15.12.2025
Sl. No. 7
Ct No. 24
SG

WPA 28338 of 2025

Partha Debnath
Vs
The State of West Bengal & Anr.

Mr. Dhiman Ray,
Mr. Pritam Modak,
Mr. D. Chandra.
...for the petitioner

Ms. Samapti Roy,
...for respondent nos. 2 & 3

Mr. Bibekananda Tripathy,
Ms. Molly Saha.
...for the State

1. The petitioner claims to be a promoter, with whom the borrower has entered into a Memorandum of Understanding, sometime in 2019. The grievance of the petitioner is that the property, which has been possessed and sold by the bank was under a joint venture between the petitioner and the borrower.

2. Mr. Ray appearing for the petitioner, who is the promoter submits that he does not have an alternative or an efficacious remedy as against the bank, since his right qua the property is not under the jurisdiction of the Debts Recovery Tribunal or the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter 'the said Act'). He placed reliance on a decision of the Hon'ble Apex Court in ***Vishal N. Kalsaria vs. Bank of India & Ors.*** reported in ***(2016) 3 SCC 762***. He has also placed reliance on a

decision of a co-ordinate Bench of this Court in ***Pyari Devi Chabiraj Steels Pvt. Ltd. vs. Axis Bank Ltd.*** reported in ***AIR 2020 CALCUTTA 136***. His primary argument is that the provision of the said Act cannot override or 'bulldoze' the rights that he may have under some other statute. In the present case, according to him, his rights under the Contract Act will be severely prejudiced if the provisions of the said Act are allowed to prevail.

3. Mr. Ray has also argued that the Memorandum of Understanding had been completely ignored by the bank in obtaining orders from the appropriate authority under Section 14 of the said Act. He, however, does not deny the fact that there is a suit being TS 1941 of 2025 which has been filed by the petitioner against the borrower as well as the authorized officer of the respondent-bank, before the learned Civil Judge (Jr. Division), Alipore. The said suit is still pending adjudication. He has argued that the petitioner does not have any grievance insofar as the acts of commission or ommission of the bank are concerned and, therefore, the Debts Recovery Tribunal is neither an alternative nor an efficacious remedy available to him.

4. Ms. Roy appearing for the respondent-bank submits that the mortgage of the property concerned had been made by the borrower sometime in 2010 for the financial accommodation availed by such borrower from

the bank. In fact, an application under Section 17 has also been filed by the petitioner herein being SA 300 of 2023 challenging the SARFAESI action initiated by the bank.

5. Ms. Roy appearing for the bank submits the borrower had taken a financial accommodation from the bank, sometime in 2010 and had mortgaged the subject property with the bank.

6. Ms. Roy has further submitted that the possession of the said property 248A, Jadab Ghosh Road, P.S. Thakurpukur, Dag No. 194, R.S. Khatian No. 859, 946, 947 (hereinafter 'the said property') has already been taken by the bank on 10.12.2024 and the sale in respect thereof has also been conducted on 11.12.2025. It is only thereafter that the civil suit has been filed by the petitioner on 01.12.2025 and the present petition on 08.12.2025.

7. I have heard learned Counsel for both the parties and the decisions relied upon by them. I have also considered the documents on record.

8. The decision relied upon by Mr. Ray in ***Vishal N. Kalsaria*** (supra) pertained to the rights of a lessee and not a developer. Further, the jurisdiction of the Debts Recovery Tribunal has been enlarged by the amendment Act 44 of 2016 on 01.09.2016, by insertion of Section 4A to Section 17 of the said Act. Thus, it cannot be said

that the Debts Recovery Tribunal presently does not have the jurisdiction to entertain an action in the nature of that the petitioner is seeking. It also cannot be said that the said Act is bulldozing rights under any other act which the petitioner may have.

9. The petitioner admits that a suit has already been filed by him and is pending before the learned Civil Judge (Jr. Division), Alipore. The petitioner's remedy against the borrower and the bank are both before such civil court. It will not be out of context to mention that the petitioner has already taken steps to protect his rights before the Debts Recovery Tribunal by initiating an action under Section 17 of the said Act.

10. The fact that the loan had been taken by the borrower and land mortgaged in 2010 is not in dispute. The MOU between the petitioner and the borrower is much after, only in 2019.

11. The petitioner has filed an action before the DRT and the Civil Court and now before this Hon'ble Court. The petitioner has indulged in forum shopping.

12. The petitioner in the present petition is challenging an action of the bank, pursuant to an order passed by the appropriate authority under Section 14 of the said Act. Thus, to stall such an action, the petitioner is at liberty to challenge the order passed under Section 14 of

the said Act by the authority, before the Debts Recovery Tribunal, if so advised.

13. In view of the aforestated, this writ petition cannot be entertained and is, accordingly, dismissed.

14. There shall be no order as to costs.

15. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Reetobroto Kumar Mitra, J.)