Sl. No. 4

In the High Court at Calcutta

Constitutional Writ Jurisdiction

APPELLATE SIDE

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 930 of 2026

Noorul Hasan

Vs.

Canara Bank & Ors.

For the Petitioner :	Mr. Swarup Banerjee Mr. H. C. Yadav Mr. Arindom Chatterjee Mr. Subham Biswas.
For the Respondent Nos. 1 & 2 : [Canara Bank]	Ms. Sreemoyee Mitra.
Heard On :	08.10.2026
Judgment on :	**08.10.2026**

Partha Sarathi Chatterjee, J.:-

1. An auction purchaser has invoked the extra-ordinary jurisdiction of this Court through the present writ petition, inter alia, seeking a direction upon the respondents/Canara Bank (hereinafter referred to as "the Bank") to hand over physical possession of and/or execute and register the Deed of Conveyance in

favour of the petitioner in respect of the secured asset, being a homestead land measuring about 2 cottahs and 10 chittaks, comprised in C.S. Plot No. 303(P), Mouza: Nonadanga, J.L. No. 10, P.S. Tiljala, District 24-Parganas (South), pursuant to and in terms of the sale certificate dated 18th May, 2024. In the alternative, the petitioner has prayed for refund of the entire bid amount of Rs.98,10,000/-, together with interest thereon at the rate of 12% per annum.

2. Succinctly stated, the brief facts which led to the institution of the instant writ petition are that, upon the borrower committing default in repayment of the loan, the secured creditor, namely, the Bank herein, put the secured asset to sale by way of an e-auction held on 29th April, 2024. The petitioner participated in the said auction and, having emerged as the successful bidder, was declared the purchaser of the property in question. The petitioner duly deposited the entire bid amount within the time stipulated in the Notice Inviting Tender (for short, "NIT"), whereupon the Bank issued a sale certificate in his favour in respect of the said property on 18th May, 2024. Despite issuance of the sale certificate, the Bank neither handed over physical possession of the property to the petitioner nor executed the Deed of Conveyance in his favour.

3. Subsequently, one person, claiming to be a developer, instituted a civil suit being Title Suit No. 589 of 2025 before the learned Civil Judge (Junior Division), 1st Court at Alipore, inter alia, contending that he had entered into a development agreement with the borrower in respect of the property in question. The Bank was impleaded as one of the defendants in the said suit. In the said suit, an ex parte interim order was passed on 16th April, 2025 restraining the defendants

therein from creating any third-party interest in respect of the property in question. It is in the aforesaid circumstances that the petitioner has been constrained to approach this Court by way of the present writ petition.

4. Mr. Banerjee, learned Advocate appearing for the petitioner, submits that the civil suit instituted in respect of the property in question may take considerable time to attain finality and that the petitioner, being a bona fide auction purchaser, cannot be compelled to wait indefinitely for the conclusion of the said proceeding. He, accordingly, prays for a direction upon the Bank to treat the sale as cancelled and refund the entire bid amount paid by the petitioner, together with interest accrued thereon.

5. In rebuttal, Ms. Mitra, learned Advocate appearing for the respondent nos. 1 and 2 (Canara Bank), submits that the Bank could not have anticipated that litigation of such nature would arise in respect of the property in question. She further submits that the Bank has taken all necessary steps for bringing the said civil proceeding to an end. It is further submitted that, initially, a civil revisional application was preferred challenging the interim order passed in the said suit. However, the said civil revisional application, being C.O. 3140 of 2026, was disposed of by granting liberty to the Bank to prefer an appeal against the ex parte interim order under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (for short, “CPC”).

6. Ms. Mitra further submits that, as the Court having jurisdiction to entertain the appeal was not in session, the Miscellaneous Appeal could not be preferred as yet. She submits that the Bank has also filed an application under Order VII Rule 11 of

the CPC seeking rejection of the plaint, principally on the ground that, in view of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act"), the civil Court lacks jurisdiction to entertain the suit. The said application, however, is still pending adjudication. She further submits that the Bank has also preferred a civil revisional application seeking a direction upon the learned Court below for expeditious disposal of the said application under Order VII Rule 11 of the CPC, which has been registered as C.O. 3461 of 2026. She expresses hope that the civil proceeding would attain finality shortly. Referring to the sale certificate, she submits that the same expressly recorded that the Bank was in symbolic possession of the secured asset. She, therefore, contends that the petitioner participated in the auction process with full knowledge of the nature of the possession held by the Bank in respect of the secured asset.

7. In reply, Mr. Banerjee submits that the order which may be passed on the application under Order VII Rule 11 of the CPC may itself be assailed in a further proceeding and the matter may, in the course of such litigation, travel even up to the Hon'ble Supreme Court. According to him, a bona fide auction purchaser cannot be compelled to wait indefinitely for the civil proceeding to attain finality. He further submits that, in a similar situation, a Coordinate Bench of this Court, in *K.D. Fabrics Pvt. Ltd. &Anr. vs. State Bank of India & Ors.*, reported in W.P. No. 1125 of 2014, by an order dated 4th December, 2014, directed the secured creditor to refund the auction money to the purchaser together with interest thereon. In support of his contention, he places reliance upon the decision of the Hon'ble Division Bench of the High Court at Hyderabad, reported in 2018 SCC

OnLineHyd 196 (*Mr. Mandava Krishna Chaitanya v. UCO Bank, Asset Management Branch)*, wherein, taking note of the inability of the Bank to hand over physical possession of the secured asset to the auction purchaser and upon consideration of the decisions rendered by various Hon'ble High Courts on the issue, the Court directed the Bank to refund the entire bid amount to the auction purchaser together with interest thereon.

8. Heard the learned Advocate appearing for both the parties and perused the materials on record.

9. Undisputedly, the e-auction was held on 29th April, 2024 and the sale certificate was issued in favour of the petitioner on 18th May, 2024. Thereafter, on 13th December, 2024, the secured creditor obtained an order under Section 14 of the SARFAESI Act from the learned Chief Judicial Magistrate, South 24-Parganas at Alipore. Despite the same, physical possession of the secured asset was not handed over to the auction purchaser. Subsequently, the secured creditor once again approached the learned Chief Judicial Magistrate, South 24-Parganas at Alipore under Section 14 of the SARFAESI Act and obtained a further order on 29th March, 2025. Even thereafter, physical possession of the property was not handed over to the auction purchaser. It is also significant that the Bank did not lodge any caveat before the Court having territorial jurisdiction over the property in question. The Bank has, furthermore, failed to furnish any satisfactory explanation or indicate any cogent reason for not taking effective steps to hand over physical possession of the property to the auction purchaser after issuance of the sale certificate.

10. As noticed earlier, presently, a civil suit being T.S. Title Suit No. 589 of 2025 is pending before the learned Civil Judge (Junior Division), 1st Court at Alipore and Bank has been brought in the array of the defendants in that suit. An ex parte interim order has been passed restraining the defendants therein from creating any third party in the property. The Bank has filed an application under Or. VII Rule 11 C.P.C. and the same is pending for consideration. The Bank has not even filed the Misc. Appeal against the interim order. The civil revisional application preferred by the Bank for expeditious disposal of the application under Or. VII Rule 11 CPC is also pending.

11. In such conspectus, the petitioner has expressed an apprehension that, even if the plaint is rejected upon allowing the application preferred by the secured creditor under Order VII Rule 11 of the CPC, such order may itself be assailed before the appropriate forum in a further proceeding, and the matter may thereafter travel to yet another forum. The apprehension expressed by the petitioner, therefore, that the civil litigation may take years to attain finality, cannot be lightly brushed aside. The question that, thus, falls for consideration is whether, in such circumstances, it would be justified to compel the auction purchaser to wait until the civil litigation attains finality, which may take considerable time, merely because he had participated in the auction process with knowledge that the Bank was in symbolic possession of the secured asset.

12. The expressions “as is where is” and “as is what is” cannot, in my view, be construed as conferring an unfettered protection upon a secured creditor in all circumstances. A secured creditor, while proceeding to sell a secured asset by way of auction, is expected to exercise due diligence in respect of the property

proposed to be sold. The said expressions cannot be understood to mean that an auction purchaser, having paid the entire consideration and obtained a sale certificate, has also agreed to remain indefinitely exposed to litigation and uncertainty in relation to the property or to forgo the fruits of the concluded auction sale for an uncertain period.

13. In the present case, the petitioner participated in the auction process with knowledge that the Bank was in symbolic possession of the secured asset. Such knowledge, however, cannot reasonably be construed as an acceptance on the part of the petitioner that, notwithstanding payment of the entire bid amount and issuance of the sale certificate, he would remain deprived of physical possession and be compelled to await the culmination of a civil litigation instituted subsequent to the auction sale. The Bank has admittedly been unable to hand over physical possession to the petitioner despite having obtained orders under Section 14 of the SARFAESI Act on two occasions. In the meantime, a civil suit has been instituted by a third party claiming an interest in the property on the basis of an alleged development agreement with the borrower, and an interim order has been passed therein restraining the defendants from creating any third-party interest in the property. In such circumstances, the petitioner, being a bona fide auction purchaser who has parted with the entire consideration and obtained a sale certificate, cannot be exposed to an indefinite period of uncertainty and litigation merely for the reason that he was aware of the symbolic possession of the Bank at the time of the auction.

14. Having regard to the peculiar facts and circumstances of the case and the balance of equities, I am of the view that the petitioner ought not to be compelled to await

the uncertain culmination of the civil litigation. It would, therefore, be just and equitable to bring the transaction to an end and direct the Bank to refund the entire bid amount to the petitioner together with reasonable interest thereon, without expressing any opinion on the rights and contentions of the parties in the pending civil suit.

15. However, although the transaction in question is essentially commercial in nature, having regard to the fact that the petitioner participated in the auction process with knowledge that the secured creditor was in symbolic possession of the secured asset and also taking into consideration that the Bank has been diligently pursuing the remedies available to it in the civil proceeding, I am of the view that interest at the rate of 8% per annum would meet the ends of justice.

16. Accordingly, the Bank is directed to refund to the petitioner the bid amount of Rs.98,10,000/-, together with interest thereon at the rate of 8% per annum, calculated from 17th May, 2024, being the date on which the petitioner deposited the balance bid amount, until the date of actual payment. The aforesaid payment shall be made by the Bank within a period of four weeks from the date of receipt of a copy of this order.

17. It is made clear that this order has been passed having regard to the peculiar facts and circumstances of the present case and shall not be treated as a precedent in any other case.

18. With these observations and directions, WPA 930 of 2026 is disposed of.

19. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall be deemed to have not been admitted by the respondents.

20. There shall be no order as to costs.

21. Let urgent Photostat certified copy of this order be made available to the parties, if applied for, upon compliance of usual formalities.

(Partha Sarathi Chatterjee, J.)

Akd/pa