

WPA 27640 of 2025

Polash Bhattacharyya
Vs.
Union Bank of India & Anr.

Mr. Subhojit Saha
Ms. Ruchira Chatterjee
Ms. Srijani Mukherjee
.... for the petitioner

Mr. Sailesh Mishra
..... for the Union Bank of India

1. Let affidavit-of-service, as filed in Court, be kept on record.
2. The petitioner is aggrieved that while disposing of a challenge to an order passed under Section 14 of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act”), learned Debts Recovery Tribunal – III, Kolkata, has not only affirmed the order passed by the Additional Chief Judicial Magistrate but has also not recorded the petitioner’s submissions, which are also the grounds of challenge of the order under Section 14 of the SARFAESI Act.
3. According to the petitioner, the principal points argued and not recorded by him are as follows :

- (i) There are multiple notices under Section 13(2) of the SARFAESI Act which have not been taken into account and not recorded by the Tribunal;
- (ii) There is a gross violation of the Rule 8 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the “said Rules”) which has also not been recorded.
- (iii) The Additional Chief Judicial Magistrate could not have adjudicated the debts which it has proceeded to do, which was one of the foremost points argued by the petitioner before the Debts Recovery Tribunal, though the same has been glossed over and not recorded;
- (iv) The petitioner had also argued before the Tribunal that there was no sale notice ever issued in respect of the property, mortgaged and sold, belonging to the petitioner. This also does not find place in the order passed by the Debts Recovery Tribunal – III, Kolkata.

4. These are all issues which can be ventilated before the Appellate Tribunal, which has been formed to look into such matters emanating from the orders passed by the Debts Recovery Tribunal.

5. The petitioner has a statutory remedy and ought to avail of the same before approaching the Writ Court. The Supreme Court, in its decision reported in (2020) 19 SCC 681, has categorically stated that in the event a statutory remedy is available, a litigant ought to avail of a remedy before coming to the Writ Court.
6. The petitioner's grievance that the aforestated points raised by the petitioner were not recorded, is also one of such points which can be urged before the Appellate Tribunal.
7. The petitioner is at liberty to proceed before the Appellate Tribunal, if so advised.
8. With the aforestated directions, the writ petition is disposed of.
9. There shall, however, be no order as to costs.
10. Since no affidavit has been called for, the allegations contained in the writ petition are deemed to be denied.
11. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking

(Reetobroto Kumar Mitra, J.)