IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 15135 of 2025

Vaidhai Agarwal alias Sonu Kumari Kedia
Vs.
The Indian Bank (Erstwhile Allahabad Bank) & Ors.

For the writ petitioner	:-	Mr. Srijib Chakraborty, Adv. Mr. Sumitava Chakraborty, Adv.
For the State	:-	Sk. Md. Galib, Sr. Govt. Adv. Ms. Priyamvada Singh, Adv.
For the Indian Bank	:-	Mr. Shiv Mangal Singh, Adv.
For the private respondents	:-	Mr. Subhrangshu Panda, Adv. Mr. Snehasish Dey, Adv.
Heard on	:-	08.07.2025
Judgment on	:-	08.07.2025

Amrita Sinha, J.:-

1. The matter relates to a property which was mortgaged to the Indian Bank. The bank took steps under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for recovery of the due amount.

2. As on March 2025 the due amount was Rs.26,45,00,000/- (Rupees twenty-six crore forty-five lakh). The loan account was classified as non-performing asset (NPA) with effect from January 28, 2023. A statutory notice under Section 13(2) of the 2002 Act was served upon the borrower on July 15, 2023 and July 17, 2023. Steps under Section 13(4) of the

2002 Act was taken in July 2023 and a newspaper publication was made in October 2023.

3. The petitioner is currently aggrieved by the notice affixed on the wall of the subject premises dated June 24, 2025 directing the noticees to hand over possession of the property. The impugned notice mentions that July 9, 2025 is the date fixed for taking over possession of the secured asset with the help of the magistrate and the police.

4. The petitioner submits that no notice was served intimating her about the steps taken under Section 14 of the 2002 Act. The notice for handing over possession, though dated June 24, 2025, was affixed to the secured asset only on July 2, 2025 wherefrom the petitioner got knowledge of the same.

5. It has been submitted that despite Indian Bank knowing that the petitioner is one of the legal heirs of the deceased mortgager, did not issue any notice to the petitioner. Violation of principle of natural justice has been pleaded. Prayer has been made to set aside the impugned notice for taking over possession of the secured asset.

6. During the course of hearing, learned counsel for the petitioner has taken the Court through the various documents annexed to the writ petition. It appears that the petitioner approached this Court on a number of times earlier.

7. Initially, a writ petition being WPA No.12679 of 2023 was filed challenging the notices issued by the bank under Sections 13(2) and 13(4). Vide order dated May 25, 2023 the Court was pleased to stay the subject proceeding under the 2002 Act. The writ petition however got dismissed on September 8, 2023 holding that the same became infructuous.

8. Second writ petition being WPA No.1599 of 2024 was filed challenging further steps taken by the bank to issue notices under

Sections 13(2) and 13(4) of the 2002 Act. The Court vide order dated January 29, 2024 disposed of the writ petition directing the bank to maintain status quo with regard to the disputed property till February 15, 2024 or until further order passed by the Tribunal. The petitioner was granted liberty to approach the Tribunal with the same relief as sought for in the writ petition within a fortnight from the said date.

9. The Court recorded that if any portion of the property had already been sold out, the same would be subject to the orders passed by the Tribunal, if approached by the petitioner. The Court also restrained the bank to issue sale certificate in favour of any third party till February 15, 2024 had the property been sold off in the meantime.

10. The petitioner failed to approach the Tribunal within the time period fixed by the Court and applied before this Court seeking extension of time to approach the Tribunal. The Court, vide order dated April 5, 2024, was pleased to modify the earlier direction passed on January 29, 2024 and extended the time limit for the petitioner to apply before the Tribunal by April 8, 2024. Status quo was directed to be maintained till April 12, 2024.

11. As the petitioner failed to apply before the Tribunal within the extended time period, the Tribunal dismissed the application of the petitioner. Challenging the same the petitioner approached this Court once again praying for setting aside the order by filing writ petition being WPO No.406 of 2024 which stood disposed of by the Court on May 15, 2024 setting aside the order passed by the Tribunal and restoring the applications filed before the Tribunal to their original files and numbers and directed the Tribunal to immediately proceed to decide the applications on merits.

12. The applications filed by the petitioner before the Tribunal were taken up for consideration on July 24, 2024 when none appeared on behalf of the petitioner. Noticing the orders passed by the High Court in

WPA No.1599 of 2024 and WPO No.406 of 2024, the Tribunal directed that the applicant shall be informed and the applicant should prosecute the matter. The mater was directed to appear in the list on September 26, 2024.

13. It appears that on September 26, 2024, none appeared on behalf of the applicant i.e. the writ petitioner herein once again. The Tribunal was pleased to adjourn hearing till November 29, 2024. The matter was ultimately taken up for consideration by the Tribunal on January 28, 2025 and as none appeared for the petitioner yet again, the Tribunal dismissed the applications by observing that the applicant is not interested to prosecute the case and dismissed the same for non-prosecution. The petitioner has not taken any step to restore the applications before the Tribunal.

14. In the absence of any restraint order to recover the loan amount, the bank proceeded to sell and thereafter take over possession of the secured asset. The said action of the bank is impugned herein.

15. It has been submitted that the bank is intentionally and deliberately not serving any notice upon the petitioner despite the bank being aware that the petitioner is one of the legal heirs of the deceased mortgager and has a right to the subject property.

16. It has been argued that the order under Section 14 of the 2002 Act was not issued by the District Magistrate. According to the petitioner, the said order ought to have been issued by the District Magistrate and not by anybody acting on behalf of the District Magistrate.

17. It has been contended that as the order under Section 14 has not been issued by the District Magistrate, the same ought not to be acted upon and the said order is to be treated as nonest in the eye of law.

18. Prayer has been made to restrain the bank from taking any step and/or further step to the impugned notice dated 24th June, 2025.

19. Learned counsel for the State submits, upon instruction that, the order under Section 14 of the Act was indeed issued by the District Magistrate and the date for taking over possession of the same has also been fixed.

20. Learned counsel for the private respondents submits that the private respondents are also the heirs and legal representatives of the deceased mortgager. It has been submitted that a partition suit has been filed before the learned civil Court in respect of the subject property and the same is pending consideration. An order to maintain status quo has been passed by the learned trial Court.

21. Learned counsel representing the bank submits, upon instruction, that the secured asset has been put up in auction and sold out. Sale certificate had been issued on May 9, 2024. Symbolic possession of the property was taken long back and the bank is obliged to hand over physical possession of the auctioned property to the auction purchaser.

22. For taking over possession of the secured asset the bank took steps under Section 14 of the 2002 Act and an order had been passed by the District Magistrate for taking over physical possession on July 9, 2025 in the presence of an Executive Magistrate.

23. It has been submitted that the petitioner did not approach the Court with bona fide intention. The applications made by the petitioner before the Tribunal in terms of the leave granted by this Court were not proceeded diligently and the petitioner did not take steps before the Tribunal on repeated occasions for which the applications stood dismissed for non prosecution way back in January 2025. No steps have yet been taken to get the applications restored.

24. None of the legal heirs of the deceased mortgager has sought to redeem the loan amount. None of the legal heirs challenged either the

auction process or the sale that was conducted and stood concluded by way of issuance of the sale certificate in May 2024.

25. It has been submitted that a huge sum of money is due and pending on account of the loan and the bank has rightly taken steps in terms of the Act to recover the same.

26. Learned counsel for the bank relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of **CELIR LLP v. Bafna Motors (Mumbai) Pvt. Ltd. & Ors.** reported in **(2023) 13 SCR 53** wherein the Hon'ble Supreme Court relying upon an order passed in the matter of **Valji Khimji & Company vs. Official Liquidator of Hindustan Nitro Product (Gujrat) Ltd. & Ors.** reported in **(2016) 1 SCR 419** reiterated that once an auction is confirmed, the same can be interfered on very limited grounds as otherwise no auction would ever be complete. Entertaining objections after the sale is confirmed should not ordinarily be allowed, except on very limited grounds like fraud.

27. It has been submitted that the bank took steps in the matter in accordance with law and the writ petition ought to be dismissed.

28. I have heard and considered the submissions made by the respective parties and perused the materials placed before this Court.

29. It appears that the petitioner and the sixth-ninth respondents are siblings and the fifth respondent is the husband of the deceased mortgager. The petitioner is a married lady and she is a resident of Kerala. The writ petition is being presented by her constituted power of attorney who is a resident of Kolkata.

30. The impugned notice of handing over possession, admittedly, has been issued in favour of all the legal heirs of the deceased mortgager but the petitioner. From the facts narrated hereinabove, it appears that the petitioner, since 2023, has been prosecuting her case and she is all along aware of the steps taken by the bank to recover the loan amount. In

terms of the leave granted by this Court to challenge the steps taken by the bank for recovery of the loan amount, she approached the Tribunal for relief but, thereafter, it appears that she was not diligent enough to proceed with the applications filed before the Tribunal. The Tribunal granted time on repeated occasions so that the petitioner could prosecute her case, which the petitioner failed to do. The Tribunal did not have any other option but to dismiss the applications for non-prosecution way back in January 2025. No steps for restoration have been taken till date.

31. Had the petitioner been genuinely aggrieved by the steps taken by the bank to recover the loan amount, the petitioner should have taken immediate steps to get the applications restored before the Tribunal. The petitioner never bothered to do so. As there was no restraint order on the bank to carry forward the proceeding for recovery of the loan amount, the bank approached the District Magistrate under Section 14 of the Act.

32. The District Magistrate passed an order for handing over possession in March 2025. The petitioner feigns ignorance of the same. Notice to hand over possession was issued by the bank in June 2025 and the same was affixed on the wall of the subject property disclosing the date for taking over physical possession. Symbolic possession of the secured asset was taken long ago on September 27, 2023. The property was put up for auction and sale certificate was issued on May 9, 2024, i.e. a year back. The bank would be obliged to hand over physical possession of the secured asset which was put up for auction to the auction purchaser. The bank has accordingly taken steps to hand over physical possession of the property to the successful purchaser.

33. It is to be noticed that none of the other legal heirs of the deceased mortgager has challenged any of the action of the bank in taking steps to recover the loan amount and they were put on notice at every step. The bank has every right to take steps in accordance with law to recover the amount taken on loan by selling the secured asset. The bank has exercised the said right. After symbolic possession is taken, the next

course of action is to take physical possession of the property. The petitioner intends to foil the same. The petitioner only springs up in action when the bank prosecutes its own case and thereafter becomes inactive for reasons best known to her.

34. The submission of the petitioner that the order of Section 14 was not passed by the District Magistrate does not appear to be proper as the learned advocate representing the District Magistrate has specifically submitted that the order was duly passed by the District Magistrate.

35. The Hon'ble Supreme Court in the case of Bafna Motors (supra) has laid down in no uncertain terms that once an auction is confirmed, the same can be interfered on very limited grounds like fraud or else the auction would never be complete.

36. In the instant case, no case of fraud has been made out. It appears that the bank took steps in accordance with the provisions of the Act. The petitioner, despite being aware of all proceedings initiated by the bank, has challenged the auction only because of the reason that her name is not reflected in the notice for handing over possession. The petitioner was well aware that symbolic possession was taken and in the absence of any order from the competent forum the bank would certainly proceed to take physical possession.

37. The petitioner has not come forward to redeem the loan amount. Neither have any of the heirs of the deceased mortgager taken steps to redeem the same. The secured property has already been sold off. It appears that the petitioner is being portrayed as a bait to thwart the steps taken by the bank. Interfering with the action of the bank at this stage at the instance of the petitioner will plainly appear to be gross abuse of the process of law.

38. No illegality appears to have been committed by the bank in taking steps to recover the loan amount and it will be absolutely improper for the

Court to restrain the bank from proceeding to take possession of the subject property. The Court is not inclined to interfere in this case to provide any relief to an indolent litigant who is not vigilant enough to exercise her right and who seeks to stall a statutory authority to act in accordance with law.

39. The Act contains provision for grant of compensation and costs in certain cases. If the petitioner is genuinely aggrieved and still asserts that there is any illegality on the part of the bank, then it will be open for the petitioner to approach the competent forum for necessary relief.

40. The writ petition fails and is hereby dismissed.

41. The orders passed by the Tribunal on the applications filed by the petitioner, the demand notice issued by the bank dated July 11, 2023, the possession notice of the subject property issued by the bank on September 27, 2023 and the sale certificate issued by the bank on May 9, 2024, handed over by the learned advocate representing the bank in Court today is retained with the records.

42. All parties are to act on the server copy of this order duly downloaded from the official website of this Court.

43. Certified copy of this order, if applied for, shall be made available to the parties.

(Amrita Sinha, J.)