IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

APO/30/2024
IA No.GA/1/2024

THE AUTHORISED OFFICER, HINDUJA LEYLAND FINANCE LIMITED AND ANR.

-Versus-

ANIMA SAMANTA AND ORS.

Present :
The Hon'ble Justice Debangsu Basak
-And-
The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant	:	Mr. Siddhartha Banerjee, Adv. Mr. Subhankar Chakraborty, Adv. Mr. Saptarshi Bhattacharjee, Adv. Ms. Sayani Gupta, Adv.
For the Respondent No.1	:	Mr. Arijit Bardhan, Adv. Ms. Saheli Bose, Adv. Mr. Gourab Mondal, Adv.
For the Respondent Nos. 2 to 5	:	Mr. Sarosij Dasgupta, Adv. Mr. Anchayita De, Adv.

HEARD ON : 19.08.2025
DELIVERED ON : 19.08.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a secured creditor and directed against the order dated January 24, 2024 passed by the learned Single Judge in WPO/1792/2023.

2. By the impugned order, learned Single Judge disposed of the writ petition by directing the appellants to seal the entrance to the ground and first floor of the concerned building by leaving open the access to the upper floors i.e., second and third floors through the common staircase as mentioned in the report of the learned Special Officer. Learned Single Judge restrained the appellants from preventing the access of the private respondents in the appeal to the second and third floors through the common staircase in any manner whatsoever. Learned Single Judge allowed the appellants to keep the ground and the first floors, which are secured assets, sealed.

3. Learned advocate appearing for the appellants submits that, the property in question lying and situated at Mouza - Udayrajpur, J.L. No.3, R.S. No.6, Khatian Nos.4232, 4238, 4239 and 4240, R.S. Dag No.1275, L.R. Dag No.2891 under the jurisdiction of the Madhyamgram Municipality, Ward No.5, Police Station- Madhyamgram, Distrct- North 24 Parganas was mortgaged to the appellant no.1 as security for loan obtained by a borrower.

4. Learned advocate appearing for the appellants submits that, the borrower obtained credit facilities from the appellant no.1. The account of the borrower became a Non Performing Asset (NPA) and was classified to be so. Thereafter, the appellants issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) to the borrower.

5. Learned advocate appearing for the appellants submits that, appellants took measures under Section 13(4) of the Act of 2002 in respect of the mortgaged immovable property. Since the appellants were unable to obtain actual physical possession of such mortgaged immovable property, an application was made before the jurisdictional District Magistrate under Section 14 of the Act of 2002 in which the concerned District Magistrate directed the possession of the mortgaged property to be made over to the appellants.

6. Learned advocate appearing for the appellants submits that, the appellants were put into possession of the secured asset being the mortgaged immovable property, pursuant to the order passed by the jurisdictional District Magistrate.

7. Learned advocate appearing for the appellants submits that, the private respondents filed a writ petition in which the impugned order was passed. Relying upon **2010 (8) SCC 110 (United Bank of India vs. Satyawati Tandon & Ors.)** and **2023 (17) SCC 311 (South Indian Bank Ltd. & Ors. vs. Naveen Mathew Philip & Anr.)**, learned Advocate appearing for the appellants submits that, the writ petition was not maintainable. He refers to Section 17 of the Act of 2002 and submits that, there was statutory alternative remedy available to the private respondents which the private respondent did not avail of.

8. Relying upon **2025 SCC Online SC 1443 (PNB Housing Finance Ltd. vs. Manoj Saha & Anr.)**, learned advocate appearing for the appellants submits that, even if it is assumed that the private respondents were

tenants in respect of the immovable property concerned, then also the remedy was under Section 17 of the Act of 2002 and the writ petition was not maintainable.

9. Referring to Section 17 of the Transfer of Property Act, 1872, learned advocate appearing for the appellants submits that, any accession to the mortgaged property enures to the benefit of the mortgagee. Therefore, the appellants can justifiably claim security interest on the two upper floors also.

10. Learned advocate appearing for the private respondent submits that, the property mortgaged with the appellants was the ground and first floors. In this regard, he refers to the application made under Section 14 of the Act of 2002 before the District Magistrate by the appellants. He submits that, the private respondent is a tenant in respect of the second and third floors.

11. Learned advocate appearing for the private respondent submits that, measure under Section 13(4) of the Act of 2002 can be taken only in respect of secured asset. The second and third floors of the immovable property cannot be construed to be a secured asset within the meaning of the Act of 2002 for the appellants to invoke the provisions of the Act of 2002.

12. In support of the contention that, since second and third floors were never mortgaged in favour of the appellants, the private respondent possess the remedy of filing a civil suit and not excluding a writ petition, learned advocate appearing for the private respondents relies upon **2018**

SCC Online Ker 5144 (Mrs. Elsamma & Ors. vs. The Kaduthuruthy Urban Co-operative Bank Ltd. & Ors.).

13. Learned advocate appearing for the private respondent draws the attention of the Court to the schedule of the deed claimed to be mortgaged with the appellants. He submits that, the schedule refers to only the ground and first floor. Moreover, the application under Section 14 of the Act of 2002 made by the appellants before the jurisdictional District Magistrate refers to the ground and first floor. The order of the District Magistrate also refers to the ground and first floor. Therefore, the second and third floors of the premises concerned can never form part of the so called secured assets of the appellants. Therefore, the appellants cannot take possession of the second and third floors.

14. Learned advocate appearing for the private respondents submits that, in view of Section 17(3)(b) of the Act of 2002 a Tribunal can, at best, restore possession of the secured assets. Since the second and third floors are not secured assets of the appellants, approach to the Tribunal is illusory. While the Tribunal, at best, can restore possession of the secured assets, the second and third floors not being a secured asset, the Tribunal, therefore, would be unable to direct restoration of possession of such floors.

15. Learned advocate appearing for the private respondent submits that, in the factual matrix of the present case, the writ petition was maintainable. Since the appellants cannot claim security interest over the second and third floors of the property concerned, question of approaching the

Tribunal under Section 17 of the Act of 2002 did not arise. Consequently, the writ petition was maintainable.

16. Referring to the contents of the impugned order, learned advocate appearing for the private respondents submits that, the learned Single Judge took pains to appoint a Special Officer in order to find out the situation at the locale. He points out that the private respondent and the borrower are not any way connected. There is no relationship of borrower and lender between the private respondent and the appellant no.1. Therefore, he submits that the impugned order should be sustained.

17. The fact that there is a loan account which stands classified as NPA between the borrower and the appellant no.1 is admitted.

18. The private respondent claim to be a tenant and in no way connected with the borrower. Private respondent also claims no relationship of borrower and lender vis-à-vis the appellant no.1. Claim of tenancy is in respect of second and third floors of an immovable property which is claimed to be mortgaged in favour of the appellant no.1.

19. Fact that the original title deed in respect of the immovable property is with the appellant no.1 as and by way of a mortgage in respect of the loan amount taken by the borrower is undisputed.

20. Contention of the private respondent is that qua tenant and by reason of the recital to the original title deed of the immovable property speaking of the ground and first floor and the private respondent being on the second and third floors, there cannot be a valid mortgage of the second and third

floors in favour of the appellant no.1. Consequently, the second and third floors cannot be considered to be a security interest in favour of the appellant no.1.

21. As noted above, the original title deed to the land in question is with the appellant no.1. Title deed speaks of a schedule of ground and first floor. Apparently, there was an improvement to the building concerned subsequent to the execution of the title deed. The date when such improvement took place and whether such improvement was prior to the mortgage or subsequent to the mortgage is not on record. The date of creation of the tenancy in favour of the private respondents is also not on record.

22. We repeatedly requested the private respondent to produce documents of creation of tenancy and to inform the Court as to the date of creation of the tenancy. However, the private respondent failed to do so.

23. Section 70 of the Transfer of Property Act, 1872 speaks of accession to mortgaged property. It prescribes that, if after the date of mortgage any accession is made to the mortgaged property, the mortgagee, in absence of a contract to the contrary, shall, for the purpose of security, be entitled to such accession.

24. There is nothing on record to establish that, the appellant no.1 will not be entitled to the accession to the immovable property concerned subsequent to the mortgage created. We hasten to add that we are not returning a finding that the second and third floors were erected subsequent to the mortgage in absence of any materials before us.

25. As matters relating to the second and third floors stands, the same needs to be considered by a forum vested with jurisdiction to decide such issue after affording the parties an opportunity to lead evidence.

26. Issues before us are whether there is statutory alternative remedy available to the private respondent in respect of the measures taken under Section 14 of the Act of 2002, and if the answer to such issue is in the affirmative, then whether the writ petition is maintainable.

27. Admittedly, measures under Section 13(4) of the Act of 2002 were taken in respect of the immovable property concerned. Possession of the immovable property concerned was taken under Section 14 of the Act of 2002 on October 13, 2024.

28. Scope and ambit of Section 17 of the Act of 2002 and the issue of maintainability of a writ petition in view of existence of statutory alternative remedy under Section 17 of the Act of 2002 was considered by the Supreme Court in **Satyawati Tandon & Ors.** *(supra)* as well as **Naveen Mathew Philip & Anr.** *(supra).* In both of those authorities the Supreme Court held that the disputes relating to a measure taken under Section 13(4) are to be decided upon by the Tribunal under Section 17 of the Act of 2002. Both the authorities are categorical in stating that writ petition should not be entertained by the High Courts where there is a statutory alternative remedy available.

29. It is the contention of the private respondents that in view of Section 17(3)(b) of the Act of 2002, all that the Tribunal can do under Section 17 of the Act of 2002 in relation to a measure taken under Section 13(4) is

to restore the possession of a secured asset. According to the private respondent, since the second and third floors are not secured asset, therefore, the Tribunal will not possess requisite jurisdiction over the same.

30. This contention of the private respondent overlooks both Section 17(1) and Section 17(3)(a) of the Act of 2002. Section 17(1) of the Act of 2002 permits any person to approach the Tribunal if aggrieved by a measure taken under Section 13(4). Section 17(3)(a) provides that, a Tribunal, on being satisfied that measures taken were not in accordance with law, can declare such recourse to any one or more measures referred to in Section 13(4) taken by the secured creditor as invalid and thereafter direct restoration of possession.

31. The issue as to whether or not the second and third floors are mortgaged with the appellant no.1 and, therefore, a secured asset of the appellant no.1, is an issue which a Tribunal under Section 17(1) of the Act of 2002 is competent to decide since a measure under Section 13(4) was taken in respect thereof. One of the issues which can be validly raised under Section 17 of the Act of 2002 is whether there exist any security interest in respect of the secured asset sought to be proceeded against. The issue as to whether or not the property in question is a secured asset can be decided by the Tribunal. A Tribunal can do so under Section 17(1) of the Act of 2002 as the validity and legality of the measures taken under Section 13(4) can be questioned. To answer such issue the Tribunal needs to arrive at the finding that a security interest in respect of the

secured asset exists. Therefore, it is required to find out whether or not the property concerned is a secured asset. The private respondent is a person who can be construed to be a person aggrieved by the measure taken under Section 13(4) of the Act of 2002 by the appellant no.1 and therefore, falling under Section 17.

32. The Kerala High Court in **Mrs. Elsamma** *(supra)* while deciding the maintainability of a civil suit seeking a decree of permanent prohibitory injunction regarding an immovable property claimed not to be a secured asset of the Bank held that the civil suit was maintainable. It held that parties need be relegated to Section 17 of the Act of 2002 if it is found that the acts complained of are in relation to a secured asset. In the facts of the present case, we are not dealing with a civil suit, nor are we dealing with a property in respect of which a measure under Section 13(4) of the Act of 2002 was not taken.

33. In view of the discussions above, we are of the view that the writ petition is not maintainable since there is statutory alternative remedy for the respondent no.1.

34. The impugned order dated January 24, 2024 is set aside. Status with regard to the property be restored to the position as on the date of filing of the writ petition forthwith.

35. APO/30/2024 along with IA No.GA/1/2024 are disposed of without any order as to costs.

36. At this stage, learned counsel appearing for the respondent no.1 prays for stay of operation of this judgment and order delivered today.

37. While considering the prayer for stay, we called upon learned Advocate for the respondent no.1 to inform the Court as to the date when the possession was taken and the date of filing of the writ petition.

38. These dates assume significance since under Section 17 of the Act of 2002, a person aggrieved by a measure taken under Section 13(4) of the Act of 2002 needs to challenge such action within 45 days from the date of the measure taken.

39. Possession was taken on October 13, 2024.

40. Learned advocate for the respondent no.1 is unable to provide the date of the writ petition. We are unable to determine as to whether the respondent no.1 approached the writ Court within the statutory period of 45 days from the date of taking possession. Since, there is no conclusive evidence of the respondent no.1 approaching the writ Court within the statutory period prescribed under Section 17 of the Act of 2002, we are unable to accept the prayer for stay of this judgment and order. Such prayer is declined.

(DEBANGSU BASAK, J.)

41. I agree.

(MD. SHABBAR RASHIDI, J.)

A/s.