

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Acting Chief Justice SUJOY PAUL
&
The Hon'ble Justice PARTHA SARATHI SEN

MAT 1989 OF 2025
With
CAN NO. 1 OF 2025

Sourav Mitra
-Vs-
Swati Chakraborty Bhattacharya
And Ors.

For the Appellant:	Mr. Siddhartha Sarkar, Adv., Mr. Sourav Gupta, Adv.
For the Respondent State:	Mr. Sankar Halder, Adv., Ms. Sujata Mukherjee, Adv.,
For the Respondent No. 1:	Ms. Pampa Dey (Dhabal), Adv., Ms. Sarbani Dutta, Adv.
For the Respondent No. 8:	Mr. Souma Subhra Ray, Adv., Ms. Anushree Mondal, Adv., Ms. Neelam Kumari, Adv., Ms. Archana Baghal, Adv.
Hearing concluded on:	26.11.2025
Judgment on:	01.12.2025

PARTHA SARATHI SEN, J. : –

1. In this intra Court appeal the order dated 13.11.2025 as passed by a Single Bench of this Court in WPA 24934 of 2025 is assailed.

2. By the impugned order the writ Court while disposing the said writ petition directed the Officer-in-Charge of the concerned police station to restore the possession of the writ petitioner in the flat in question by 15.11.2025 with a further direction to the police authorities to ensure protection to the writ petitioner so that the writ petitioner could stay in the flat in question peacefully till she is evicted therefrom in due course of law.
3. In course of hearing Mr. Sarkar, learned Advocate appearing on behalf of the appellant/ private Respondent No. 7 submits before this Court that the learned Single Bench while entertaining a writ petition alleging inaction of the police has practically acted like an executing Court in respect of a decree of a Civil Court in gross disregard to the settled position of law that where there exists availability of alternative remedy, writ Court should refrain from exercising its high prerogative writ jurisdiction. It is further submitted by the appellant/private Respondent No. 7 that the learned Single Bench while disposing the said writ petition entered into disputed questions of facts and thus a serious miscarriage of justice occurred while passing the order impugned and, therefore, the order impugned is required to be set aside.
4. Such contention of the appellant/private Respondent No. 7 is vehemently opposed by the learned Advocate for the Respondent No. 1/writ petitioner by saying that on perusal of the entire materials as placed before the writ Court, the learned Single Bench was satisfied regarding the inaction of the police authorities in registering the FIR pursuant to the written complaint as made by the writ petitioner on 17.09.2025. It is submitted further that there was no

illegality in the order impugned inasmuch as the learned Single Bench while passing the impugned order found that the Respondent No. 1/ writ petitioner has been dispossessed without due course of law and thus, rightly directed the police authorities to restore her possession with a further direction to ensure her peaceful possession in the said flat till she is evicted in due course of law.

5. Placing reliance upon a report dated 20.11.2025 as submitted by the O.C., Nagerbazar Police Station it has been submitted on behalf of the respondent/ State that pursuant to the order impugned the Respondent No. 1/ writ petitioner was put into possession in the said flat by the police authorities which was reduced into writing vide Nagerbazar Police Station, GDE No. 821 dated 14.11.2025.

6. For effective adjudication of the instant *lis* we at the very outset propose to look to the prayers made by the Respondent No. 1/ writ petitioner before the learned Single Bench in WPA 24934 of 2025 which is quoted hereinbelow in verbatim:

(a) "A writ in the nature of Mandamus, commanding the respondents no. 1 to 6 their men, agents, servants, and associates and each one of them to take appropriate steps against the respondent no. 7 and 8 by taking necessary steps in respect of complaint dated 17.09.2025 being annexure P-3 of this writ application by registering the FIR against the respondent no.7 and 8 and to prevent them from causing disturbance to possession of the flat purchased by the petitioner and also provide the petitioner with assistance in opening the pad lock installed by the private respondent allowing the petitioner to enter into her own purchased flat, situated at 17/6/1, 3rd floor, Flat No.3F, Eshani Apartment, Nayapatty Road, Post Office-Bangur Avenue, Police Station-Nager Bazar, Kolkata-700055;

- (b) A writ in the nature of Certiorari directing the concerned respondents authorities to transmit and produce all relevant records of the case to this Hon'ble court so that proper justice may be administered by removing the aforesaid installed pad lock at the main door of the petitioner's flat lying and situated at 17/6/1, 3rd floor, Flat No.3F, Eshani Apartment, Nayapatty Road, Post Office-Bangur Avenue, Police Station-Nager Bazar, Kolkata-700055;*
- (c) A Rule NISI in terms of prayers(a) and (b) and make the Rule absolute after hearing the parties;*
- (d) Any other order or orders, writ or writs and/or direction or directions as your Lordships may deem fit and proper.”*

7. On careful perusal of the prayers made by the Respondent No. 1/ writ petitioner it thus appears to this court that it is the primary grievance of the Respondent No. 1/writ petitioner regarding inaction of the police authority in registering FIR and in initiating police case on the basis of her complaint dated 17.09.2025. The second fold of the grievance of the Respondent No. 1/writ petitioner is also the inaction of the police authority in assisting her in opening the padlock of the said flat as has been allegedly put by the appellant/private Respondent No. 7.

8. It thus, appears to us that indisputably at the time of filing of the said writ petition the writ petitioner was out of possession of the said flat, may be on account of allegedly putting of padlock by the appellant Respondent No. 7.

9. The moot question cropped up before us as to whether the learned Single Bench while disposing the said writ petition can at all grant the reliefs as prayed for by passing the order impugned.

10. At this juncture, we propose to look to the provisions of Section 173 (corresponding Section 154, Cr.P.C.) and Section 175 (corresponding Section

156, Cr.P.C.) of the Bhartya Nagarik Suraksha Sanhita, 2023 (BNSS in short) which are reproduced hereunder in verbatim:

“173. Information in cognizable cases.”-(1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station, and if given-

(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as afore-said, shall be signed by the person giving it;

(ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf:

Provided that.....

Provided further that.....

(2).....

(3).....

(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.

175. Police officer’s power to investigate cognizable case.- (1).....

(2).....

(3) Any Magistrate empowered under Section 210, after considering the application supported by an affidavit made under sub-section (4) of Section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(4).....”

11. We also propose to look to Section 6 of the Specific Relief Act, 1963 and the said Section is also reproduced hereinbelow in verbatim:

“[s.6.] Suit by person dispossessed of immovable property.-(1) if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person [through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall brought-

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

12. On conjoint perusal of Sections 173 and 175 of the BNSS, it reveals that any person aggrieved by a refusal on the part of an Officer-in-charge of a police station to register an FIR may approach the jurisdictional Superintendent of Police by sending the substance of the information of the cognizable offence in writing and by post and the said jurisdictional Superintendent of Police on receipt of such information and after being satisfied that such information

discloses the commission of a cognizable offence may direct the Officer-in-charge the Jurisdictional Police Station to initiate a police case by registering an FIR.

13. Section 175(3) of BNSS further postulates that the event the jurisdictional Officer-in-charge of the Police Station or the Jurisdictional SP refuse to register FIR, the aggrieved person still has his remedy to approach before the jurisdictional Judicial Magistrate by filing an application supported by affidavit and the jurisdictional Judicial Magistrate on receipt of such application after making such enquiry may order investigation by a police officer. It thus, appears to us that there is availability of alternative remedy to an aggrieved person regarding inaction of police in registering an FIR.

14. Similarly, if we look to the provisions of Section 6 of the Specific Relief Act, it appears to us that the legislatures in their own wisdom have enacted the provisions of Section 6 of this Specific Relief Act thereby granting a dispossessed person an efficacious and speedy remedy to recover his possession without proof of any title to the property where from he has been evicted and in the proceeding of such nature, the aggrieved person has his right to seek injunction also.

15. In the backdrop of the aforementioned legal scenario, if we once again look to the prayers of the Respondent No. 1/ writ petitioner, it appears to us that the writ petitioners have alternative efficacious remedy to redress her grievance and instead of availing the same she had approached the writ Court for getting relief.

16. In the reported decision of **Radha Krishan Industries Vs. The State of Himachal Pradesh** reported in **(2021) 6 SCC 771** the Hon'ble Supreme Court had occasioned to consider the scope of exercising writ jurisdiction by a constitutional Court even when alternative remedy is available and in doing so the Hon'ble Apex Court expressed the following view:

"27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where:

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view

that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad reported in (2003) 5 SCC 399, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot reported in (1974) 2SCC 706 and Rajasthan SEB v. Union of India reported in (2008) 5 SCC 632 among other decisions."

(Emphasis Supplied)

17. Keeping in mind the proposition of law as decided in the case of **Radha Krishan Industries (Supra)** if we look to the factual aspect as involved in the said writ petition, it appears to us that no endeavour was made by the Respondent No. 1/ writ petitioner to substantiate that the facts as involved in such writ petition falls under the exception clauses to the rule of alternative remedy.
18. Learned Advocate appearing on behalf of the Respondent No. 1/ writ petitioner also fails to substantiate as to how the case of the Respondent No. 1/writ petitioner falls in the category of exception to the rule of alternative remedy.
19. We have noticed that the impugned order was passed by the learned Single Bench without exchange of affidavits and despite the same, the learned Single Bench made a venture to deal with disputed questions of facts as reveals from the last paragraph of Page No. 2 of the order impugned which in our considered view ought not to be done by the learned Single Bench in view of the ratio of decision in the case of **Radha Krishan Industries (Supra)**.

20. The question as to whether the remedy under Article 226 of the Constitution of India can be availed of if there exists inaction and/or non-action of police in registering the FIR in relation to a cognizable offence has been duly considered by the Hon'ble Apex Court in the reported decision of **Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Others** reported in **(2016) 6 SCC 277** wherein the Hon'ble Apex Court had drawn has drawn the curtains on the said aspects in the following words:

"2. This Court has held in Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409], that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) Cr.P.C. If such an appointment under Section 156(3) Cr.P.C. is made and the Magistrate is, prima facie, satisfied, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the mater. We have said this in Sakiri Vasu case because what we have found in this country is that the High courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation"

(Emphasis Supplied)

21. Similar point of law was involved before a Division Bench of this Court in which one of us (Sujoy Paul, J.) was in the Bench in connection with **WPA (P) No. 517 of 2022 (Merjul Hoque Mondal Vs. The State of West Bengal & Ors.)**

22. In the case of **Merjul Hoque (Supra)** the said Division Bench while disposing the said writ petition by its order dated 04.08.2025 had occasioned to consider the reported decisions of **Lalita Kumari Vs. Government of U.P.** reported at **(2014) 2 SCC 1**, **Aleque Padamsee Vs. Union of India** reported at **(2007) 6 SCC 171** and **Sakiri Vasu Vs. State of U.P.** reported at **(2008) 2 SCC 409**, as well as a judgment of the Division Bench of MP High Court and in doing so, the said Division Bench expressed the following :

“10. In view of the authoritative pronouncement of the Hon'ble Supreme Court and the Division Bench of the Madhya Pradesh High Court on the above aspect, no writ of mandamus/direction can be issued for lodging of FIR. The petitioner has an efficacious remedy under the criminal law. Hence the PIL cannot be entertained.”

(Emphasis Supplied)

23. In view of the aforementioned authoritative decisions of the Hon'ble Supreme Court as well as the judgments as passed by a coordinate Bench of this court and a Division Bench of Madhya Pradesh High Court we are of considered view that the order impugned before us is contrary to the settled principle of law.

24. We are accordingly constrained to hold that the impugned order dated 13.11.2025 as passed in WPA 24934 of 2025 by the learned Single Bench of this Court is not an authoritative decision and has got no binding effect.

25. In view of the factual positions as discussed (supra), we would have set aside the order impugned before us but not inclined to do so in view of the fact that a report is filed on behalf of the State to the effect that pursuant to the

order impugned, the Respondent No. 1/ writ petitioner was put into the possession of the said flat in execution of the order impugned.

26. In view of such, while disposing the instant writ petition, we permit the parties to the instant appeal to take recourse to the law before the appropriate forum, if so advised and in the event if such approach is made, the jurisdictional Court(s)/ forum(s) shall pass appropriate order without being influenced by any of the observations as made by the learned Single Bench in its order dated 13.11.2025 in WPA 24934 of 2025 (***Swati Chakraborty Bhattacharya Vs. State of West Bengal and Ors.***)

27. MAT 1989 of 2025 is disposed of in the light of the observation made hereinabove.

28. Consequently, CAN No. 1 of 2025 is also disposed of.

29. Urgent Xerox certified copy, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, A.C.J.)

(PARTHA SARATHI SEN, J.)

(P.A- Pramita)