auction purchaser, by filing the said writ petition, only sought for mandamus against the revenue authorities for incorporating the name of the petitioner in the record of rights by substituting the name of the borrower, as the sale certificate was already been issued in favour of the auction purchaser by the concerned department.

[16] The entire matter has already been dealt by the learned Single Judge in CRP No.37 of 2023 preferred by the appellants herein. By filing the said CRP, the appellants herein had challenged the order dated 21.06.2023 passed by learned Debts Recovery Appellate Tribunal (DRAT), Kolkata in Appeal No.37 of 2021 arose out of a judgment and order dated 21.06.2019 passed by learned Debts Recovery Tribunal (DRT), Guwahati in S.A. No.29 of 2019 instituted by the original borrower, Biswajit Ghosh whereby the SARFAESI application was dismissed. Learned Single Judge by the order dated 16.02.2024, as quoted earlier, rejected the pleas of the appellants indicating that it is evident from the possession notice

dated 10.03.2017 that the physical possession of the mortgaged property was taken in the presence of the borrower without any protest and he had countersigned on the possession notice.

[17] As discussed earlier, the judgments relied by the appellants-counsel do not come to the rescue of the appellants as they are not applicable to the facts of the case.

In view of the above discussion, this Court feels that it is not open for the appellants for seeking any relief in this writ appeal and they are not entitled for any relief as sought for. Thus, the present writ appeal is liable to be dismissed and accordingly, the same is ordered.

As a sequel, stay if any, stands vacated. Pending application(s), if any, also stands closed.

B. PALIT, J

T. AMARNATH GOUD, J

Sabyasachi G.

**SABYASACHI
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