

16.04.2025
Sl. No.07
CP

CPAN/1722/2024
In
WPA/18934/2024

SHILA DAS
VS
AJAY KANWAL & ANR.

Mr. Snehatosh Majumder
Mr. Sattwik Majumder
Mr. Amar Nath Ghosh

...for the Applicant.

Ms. Sambrita B. Chatterjee

.....for the alleged contemnor no. 2.

The contempt application is not maintainable as this Court did not accept the contentions made in the writ petition but had granted liberty to the petitioner to approach the Debts Recovery Tribunal, in accordance with law. The relevant portion of the order is quoted below:-

“The learned advocate for the bank submits that the sons had mortgaged ‘B’ scheduled property and steps were taken only in respect of such property only. The property is described below:-

**“KHA (B) SCHEDULE PROPERTY
(Property hereby gifted)”**

Under the Ka Schedule property one shop room having a super built up area 485 sft. More or less out of total area 1454 Sft. To the extent of 1/3rd share constructed upon the “A” Schedule property, comprised of R.S. Dag Nos. 5911, 5912 and 5915 and under R.S. Khatian Nos.3738, 3788 and 3801 corresponding to L.R. Dag No.6312, L.R. Khatian Nos. 28318, 18319 and 28320, Mouza Serampore, J.L. No.13, being holding No.91/92/F, Kumirjala Road (Raja Ram Mohan Roy Sarani), under Serampore

Municipality, P.S. & A.D.S.R. Office Serampore,
Dist. Hooghly.”

The property was gifted by the petitioner to her sons. Copy of the gift deed and copy of the memorandum of deposit of title deed/gift deed have been produced before this Court, which mentions the said property.

Under such circumstances, this Court is not in a position to pass any orders save and except to restrict the order under Section 14 of the SARFAESI Act to the secured asset. However, if the petitioner is aggrieved by the order passed by the learned Additional Chief Judicial Magistrate under Section 14 of the said Act with regard to certain observations or quantum etc., the petitioner is at liberty to approach the Debts Recovery Tribunal, in accordance with law.”

The Court had recorded the rival contentions but was of the view that it was not in a position to pass any orders save and except to restrict the order under Section 14 of the SARFAESI Act to the secured asset and granted further liberty to the petitioner to approach the Debts Recovery Tribunal.

Today, during the hearing of the contempt application an attempt is made to once again urge on the issues raised in the writ petition. This is not permissible. If the petitioner has not availed of her statutory remedy by approaching the Debts Recovery Tribunal, it was at her own risk. Whether the petitioner was a borrower or a guarantor cannot be decided in this proceeding by reopening the writ. Further, the prayer for inspection of the premises in respect of which the order has been passed under Section 14 of the SARFAESI Act, is beyond the scope of contempt application. Whether the petitioner is

entitled to file a suit or not, is not for this court to decide.

Accordingly, the contempt application is disposed of. The contempt proceedings are dropped.

(Shampa Sarkar, J.)