

05.05.2026
M/L No.15
Court No.12
(gc)

MAT 213 of 2026
CAN 1 of 2026
In
WPA 25544 of 2025

Kanta Bauri
Vs.
Dharma Ruidas & Ors.

Mr. Pinaki Ranjan Chakraborti
...for the Appellant.
Mr. Uttiya Ray,
Mr. Atish Santra
...for the Respondent No.1.
Ms. Parna Roy Choudhury,
Ms. Payel Ghosh,
Ms. Trisa Chanda
...for the Respondent Bank.

1. Liberty is given to correct the cause title by incorporating the respondent no.2 in the writ petition as the respondent no.2A in the memorandum of appeal and also the stay application. Such defect be corrected here and now.
2. This is the tenant's appeal from an order dated January 30, 2026 passed in WPA 25544 of 2025. The auction purchaser was the writ petitioner. It was contended by the writ petitioner before the learned Single Judge that, although more than Rs.32 lakhs had been invested by the auction purchaser while purchasing the auctioned property, the appellant was creating multiple hurdles and the bank failed to hand over possession of the property to the auction purchaser.

3. The learned Court recorded that an application under Section 17 of the SARFAESI Act was pending adjudication since 2024, but the same could not impede the right of the auction purchaser from taking the property, as there was no order of stay of the SARFAESI proceeding.
4. Mr. Chakraborti, learned Advocate for the appellant submits that the right of a tenant to initiate proceedings under the SARFAESI Act, has been protected by the legislature, by incorporating Section 17(4A) therein, by an amendment of 2016. Thus, the learned Judge failed to take into consideration such legal aspect and directed the bank to handover possession to the auction purchaser. Police help was also allowed to be rendered. The order suffered from perversity as the same was passed in ignorance of law.
5. Mr. Chakraborti draws our attention to the writ petition and the cause title thereof, in support of the contention that both the bank and the auction purchaser were all along aware of the fact that the property was tenanted and that the appellant was in possession.
6. The learned Advocate for the bank submits that, possession has been handed over to the auction purchaser. It is further submitted that, the bank was not aware that the property was tenanted. The

property was in possession of the borrower and the order has been complied with. The deed of conveyance has been registered.

7. Mr. Ray, learned Advocate for the auction purchaser submits that incorporation of the name of the appellant in the writ petition was necessary, as the bank had informed the auction purchaser that the appellant had moved the Debts Recovery Tribunal by initiating proceedings under Section 17 of the SARFAESI Act. However, mere addition of the appellant as a party to the writ petition, did not amount to acceptance of the fact that the appellant was actually a tenant as per the legal definition.
8. It is specifically contended by both the respondents that the tenant was set up by the borrower at the fag end of the proceeding, only to deprive the bank from recovering its legitimate dues by sale of the property.
9. Mr. Chakraborti has not been able to show us whether any application under Section 17(4A) of the SARFAESI Act is pending before the Tribunal. It is recorded by His Lordship that, an application under Section 17 is pending before the Tribunal. However, we are unable to understand the purport and meaning of the application which has been filed by the appellant.

10. In the event the appellant is successful before the Debts Recovery Tribunal by proving his tenancy, by taking steps under Section 17(4A) of the said Act, as a natural consequence thereof, restoration of the tenanted portion to the appellant will be made, upon the tribunal ordering in favour thereof.
11. The order impugned is not interfered with, but is clarified to the above extent.
12. Accordingly, the appeal and the connected application are disposed of.
13. There shall be no order as to costs.
14. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)