

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 281 of 2020

**Sukumar Chanda
-versus-
The State of West Bengal & Ors.**

Mr. Jagriti Mishra
... for the petitioner.

Mr. Jiban Krishna Chakraborty,
Ms. Suman Sehanabis (Mondal)
....for the respondent nos.4 & 5.

Mr. Bikramaditya Ghosh,
Mr. Momenur Rahaman
....for the State.

The petitioner alleges that a credit facility, which according to the Reserve Bank of India guidelines, had to be given to an agriculturist like the petitioner under the nomenclature “KCC” loan has been fraudulently converted into a CC loan available in case of normal commercial transaction at the instance of the bank and its manager, fraudulently the bank has proceeded against the petitioner for having committed default. It has issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act of 2002), followed by a notice under Section 13(4) and then proceeded up to the stage of Section 14 of the Act of 2002.

The writ Court cannot go into the aspect of fraud, if any, alleged to have been committed by the bank

and/or its Manager in denoting the petitioner's credit facility as "CC" instead of "KCC". Unless the element of fraud, if any, involved in the matter is adjudicated, the relief which the petitioner is claiming cannot be granted.

It is well settled by virtue of the judgment reported in **2010 (8) SCC 110 (United bank of India -v- Satyawati Tandon & Ors.)** and several other judgments pronounced subsequently that a borrower or any person aggrieved by any action of the bank in invoking the provisions of the Act of 2002 has to go before the Tribunal under Section 17 of the said Act.

Considering this aspect of the matter, I find that the writ petition is not maintainable and is accordingly dismissed.

This will, however, not prevent the writ petitioner from approaching the Tribunal, if advised, and the writ petitioner will get the benefit of the time spent from the date of filing of the writ petition till date in case the petitioner approaches the Tribunal.

Since no affidavits are called for, the allegations contained in the writ petition are deemed to have been not admitted.

Interim order, if any, stands vacated.

There shall be no order as to costs.

(Arindam Mukherjee, J.)