

28.07.2025.
Item No. 23.
Court No. 13
ap

F.M.A. No. 1305 of 2022
With
I.A. No. CAN 1 of 2022
And
I.A. No. CAN 2 of 2022

Bajaj Housing Finance Limited & Anr.
Versus
Uday Sankar Roy Choudhury & Ors.

Mr. Sudhasatvya Banerjee,
Mr. P. K. Srivastava,
Mr. Prantik Gorai,
Ms. Akansha Mukherjee,
Ms. Subhra Chowdhury.

...For the appellants.

Mr. Anindya Bose,
Mr. Shubradip Roy.

...For the respondent no.1.

1. Affidavit-of-service filed in Court today be taken on record.
2. The instant intra court appeal is directed against the judgment and order dated 17th August, 2022 passed by a learned Single Judge of this Court in W.P.A No. 18376 of 2022 whereby an order under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act, 2002") passed by the District Magistrate, South 24 Parganas was set aside.
3. The writ petitioner before the learned Single Judge claimed to be a pre-existing tenant of the property in question. He relied upon two unregistered

lease agreements for more than one year to establish such tenancy.

4. The learned Single Judge applying the dicta of the Division Bench of this Court in the case of ***State Bank of India & Anr. – Vs. – Vivek Kumar Kejriwal*** reported in ***AIR 2016 Calcutta 176*** and the decision of the Single Judge dated 25th July, 2022 in W.P.A. 16454 of 2022 (***Aniruddha Mukherjee & Anr. – Vs. – The Authorized Officer, Choramandalam Investment & Finance Company Limited & Ors.***) as also in the case of ***Bajrang Shyamsunder Agarwal – Vs. – Central Bank of India & Anr.*** reported in ***(2019) 9 Supreme Court Cases 94*** held that the writ petitioner was a pre-existing tenant within the meaning of the SARFAESI Act, 2002 and a tenant within the meaning of the West Bengal Premises Tenancy Act, 1997 and quashed the order of the District Magistrate, South 24 Parganas under Section 14 of the SARFAESI Act, 2002.

5. Mr. Sudhasatvya Banerjee, learned Counsel appearing on behalf of the appellants would argue that the writ petitioner/respondent himself has disclosed an unregistered lease agreement and an unregistered tenancy agreement.

6. Section 107 of the Transfer of Property Act mandates that any agreement of tenancy or lease above a period of one year is required to be registered. The writ petitioner/tenant could not, therefore, come

within the meaning of the pre-existing tenant or any tenant for that matter.

7. The writ petitioner relied upon certain rent receipts which could not be proved by affidavit of evidence.

8. What is most curious is that the Writ Court held that the writ petition was in fact filed by the borrower and not the tenant despite the liberty having been granted to the tenant to take out proceedings under Section 17 of the SARFAESI Act, 2002 before the Debts Recovery Tribunal with liberty to challenge both the notices under Section 13(2) and 13(4) of the SARFAESI Act, 2002. The tenant has not chosen to do so till date. This is fairly admitted by the Counsel for the respondents.

9. In view of the above, this Court is of the view that the learned Single Judge committed error in coming to a finding that the respondent/writ petitioner was a pre-existing tenant in the said premises. No such tenant has come forward either before the learned Single Judge or before this Court to assert any such rights. Liberty granted by the learned Single Judge was also not availed by the tenant.

10. In that view of the matter, the impugned order cannot be sustained in law and the same is set aside. The order of the District Magistrate, South 24 Parganas issued under Section 14 of the SARFAESI Act, 2002 is restored and revived.

11. The appellant/Financial Institution is entitled to seek enforcement of the order issued under Section 14 of the SARFAESI Act, 2002 (supra), through District Magistrate, South 24 Parganas and the local police.

12. With the aforesaid observations, F.M.A. 1305 of 2022 is allowed and disposed of.

13. In view of the disposal of the appeal itself, all the pending connected applications are disposed of.

14. There will be no order as to costs.

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

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)