IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Prasenjit Biswas

F.M.A. 581 of 2025
With
CAN 1 of 2025

Tushar Kanti Das
vs.
Union of India & Ors.

For the Appellant : Ms. Shabana Hasin
Ms. Samima Akter

For the ABHFL : Mr. Arnab Basu Mallick

For the Union of India : Mr. Rajesh Kumar Shah

Heard & Judgment on : **August 11, 2025**

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a writ petitioner and directed against an order dated February 25, 2025 passed in W.P.A. 28957 of 2024.

2. Learned advocate appearing for the appellant submits that the appellant is no way connected with the so-called borrower of the bank. Immovable property belonging to the appellant was never mortgaged as security for any credit facility for the borrower and for that matter for any person.
3. Learned advocate appearing for the appellant submits that the appellant was not present at his residence at the material point of time when possession was sought to be taken by the bank. Appellant subsequently learned about the possession and came to the High Court under Article 226 of the Constitution of India.
4. Learned advocate appearing for the appellant relies upon (**2003) SCC Online SC 95 (M/s. Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.)** as well as **1998 8 SCC 1 (Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.)** and contends that a writ petition cannot be termed to be not maintainable *ipso facto* on the existenceof statutory alternative remedy. Notwithstanding the existence of statutory alternative remedy writ petition is still maintainable.
5. Learned advocate appearing for the appellant submits that in the facts of the case, the appellant will be rendered remediless since the Debts Recovery Tribunal is refusing to accept an application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 from the appellant on the ground that

the same is barred by limitation. She submits that the appellant will be made to suffer fraud perpetuated upon the appellant without any recourse to law.

6. Learned advocate appearing for the bank submits that the appellant falls within the definition of any person used under Section 17 of the SARFAESI Act, 2002. He submits that, the appellant did not approach the Debts Recovery Tribunal within 45 days as also under Section 17 of the SARFAESI Act, 2002. He submits that the appellant cannot approach the Writ Court after allowing the time period prescribed under Section 17 of the SARFAESI Act, 2002 to elapse.

7. In response to a query of the Court, learned advocate appearing for the respondent draws the attention of the Court to the original title deed which is possession of the bank in respect of the property concerned.

8. Appellant before us is aggrieved by the action of the bank in taking actual physical possession of immovable property under Section 14 of the SARFAESI Act, 2002. Appellant claims to be the owner of such property. Such property was not mortgaged to the bank for any credit facility. According to the appellant, title deeds of the immovable property are lying inside the immovable property which is under the possession of the bank.

9. Section 17 of the SARFAESI Act, 2002 allows any person aggrieved by a measure taken by a secured creditor under Section 13(4) of the SARFAESI Act, 2002 to approach the Debts Recovery Tribunal. Admittedly, the bank took possession of the immovable property concerned after taking assistance under

Section 14 of the SARFAESI Act, 2002 in terms of Section 13(4) of the SARFAESI Act, 2002.

10. Taking actual physical possession, in the facts of the present case by the bank is a measure taken by the bank in terms of Section 13(4) of the SARFAESI Act, 2002.

11. Appellant before us is a person aggrieved by such measure being taken by the bank under Section 13(4) of the SARFAESI Act, 2002. Therefore, the appellant before us is a person aggrieved within the meaning under Section 17 of the SARFAESI Act, 2002.

12. Section 17 of the SARFAESI Act, 2002 prescribes a period of limitation of 45 days from the date when measure under Section 13(4) of the SARFAESI Act, 2002 is taken. Appellant did not approach the Debts Recovery Tribunal within a prescribed period of 45 days from the date of a measure in respect of his property being taken or at all. In the facts of the present case, bank took actual physical possession of the property on July 31, 2024. Appellant approached the Writ Court on November 27, 2024.

13. **Whirlpool Corporation** (supra) is of the view that existence of statutory alternative remedy is not a complete bar to the maintainability of a writ petition. A writ petition can be entertained despite a party not availing statutory alternative remedy provided that the writ petition seeks enforcement of any fundamental right or the order impugned was passed in violation of

principles of natural justice or where the proceedings are wholly without jurisdiction where the *vires* of a statute is under challenge.

14. **Godrej Sara Lee Ltd**. (supra) notices various authorities of the Supreme Court on the issue of maintainability of a writ petition notwithstanding availability of a statutory alternative remedy. Amongst the authorities, it notices **Whirlpool Corporation** (supra). **Godrej Sara Lee Ltd**. (supra) was rendered in the context of the High Court entertaining a writ petition with regard to proceedings under the Value Added Tax Act where statutory alternative remedy was available. It is of the view that since the jurisdiction of the revisional authority was questioned in a writ petition, the same was maintainable.

15. In course of hearing of the appeal, we drew the attention of the learned counsel appearing for the parties to **(2010) 8 SCC 110 (United Bank of India vs. Satyawati Tondon & Ors.).**

16. **Satyawati Tondon** (supra) was rendered in the context of the SARFAESI Act, 2002. It is of the view that High Court will not ordinarily entertain a writ petition under Article 226 of the Constitution, if an effective remedy is available to the aggrieved party. It also notices that although the powers conferred upon the High Court under Article 226 of the Constitution are very wide and there is no express limitation on exercise of such powers nonetheless High Court should not be oblivious of the rules of self-imposed restraint evolved by the Supreme Court. It expresses an anguish that despite repeated

pronouncements by the Supreme Court, the High Courts continue to ignore the fact of availability of statutory remedies under Recovery of Debts and Bankruptcy Act, 1993 and the SARFAESI Act 2002 and exercise jurisdiction under Article 226 of the Constitution for passing orders having serious adverse impact on the right of bank to recover their dues.

17. It is trite law that notwithstanding existence of a statutory alternative remedy, a writ petition is maintainable when the writ petitioner seeks enforcement of any fundamental right or the order impugned was passed in excess of jurisdiction or in violation of principles of natural justice or the *vires* of a statute is under challenge.

18. In the facts and circumstances of the present case, none of those scenarios are available to the appellant. Section 17 of the SARFAESI Act 2002 enabled the appellant to approach the Debts Recovery Tribunal for appropriate relief. Appellant did not approach such Tribunal within the period prescribed. No fundamental right of the appellant stands breached by the action taken by the bank. Question of violation of the principles of natural justice does not arise. Bank taking measures under Section 13(4) of the Act of 2002 cannot be said to be wholly without jurisdiction, *vires* of SARFAESI Act 2002 is not under challenge in the writ petition.

19. Learned Single Judge refused to exercise discretion in the writ petition filed by the appellant on the ground of existence of statutory alternative remedy.

20. In view of the discussions above, we find no ground to interfere with the order impugned.

21. **F.M.A. 581 of 2025** and the application being **CAN 1 of 2025** are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

22. I agree

S.D.

(**Prasenjit Biswas, J.**)