

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPO/178/2005
SHREE BALAJI SARKAR KUTIR PRIVATE LIMITED
VERSUS
THE CHIEF JUDICIAL MAGISTRATE, CALCUTTA AND ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 13th March, 2025.

Appearance:

Mr. Siddhartha Banerjee, Advocate
Mr. Zeeshan Haque, Advocate
Mr. Rajib Mullick, Advocate
Ms. Shambhavi Jha, Advocate
... for the petitioners.

Mr. Anand Farmania, Advocate
Ms. Indumoli Banerjee, Advocate
... for the respondent No.1, State of WB.

Mr. Pratik Ghose, Advocate
Mr. Avishek Roy Chowdhury, Advocate
... for the respondent No.2.

1. In furtherance to the order passed by the Learned Chief Judicial Magistrate, Calcutta on 30th September, 2024 in Misc. Case No.157 of 2023 under Section 14 of the SARFAESI Act, the Kotak Mahindra Bank Limited has taken steps for recovery of the mortgaged asset. The petitioners claim to be pre-mortgage sub-lessees. It has been submitted that the subject property is under the control of the Official Liquidator and the bank cannot take possession of the property without formally impleading the Official Liquidator in the SARFAESI proceeding.

2. It has been contended that the initial application under Section 14 of the SARFAESI Act filed by the bank stood dismissed by the Magistrate vide order dated 17th January 2024 and after passing the said order the Magistrate became functus officio. The Magistrate thereafter again took up the matter for consideration and passed order for taking physical possession of the secured asset.
3. It has been submitted that fraud has been played on the Court by suppression of material facts. The application made by the bank never disclosed the proceeding before the National Company Law Tribunal.
4. Prayer has been made to set aside the order passed by the Learned Magistrate and restrain the bank from proceeding any further to the order dated 30th September, 2024.
5. Learned advocate representing the bank raises a preliminary objection with regard to the maintainability of the writ petition. It has been submitted that in usual course of events, the petitioner ought to have approached the Debts Recovery Tribunal and not the High Court under Article 226 of the Constitution. It has been submitted that the petitioners are post mortgage sub-lessees.
6. The order dated 25th June 2024 passed by a coordinate Bench of this Court in WPO/422/2024 in the matter of Kotak Mahindra Bank Limited v. The State of West Bengal & Others has been relied upon. On a perusal of the said order, it appears that the Court was pleased to set aside the order passed by the Learned Magistrate on 17th January, 2024 and directed the

Learned Chief Judicial Magistrate to re-hear the application and dispose of the same within three months. The Official Liquidator was directed to be called for clearing any doubt or confusion.

7. The Learned Magistrate heard the matter afresh and passed order on 30th September, 2024. The bank is taking steps in pursuance thereto.
8. Upon hearing the submissions on behalf of both the parties and on perusal of the documents placed before this Court, it appears that there are several disputed questions of facts involved in the present writ petition. The date of the mortgage, the date of the lease/sub-lease, the details placed before the Learned Chief Judicial Magistrate at the time of filing the application under Section 14 of the SARFAESI Act etc., are all disputed. The provisions of the Insolvency and Bankruptcy Code have been relied upon. The writ court would not be the competent forum to adjudicate such disputed issues.
9. The SARFAESI Act prescribes remedy to persons aggrieved by the measures taken by the secured creditor under Section 13 (4) of the Act to approach the Debts Recovery Tribunal. The petitioners are aggrieved by the steps taken by the bank for recovery of its dues.
10. The instant writ petition is disposed of by observing that it will be open for the petitioners to approach the Debts Recovery Tribunal for relief, if so advised. If the petitioners approach the Tribunal, then endeavour shall be taken by the Tribunal to consider their application in accordance with law at the earliest.

11. WPO/178/2025 is disposed of.
12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(AMRITA SINHA, J.)

S. Kumar / R.D. Barua