

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**HEARD ON: 17.06.2025
DELIVERED ON: 17.06.2025**

**PRESENT:
THE HON'BLE JUSTICE GAURANG KANTH**

**W. P. A. 2153 OF 2023
With
CAN 1 OF 2024**

**M/S. AXIX BANK LIMITED & ANR.
VERSUS
STATE OF WEST BENGAL & ORS.**

Appearance:-

Mr. Hillol Saha Poddar, Adv.
Ms. Srijoni Ghosh, Adv.
Mr. Bibhash Kr. Nandi, Adv.

...For the Petitioners

Mr. Hirak Barman, Adv.
Mr. Pretom Das, Adv.

...For the State

Mr. Deborshi Dhar, Adv.
Mr. Debanjan Chakraborty, Adv.

...For Respondent Nos.3 & 4

JUDGMENT

Gaurang Kanth, J. :-

1. The petitioners have filed the present writ petition assailing the order dated 31.01.2023 passed by the District Magistrate, Cooch Behar in Case

No.28 of 2022, whereby the application filed by the petitioners under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act) was rejected.

2. The factual background leading to the filing of the present writ petition are as follows:

3. Respondent Nos.3 and 4, being partners of M/s. S. B. Enterprise, had approached the petitioner's Bank (petitioner no. 1) at its Dinhata Branch seeking credit facilities to the tune of Rs.1,30,000,00/- (Rupees One Crore and Thirty Lakhs) in the form of cash credit under the Kishan Mitra AVCP Scheme. Upon due consideration, petitioner no. 1 granted such credit facility in favour of M/S S.B. Enterprise by way of a sanctioned letter dated 20.08.2018 subject to terms and conditions stated therein. Subsequently, on 31.08.2018, a working capital loan agreement was executed between the petitioners and respondent Nos.3 and 4, in their capacity as partners of M/s. S. B. Enterprise. Additionally, respondent Nos.3 and 4 extended their personal guarantees to secure the obligations on behalf of the partnership firm. To secure the said facility, the respondent Nos.3 and 4 created an equitable mortgage by depositing the title deeds of immovable property, land measuring 0.06 acres situated at Mouza-Jhuripara, J.L.No.113, L.R. Khatian No.724/1, L.R. Plot No.1549, and land measuring about 0.010 acres situated at Mouza-Dinhata, J.L. No.108, Plot No.9159, Khatian No.3209/1, both under P.S. Dinhata, Ward No.14 of Dinhata Municipality, District-Cooch Behar. The said facility was availed and utilized by the borrowers, however, they eventually defaulted in making payment of principal amount along with

interest in terms of the aforesaid agreement, despite repeated reminders from the petitioners. Consequently, the loan amount was classified as non-performing as on 30.11.2020. Thereafter, the petitioners issued a demand notice dated 04.04.2021 under Section 13(2) of the SARFAESI Act, calling upon the respondent nos. 3 and 4 to repay an amount of Rs.1,39,55,598.20 (Rupees One Crore Thirty Nine Lakhs Fifty Five Thousand Five Hundred Ninety Eight and Twenty paise only) within a period of 60 days. The said notice was duly published in English as well as Vernacular newspapers. Respondent Nos.3 and 4 submitted their objection dated 10.09.2021 under Section 13(3A) of SARFAESI Act, which were duly replied to by the petitioners vide reply dated 23.09.2021. The petitioners, having complied with the requirements of Section 13(4) of SARFAESI Act, took symbolic possession of the secured assets on 18.05.2022 and issued appropriate intimation to the borrowers, along with public notice in newspapers.

4. In the meantime, the respondent Nos.3 and 4 preferred an appeal under Section 17 of SARFAESI Act before Debts Recovery Tribunal. However, no interim protection was granted to them. Apprehending resistance in taking physical possession, the petitioners filed an application under Section 14 of SARFAESI Act before the District Magistrate, Cooch Behar on 19.07.2022. However, the said application was rejected by the District Magistrate, Cooch Behar vide impugned order dated 31.01.2023, citing the existence of stay order by the Hon'ble Supreme Court, and granting liberty to the petitioners to initiate proceedings in terms of the SARFAESI Act afresh. The impugned order was communicated to the petitioners on 22.03.2023.

Aggrieved thereby, the petitioners have approached this Court by way of filing the present writ petition.

5. Ms. Srijoni Ghosh, Learned Counsel for the petitioners submits that the impugned order is without jurisdiction and is liable to be set aside. She contends that the District Magistrate, Cooch Behar, while exercising powers under Section 14 of the SARFAESI Act, performs a ministerial function limited to verifying compliance with statutory conditions and is not empowered to adjudicate on legal issues such as the validity of the classification of the loan account as a NPA or the existence of stay. She further submits that the interim order passed by the Hon'ble Supreme Court in WPC 474 of 2020 merged with the final judgment dated 23.03.2021 in Writ Petition being Civil Appeal No.955 of 2020, wherein the Hon'ble Supreme Court refused to extend the moratorium period beyond 30.08.2020. The petitioners' application under Section 14 of SARFAESI Act was filed much later on 19.07.2022.

6. Per contra, learned Counsel for the respondent Nos.3 and 4 supports the impugned order and contends that the declaration of the loan account as NPA was itself initiated, having been made during the pendency of the interim stay granted by the Hon'ble Supreme Court. Thereafter, it is argued that all proceedings initiated thereafter are vitiated and not legally maintainable.

7. This court has heard the arguments advanced by the learned Counsel for the parties and has perused the documents placed on record. A perusal of the impugned order dated 31.01.2023 reads as follows:

“(a) Bank Officials & borrowers Present.

*(b) At the time of declaration of NPA, S.C. stay order was existing.
 (c) Hence, the case was dropped and advised to submit Fresh Application U/S 14 of SARFAESI Act, 2002 & Notice 13(2) to borrower.”*

8. It is evident that the impugned order is a non-speaking order, bereft of any discussion on facts, legal provisions or the effect of the final judgment of the Hon'ble Supreme Court, dated 23.03.2021. There is also no reference to the particulars of the alleged stay order or how it continues to operate post disposal of the said writ petition. In the considered opinion of this Court, the impugned order dated 31.01.2023 suffers from serious infirmities. The order is entirely non-speaking, cryptic, and passed without any due application of mind. It failed to disclose any cogent, reasoned or reference to any material record justifying the conclusion arrived at by the District Magistrate, Cooch Behar. Merely stating that a stay order of the Hon'ble Supreme Court exists at the time of NPA declaration without specifying the nature, duration, or legal effect of such stay orders renders the order arbitrary. It is further noted that the stay has already merged with the final judgment of the Hon'ble Supreme Court dated 23.03.2021, which decline to extend the moratorium period beyond 03.08.2020 and thus, the stay order could not have been relied upon as a valid ground for declining assistance under Section 14 of the SARFAESI Act.

9. In view of the above discussions, this Court is of the considered view that the impugned order dated 31.01.2023 is legally unsustainable and is, accordingly, set aside. The matter is remanded back to the District Magistrate, Cooch Behar (JM Section), who shall, consider the petitioners'

application under Section 14 of SARFAESI Act afresh, strictly in compliance with the mandatory requirement as prescribed under the statute, and pass a speaking and reasoned order in accordance with law. Such an exercise shall be completed within a period of four weeks from date of receipt of a server copy of this order.

10. It is clarified that while reconsidering the matter, the District Magistrate, Cooch Behar shall not be influenced by any observation made in the impugned order dated 31.01.2023 and shall confine the consideration strictly to the scope of Section 14 of SARFAESI Act, which does not include adjudication of disputed facts or legal interpretation beyond the ministerial satisfaction of compliance.

11. With the aforesaid direction, the present writ petition stands allowed.

12. Consequently, the application being CAN 1 of 2024 is also disposed of.

13. There shall be no order as to costs.

14. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Gaurang Kanth, J.)

(AS)