OD-15

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

APO/43/2025
IA No.GA/1/2025

BANI SINGH.

-VERSUS-

IDBI BANK LIMITED AND ORS.

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

For the Appellant	:	*Mr. Rupak Ghosh, Adv.* *Mr. Debdut Mukherjee, Adv.* *Ms. Nairanjana Ghosh, Adv.*
For the KMC	:	*Mr. Biswajit Mukherjee, Adv.* *Ms. Manisha Nath, Adv.*
For the IDBI Bank	:	*Ms. Soni Ojha, Adv.*
For the RBI	:	*Mr. D. K. Kundu, Adv.* *Mr. Arjun Basu, Adv.*

HEARING C0NCLUDED ON : 16.09.2025
DELIVERED ON : 16.09.2025

DEBANGSU BASAK, J.:-

1. Appeal is directed against an order dated January 16, 2025 passed in WPO/1229/2023.

2. Appeal is at the behest of the writ petitioner.

3. By the impugned order the learned Single Judge dismissed the writ petition after noticing that IDBI Bank proceeded under the provisions of

SARFAESI Act, 2002 and that there is a statutory alternative remedy available to the appellant.

4. Learned advocate appearing for the appellant submits that, the appellant is neither a borrower nor a guarantor of IDBI Bank. He draws the attention of the Court to the title documents of appellant. He submits that, the title deed stands in favour of the appellant. The registered title deeds are such that the borrower cannot claim title over the immovable property concerned.

5. Learned advocate appearing for the appellant submits that, by reason of the registered title deed as standing today, the property cannot be said to be validly mortgaged with IDBI Bank. Therefore, the initiation of proceeding under the SARFAESI Act, 2002 as against the immovable property is concerned is wholly without jurisdiction, bad in law and, therefore, required to be interfered with under Article 226 of the Constitution of India.

6. Learned advocate appearing for the appellant submits that, appellant did not receive any notice under Section 13(2) of the Act of 2002. The appellant is remediless so far as the steps taken under the 2002 Act in relation to the immovable property is concerned. He submits that, as on date there would be an issue of limitation in approaching the Debts Recovery Tribunal in the event the appellant is required to approach the same under the Act of 2002.

7. In support of the contention that, where the proceeding under the SARFAESI Act, 2002 is wholly without jurisdiction, a writ Court can intervene, learned advocate appearing for the appellant relies on **(2011)**

1 CHN 10 (Debasree Das vs. State of West Bengal & Ors.). He relies on **(2023) 17 SCC 311 (South Indian Bank Ltd. & Ors. vs. Naveen Mathew Philip & Anr.)** for the proposition that a writ petition is maintainable where proceedings are wholly without jurisdiction.

8. Learned advocate appearing for the Bank submits that, there is a valid mortgage created in respect of the immovable property concerned by the deposit of title deeds. She submits that since, the appellant possessed a statutory alternative remedy under the SARFAESI Act, 2002, writ petition was rightly held to be not maintainable. In support of her contention that the writ petition is not maintainable, learned advocate appearing for the Bank relies upon **(2023) 14 SCC 159 (G. Vikram Kumar vs. State Bank of Hyderabad & Ors.).**

9. In the facts and circumstances of the present case, admittedly provisions of the SARFAESI Act, 2002 were invoked for the purpose of proceeding as against the immovable property concerned. Appellant before us claims higher and better title than the mortgagor of such immovable property. By reason of such higher and better title, appellant's claim that the proceedings under the SARFAESI Act, 2002 are not maintainable in relation to the immovable property concerned.

10. At the very least, there are disputed questions of facts and law involved as to who possesses higher and better right in respect of the immovable property concerned. It is the claim of the appellant that, the appellant possesses higher and better right than the borrower. The bank claims otherwise. The bank claims valid mortgage by deposit of title deed in respect of the immovable property. Purely on the anvil of disputed

question of facts and law and involved on the issue as to the title to the immovable property concerned, a writ Court should not intervene.

11. There is another dimension to the entire controversy involved in the present case. As noted above, proceedings under SARFAESI Act, 2002 were initiated in respect of the immovable property concerned by the bank. It is not the case of the appellant that, IDBI Bank which initiated the SARFAESI proceeding in respect of the immovable property concerned cannot invoke the provisions of such Act. IDBI Bank is otherwise authorised to invoke the provisions of the SARFAESI Act.

12. Issue is whether the IDBI Bank validly invoked SARFAESI Act, in respect of the property concerned or not. With due respect, such an issue can be adequately considered and decided upon by Debts Recovery Tribunal under the provisions of Section 17 of the 2002 Act.

13. In the facts and circumstances of the present case, we cannot say that the appellant is not entitled to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

14. Debasree Das *(supra)* is a decision of a Division Bench of this Hon'ble Court. Subsequent to Debasree Das (Supra) the Supreme Court in both South Indian Bank Limited and Ors. *(supra)* as well as G.Vikram Kumar *(supra)* held that a writ petition is not maintainable when there are statutory alternative remedies available particularly when provisions of the SARFAESI Act are invoked.

15. In South Indian Bank & Ors. *(supra)* the Supreme Court noted that a writ petition is maintainable notwithstanding the availability of statutory alternative remedy. It considered an earlier decision and held that, there

are four exceptions to the rule of alternative remedy, namely, a writ petition is filed for infringement of fundamental rights, or, that there is a violation of principles of natural justice or, order or proceeding are wholly without jurisdiction or, the vires of the legislation is under challenge. In the facts and circumstances of the present case, as noted above, we are not in a position to say that the invocation of the SARFAESI Act by IDBI Bank as against the immovable property concerned is wholly without jurisdiction.

16. In G. Vikram Kumar *(supra)* the Supreme Court held that a writ petition assailing an e-auction notice was not maintainable in view of the availability of the alternative remedy of appeal under Section 17 of the SARFAESI Act.

17. In the facts and circumstances of the present case, since the appellant possesses a statutory alternative remedy under the SARFAESI Act and since the learned Single Judge exercised discretion in not admitting the writ petition, we find no ground to interfere in this appeal.

18. Accordingly, APO/43/2025 along with the connected application are dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

19. I agree.

(MD. SHABBAR RASHIDI, J.)

A/s.