IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:
The Hon'ble Justice Ravi Krishan Kapur

WPA No. 4060 of 2026

M/s. Kirti Commosales LLP & Ors.
Vs.
Canara Bank & Ors.

For the petitioner : Mr. Arindam Banerjee, Senior Advocate.
Mr. Vikas Baisya, Adv.
Ms. Ranjana Seal, Adv.
Mr. Anshunath Chakraborty, Adv.

For the State : Mr. Jishnu Chowdhury, Senior Advocate.
Mr. Farooq Ali, Adv.
Mr. Faizan Md. Zafar, Adv.
Mr. Andolon Sarkar, Adv.

Heard on : 8 April 2026

Judgment on : 8 April 2026

**Ravi Krishan Kapur, J.:**

1. This is a writ petition seeking quashing of a letter of rejection dated 20 January 2026 and for consequential reliefs including refund of the entire sale consideration paid by the auction petitioner alongwith interest.
2. Briefly, pursuant to credit facilities granted by the respondent no.1 bank in favour of the private respondent no 7, an equitable mortgage had been created as security of an immoveable property (a residential flat measuring approximately 4050 sq. ft. on the entire fourth floor of premises No. 237, N. S. C. Bose Road, P.O. Naktala, P.S. Jadavpur morefully described in the petition). Subsequently, the respondent no.7 defaulted and failed to make payment of the stipulated amounts. In such circumstances, the respondent

no.1 bank was compelled to take possession of the secured asset and conduct an e-auction under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). Ultimately, the petitioner was declared as the successful purchaser and after payment of the entire consideration was put into possession of the above premises. The respondent no.1 bank had on 26 February 2024 issued a Certificate of Sale in favour of the petitioner. Later, the Certificate of Sale was also duly registered on 8 April 2024.

3. On behalf of the petitioner, it is submitted that they are not aggrieved by any action or inaction under the SARFAESI Act. There is a pure question of law which is raised in this petition inasmuch as there has been failure to refund the entire consideration which has passed under a void sale. It is further submitted that the sale conducted by the respondent bank is a nullity since the bank had no title to conduct such sale and there could have been no "security interest" under the SARFAESI Act. The property belonged to a third party and the provisions of the SARFAESI Act were inapplicable. In such circumstances, the present writ petition does not pertain to the niceties or any infraction of the SARFAESI Act. There is a serious infirmity in the respondent bank conducting such sale and based on the principles of restitution, the petitioner is entitled to the entire sale consideration. In support of such contentions, the petitioner relies on the following cases: *Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and Ors. 2023 SCC OnLine SC 95, Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1, State of U.P vs Mohammad Nooh , 1957 SCC Online*

*SC 21 and Mr. Mandava Krishna Chaitanya v UCO Bank, Asset Management Branch, 2018 SCC Online Hyd 196.*

4. On behalf of the respondent no.1 bank, it is submitted that the petitioner has a statutory alternative remedy under section 17 of the SARFAESI Act and the writ petition is liable to be dismissed. All the objections raised by the petitioner are exclusively triable by the Debts Recovery Tribunal under the SARFAESI Act. There are no exceptions warranting this Court to entertain the writ petition. Insofar as the merits of the case are concerned, there is collusion and conspiracy by and between the petitioner and the respondent no. 7 borrower. The entire ill-design of the petitioner is to nullify the sale and unnecessarily procrastinate the recovery proceedings. The petitioner and the respondent no. 8 are in collusion and connivance and the only aim is to thwart a valid sale. The petitioner has also challenged the sale after a lapse of two years. In support of such contentions, reliance is placed on the decisions in *United Bank of India vs. Satyawati Tondon and Ors. (2010) 8 SCC 110, Agarwal Tracom Pvt. Ltd. vs. Punjab National Bank and Ors. (2018) 1 SCC 626,* and *K.C Ninan vs Kerala State Electricity (Board) 2023 14 SCC 431.*
5. There have been no submissions made either on behalf of the borrower or the ostensible owner being the respondent nos. 7 and 8 respectively.
6. The sale which is the subject matter of this proceeding has been conducted by the respondent no.1 bank under the SARFAESI Act. A Sale Certificate has also been issued in terms of the SARFAESI Act and the same has been duly registered. It is only after a period of two years that the petitioner has now

challenged the sale on the ground that respondent no.1 bank could have had no security interest in the property.

7. There is no quarrel with the proposition that the Writ Court may exercise jurisdiction even in cases where there is an alternative efficacious remedy. In fact, the concept of an alternative remedy pre-supposes that the Writ Court has authority to entertain the matter. To this extent, a writ petition is maintainable. Nevertheless, a Writ Court would be loath to exercise its authority unless it falls within one of the exceptional circumstances. This is the self-restraint which is required to be exercised by the Writ Court in directing a party to pursue the statutory remedy before an efficacious alternative forum. In *Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1*, it has been held as follows:

> *"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose.*
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> *15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

8. Similarly, in *Godrej Sara Lee Ltd. v. The Excise And Taxation Officer-Cum-Assessing Authority & Ors (Supra)*, it has been held as follows:

*"4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.*

***5.*** *A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in [1958] SCR 595 (State of Uttar Pradesh v. Mohammad Nooh) had the occasion to observe as follows :*

*"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only*

*where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.. . ."*

9. In *Godrej Sara Lee Ltd.* (Supra), the Hon'ble Supreme Court was considering whether the particular re-opening of the assessments for the years 03-04 and 04-05 was in excess of the jurisdiction conferred by law. The competence of the revisional authority in exercising *suo moto* powers being a pure question of law was in issue. It was in this background, that despite an alternative remedy, the legality and impropriety of those proceedings were gone into. There was a pure question of law and a serious question of jurisdiction which fell for consideration.

10. In *Union Bank of India vs. Satyawati Tandon and Others* (*Supra*) it has been held as follows:-

*"42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act Act are both expeditious and effective.*

*43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the*

*Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*

*45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."*

11. Similarly, in *Agarwal Tracom Private Limited vs. Punjab National Bank* (Supra) it has been held as follows:

*27. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "provisions of this Act and the Rules made thereunder" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13(4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Sections 17(2), (3) and (4) to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?*

*29. In our view, therefore, the expression "any of the measures referred to in Section 13(4) taken by secured creditor or his authorised officer" in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section 13(4).*

*30. The auction-purchaser (appellant herein) is one such person, who is aggrieved by the action of the secured creditor in forfeiting their money. The appellant, therefore, falls within the expression "any person" as specified under Section 17(1) and hence is entitled to challenge the*

> *action of the secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the SARFAESI Act Act.*

12. In *Dimension Realtors Private Limited vs. District Magistrate, 2015 SCC OnLine Cal 7463*, after an exhaustive examination of sections 13, 14 and 17 of the SARFAESI Act, a Co-ordinate Bench had culled out the following principles:

> *(i) The process under Section 14 of the Act is non-adjudicatory and administrative in nature. The appropriate magistrate has to ascertain whether the nine aspects referred to in the first proviso to Section 14(1) of the Act are covered by the declaration furnished in the affidavit filed by the authorised officer of the secured creditor. The magistrate cannot make any inquiry into the truth of the contents of the affidavit. The magistrate is not called upon to issue any notice to any person who is likely to be affected by any order passed or action taken under such provision. The magistrate should act promptly and ensure such assistance as may be proportionate to the requirement, but only upon checking that all nine clauses of the proviso are covered in the affidavit.*
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> *(ii) A petition under Article 226 of the Constitution against anything done or not done under Section 14 of the Act is maintainable; but such a petition should, ordinarily, not be received to be assessed on merits if filed by a person, other than the secured creditor, who claims to be affected or likely to be affected thereby. As a corollary, a petition under Article 226 of the Constitution can be entertained on merits against an order passed or any act done under Section 14 of the Act, if the complaint pertains to the lack of jurisdiction (primarily, on territorial considerations) or when the absurdity of that which is complained against is demonstrable. A further corollary would be that a secured creditor may maintain a petition under Article 226 of the Constitution on merits if the complaint is of lack of, or the inadequacy of, the assistance rendered under Section 14 of the Act.*
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> *(iii) Neither any order nor any assistance provided under Section 14 of the Act may be challenged by a borrower or any other person aggrieved thereby before any court or tribunal; but such person (other than a secured creditor) may apply under Section 17 of the Act in respect of the grievance by citing the secured creditor approaching a magistrate under Section 14 of the Act as a step taken in respect of a measure under Section 13(4) of the Act.*
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> *(iv) Any overt step taken by a secured creditor to actuate any of the measures under Section 13(4) of the Act would give rise to an immediate cause of action to a person who may be aggrieved thereby. Such aggrieved person may apply under Section 17 of the Act upon being aware of the overt step taken by the secured creditor, without having to wait for the completion of the relevant measure by the secured creditor. As to the nature of any order that may be passed on such application, whether immediately or otherwise, would depend on the facts of a particular case viewed in the context of the ultimate object of the Act to facilitate the access of the secured creditors to the secured assets*

> *without waiting for the completion of a process of adjudication. In assessing the desirability of passing an order, the tribunal will defer to the statutory command in Section 34 of the Act that "no injunction shall be granted by any … authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act" to ascertain whether the act complained of is within the entitlement of the secured creditor "in pursuance of any power conferred by or under this Act."*
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> *(v) Any person aggrieved by any measure taken by a secured creditor (where the commencement of the taking of the measure is upon an overt step being taken by the secured creditor in such direction after the Section 13(3A) stage is completed) may obtain, and be granted, if entitled on facts, the reliefs of repossession or restitution or damages by the appropriate tribunal without there being a distinction, in such regard, between a borrower as defined in the Act and other persons aggrieved who may apply under Section 17 thereof.*

13. In this background, on closer scrutiny of the facts of this case some of the questions raised in this writ petition would necessarily involve adjudication of disputed questions: (a) Whether the borrower had title over the property or not at the time of creating the security interest? (b) Whether the bank had title to the property or not? (c) Whether the sale conducted by the bank was valid or not? Whether the petitioner is entitled to restitution or not? (d) What is the true scope, purport and ambit of an "*as is where is basis*" sale? (e) Whether the petitioner is an alter ego or stooge of the respondent no. 7 borrower or not? Such questions of fact would necessarily require adjudication despite the petitioner making the facts appear as if they only involved a pure question of law. Even the case of shifting hands of conveyance jugglery or whether there has been good, proper and substantial conveyancing is mixed question of law and fact. In such circumstances, the facts of this case do not fall within any of the exceptions where the Writ Court should exercise its discretion in entertaining the petition

notwithstanding the statutory alternative remedy under section 17 of the SARFAESI Act.

14. Moreover, the sale was conducted on "*as is where is basis*". The phrase "*as is where is basis*" is not limited to the physical condition of the property but extends to the condition of the title of the property and the extent and state of whatsoever claims, rights and dues affect the property, unless stated otherwise. In other words, the implication of the expression is that every intending bidder is put on notice that the seller does not undertake any responsibility in respect of the property or any liability for payment of dues in respect thereof. The phrase postulates that the purchaser would be acquiring an asset with all its existing rights, obligations and liabilities. Thus, any prospective auction purchaser is put on notice of any liability hidden or otherwise where a sale is on conducted as is where is basis. It is a conscious and deliberate risk undertaken by any prospective auction purchaser. To add to this, is the legal doctrine of *Caveat Emptor* where it becomes the duty and obligation of every buyer to exercise due diligence when undertaking a sale [*K.C Ninan vs Kerala State Electricity (Board) (*Supra*) @paras 137-148*].

15. There is also the further question of delay as to why has the petitioner waited for a period of two years? The petitioner has been unable to provide any reason for the delay in approaching this Court after a period of two years since confirmation of the sale and registration of the Sale Certificate. This is an additional factor which requires to be examined.

16. In view of the clear mandate of section 17 of the Act and the nature of the factual disputes which arise for consideration it is abundantly clear that

there is a statutory alternative remedy available to the petitioner under section 17 of the SARFAESI Act. For the above reasons, the writ petition is dismissed.

17. It is made clear that there has been no adjudication on the merits of the case and all questions would be decided by the concerned Debts Recovery Tribunal having jurisdiction in case any such proceeding is filed. With the above directions, WP 4060 of 2026 stands dismissed.

18. It is to be remembered that the SARFAESI Act is a complete Code by itself and provides for expeditious recovery of dues arising out of loans granted by financial institutions. Interference in such matters has a deleterious effect. Loans by financial institutions are granted from public money generated at the expense of the tax payer. Such loans do not become the property of a person taking the loan but retains the character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment of loan also enures liquidity to facilitate loan to be blocked by frivolous litigation by those who can afford the same having been the recipient of the ill gotten gains. In such circumstances, Courts should be extremely careful in exercising any discretion in entertaining such writ petitions. The exercise of discretionary jurisdiction under Article 226 of the Constitution of India has to also depend on the conduct of the person seeking relief. Ordinarily, a debtor or bank dodger is not entitled to any discretionary relief under Article 226 of the Constitution of India. [*ITC Limited vs. Blue Coast Hotel Ltd. & Ors.* (2018) 15 SCC 99].

(Ravi Krishan Kapur, J.)