

**12**  
31.01.2025  
Court No.14  
BP/AGM

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

WPA 2548 of 2025

Arnab Bhattacharya  
Vs.  
The Chief Judicial Magistrate, South 24 Parganas &  
Ors.

*Mr. Srijib Chakraborty.*  
*Mr. Sumitava Chakraborty.*  
*Mr. Aronyak Saha.*

*... for the Petitioner.*

*Mr. Biswabrata Basu Mallick.*  
*Mr. Sayan Ganguly.*

*... for the State.*

*Mr. Sayak Ranjan Ganguly.*  
*Ms. Srijani Ghosh.*  
*Ms. Indrani Majumdar.*

*...for the respondent no. 3.*

1. Affidavit-of-service filed today in Court be kept with the records.
2. The matter relates to the flat no. 2 on the first floor (east facing) measuring about 892 sq.ft (super built up area) and one car parking space measuring about 98 sq.ft on the ground floor of the building built and constructed at or upon the plot of land measuring about 3 cottahs, 14 chittacks and 5 sq. ft. (physically measuring about 3 cottahs, 12 chittacks and 44 sq. ft. ) forming part of Dag Nos. 38 and 40 under Khatian No. 152 in Mouza-Purba Barisha under PS-Thakurpukur in the District-South 24 Parganas, presently known and numbered as Municipal premises No. 94, Bose Para Road

under Municipal Ward No. 123 within the limits of KMC, District South 24 Parganas.

3. The petitioner is a borrower of a loan agreement in respect of the aforesaid property. The original secured creditor was restrained by an order dated 14<sup>th</sup> February, 2019 in Money Execution No. 23 of 2016 from proceeding any further with the disposal of the Misc. Case No. 343/2018 as the award was passed against a dead person. The Money Execution Case No. 143/2016 (old No. 23/2016) was stayed till 15<sup>th</sup> April, 2019 awaiting disposal of the Misc Case No. 343/2018. The interim order has since been extended till 6<sup>th</sup> March, 2025.
4. The learned Additional District Judge in Misc Case No. 343/2018 passed order on 15<sup>th</sup> September, 2021 restraining the decree holder from creating any third party interest in the corpus of the arbitral award without the leave of the Court. No order has been placed before this Court passed by any competent forum modifying/setting aside or vacating the interim protection granted to the petitioner.
5. The original secured creditor has assigned the loan to the respondent no. 3. The respondent no. 3 has obtained an order from the learned Chief Judicial Magistrate, Alipore on 30<sup>th</sup> January, 2023 in Misc Case No. 217 of 2022 by appointing a seal bailiff as Court Commissioner to take possession of the secured asset.

6. The order of the Court dated 30<sup>th</sup> January, 2023 was not executed and vide order dated 14<sup>th</sup> January, 2025 the learned Chief Judicial Magistrate, Alipore directed execution of the said order dated 30<sup>th</sup> January, 2023 and date of possession of the aforesaid secured asset has been intimated to the petitioner as on or after 4<sup>th</sup> February, 2025.
7. According to the petitioner, as he is protected by the order passed by the learned Additional District Judge restraining the secured creditor from creating any third party interest over the secured asset, accordingly, the learned Chief Judicial Magistrate ought not to have passed order directing handing over of possession of the same secured asset.
8. It has been submitted that the order was obtained from the learned Magistrate by EARCL, the respondent no. 3, upon total suppression of facts. It has been contended that parallel proceeding before the civil forum and under SARFAESI Act cannot continue.
9. Prayer has been made to restrain the respondent no. 3 from proceeding to take possession of the secured asset.
10. Learned advocate representing the respondent no. 3 submits that the said authority can always proceed parallelly before two different fora for taking possession of the secured asset.
11. Upon hearing the submission made on behalf of the parties, the Court is of the opinion that as

the right of the petitioner has been temporarily protected by the order passed by the learned Civil Court, accordingly, it will be improper for the respondent no. 3 to proceed to take possession of the secured asset at this stage. The secured asset is already suffering an order of attachment passed by the learned civil Court.

12. The parties are relegated to the competent forum to take steps in the matter in accordance with law.

13. The writ petition stands disposed of.

14. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**(Amrita Sinha, J.)**