

OD-5

ORDER SHEET

WPO No.510 of 2025
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

TARAK NATH SHAW & ANR.
VS
THE STATE OF WEST BENGAL & ORS.

BEFORE
THE HON'BLE JUSTICE AMRITA SINHA
Date: 25th July, 2025.

Appearance :

Mr. Sutanu Chakrabarti, Adv.
Mr. Subhendu Sarkar, Adv.
...for Petitioners.

Ms. Jhuma Chakraborty, Adv.
...for the State.

Mr. Ajit Kumar Mishra, Adv.
Mr. Suprovat Banerjee, Adv.
Mr. Abhishek Dey, Adv.
...for Respondent no.6.

1. None appears on behalf of the bank.
2. Due to inadvertence the names of learned advocates for the bank have been recorded in the order dated 16th July, 2025 although none appeared on behalf of the bank on that day. Let the names of the advocates appearing for the bank be treated as deleted from the order dated 16th July, 2025.
3. The petitioner claims to be a tenant of a property in respect of which order has been passed under the provisions of the SARFAESI Act in favour of the bank for obtaining possession on account of non payment of the loan amount.
4. The sheet anchor of the petitioner's submission is that the petitioner is a pre mortgage tenant. The bank obtained order under Section 14 of the SARFAESI Act completely suppressing the fact of tenancy.

5. Prayer has been made to set aside any step taken by the bank to oust the petitioner from the tenanted premises without taking due recourse of law.
6. The landlord admits the petitioner as pre mortgage tenant. The loan agreement has been produced before this Court wherein the fact of tenancy is mentioned.
7. Learned advocate representing the landlord submits that an application under Section 17 of the Act is pending consideration before the Debts Recovery Tribunal and an interlocutory application will be filed by the landlord before the Tribunal challenging the order passed by the Magistrate under Section 14 of the Act.
8. Section 17(4A) of the SARFAESI Act lays down the procedure for examining the issue of tenancy by the Debts Recovery Tribunal.
9. Upon hearing the submissions made on behalf of all the parties, it appears that, admittedly, an application under Section 17 of the SARFAESI Act at the instance of the landlord is sub-judice before the Tribunal. The petitioner claims to be a tenant under the said landlord. The petitioner claims to have documents to prove that he is a pre mortgage tenant.
10. It will be open for the petitioner to approach the Tribunal for necessary reliefs. In the event the petitioner makes an application, the Tribunal shall endeavour to decide the same at the earliest, preferably prior to the execution of the order under Section 14 of the SARFAESI Act.
11. The writ petition stands disposed of.

12. As the writ petition is disposed of without calling for any affidavit, the allegations made therein are deemed not to have been admitted by the respondents.
13. Urgent photostat certified copy of this order be supplied to the parties, if applied for, upon compliance of all legal formalities.

(AMRITA SINHA, J.)

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