

26.03.2025
Item No.2
Ct. No.01
RP/SM

MAT 307 of 2025
with
CAN/1/2025

Sabita Banik and Ors.
Vs.
State of West Bengal and Ors.

Mr. Siddhartha Banerjee, Sr. Adv.
Mr. Dyutiman Banerjee, Adv.
Mr. Vishal Mallick, Adv.

....For the Appellants/
Writ Petitioners

Ms. Aparajita Ghosh, Adv.
Mr. Souvik Ghosh, Adv.

....For the Respondent Nos.2 & 3

Mr. Jewel Chanda, Adv.
Mr. Rejaul Mistry, Adv.
Mr. Saptashwa Das, Adv.

....For the Respondent Nos.5 & 6

Mr. Nilanjan Adhikari, Adv.
Ms. Oindrila Sinha, Adv.

....For the Respondent No.7

Mr. Samrat Sen, Sr. Adv.
Ms. Manali Ali, Adv.

...For the State-Respondent

1. This intra-court appeal by the writ petitioners is directed against the order dated 24th February, 2025, in WPA No.1877 of 2025. The said writ petition was filed by the appellants challenging the order under section 14 of the SARFAESI Act passed by learned Additional Chief Judicial Magistrate, Alipore, in Misc. Case No.409 of 2024 and for a consequential order restraining the respondents from dispossessing or evicting the writ petitioners from the respective flats

on the third and fourth floor of the G+4 building comprised with the said property being holding No.P-10 (corresponding to premises No.74), Garia Park, beside Sabuj Dal Club, Post Office-Garia, Police Station-Patuli, District-South 24 Parganas, PIN-700084. The learned Single Bench dismissed the writ petition on the ground that the petitioner should avail the remedy provided under the SARFAESI Act. The view taken by the learned Single Bench is perfectly justified.

2. Mr. Banerjee, learned senior advocate appearing for the appellants/writ petitioners strenuously contends that the appellants had filed the writ petition challenging the order passed under section 14 of the SARFAESI Act on the ground that fraud has been committed and this issue cannot be adjudicated by the Debt Recovery Tribunal. In our considered view, the said submission is not tenable considering the facts and circumstances of the case.
3. The respondent Nos.5 and 6 are said to have purchased the very same flat which was sold to them by the developer by deed of conveyance dated 18th February, 2016 and the property which was purchased under the said document was subject-matter of mortgage with the second respondent-bank. Upon default being committed action has been initiated under the SARFAESI Act. When the

appellants/writ petitioners claimed to purchase a flat admittedly subsequent to the deed of conveyance executed in favour of the respondent Nos.5 and 6 by the developer. If that be the case, the inter se dispute can always be adjudicated by the Debt Recovery Tribunal and in the event the learned tribunal comes to a conclusion that it is a case of fraud that it will not be in a position to decide the matter, it will be well open to the learned tribunal to pass an appropriate order. Therefore, we are of the view, the appellant should avail the remedy provided under the SARFAESI Act.

4. For the above reasons, we find no grounds to interfere with the impugned order and the appeal along with the application is dismissed.
5. Liberty is granted to the appellants/writ petitioners to file an appropriate application before the learned Debt Recovery Tribunal after such application is filed before 21st April, 2025, then the learned Debt Recovery Tribunal is requested to entertain the application without rejecting the same on the ground of limitation. However, the benefit of this order will not inure in favour of the appellants/writ petitioners if they do not file the application within the time stipulated by this court. It is not disputed by the respondent Nos.5 and 6 that the appellants/writ petitioners are in possession of a property, therefore,

a status quo with regard to the possession which is prevailing as on date, that is 26th March, 2025, shall be maintained till 28th April, 2025 and the appellants/writ petitioners are at liberty to move for interim relief in the appropriate application which is to be filed by them in terms of the above liberty.

6. It is made clear that this court has not gone into the merits of the matter and all points can be urged by both sides before the learned Debt Recovery Tribunal.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]