

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 13075 of 2026

Sushanta Madhab Chaki
Vs.
Bank of India & Ors.

Mr. Ratul Das
Ms. Bratati Pramanick
...For the petitioner

Mr. Shiv Mangal Singh
...For the respondent bank

Mrs. Indrani Chakraborty
Mr. Falguni Bandyapadhyay
...For the State

Mr. Sumitava Chakraborty
Mr. Shantanu Chakraborty
...For the respondent nos.6 & 7

1. The grievance of the petitioner is directed against a possession notice dated 21 May 2026 issued under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).
2. It is submitted on behalf of the petitioner that the petitioner is the owner of a flat situated in a three storied building at premises no. 248, Baghajatin Place, Kolkata-700086. It is also submitted on behalf of the petitioner that after construction of the flat, the landowner had fraudulently and in a clandestine manner mortgaged the land in favour of the bank. In such circumstances, any action

taken insofar as the flat is concerned is without the authority of law.

3. On behalf of the respondent bank it is submitted that the petitioner has an adequate efficacious statutory remedy in section 17 of the SARFAESI Act and the instant writ petition should not be entertained.
4. It is submitted on behalf of the private respondent bank that the mortgage which was created in favour of the respondent bank is only in respect of one flat and one garage.
5. In *United Bank of India vs. Satyawati Tondon* (2010) 8 SCC 110 and others 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 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.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority,

including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

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."

6. All the questions raised by the petitioner are within the exclusive jurisdiction of the Debts Recovery Tribunal. In view of the express statutory embargo under SARFAESI, there is no scope to entertain this writ petition.
7. It is also surprising that the petitioner has not filed any civil or criminal proceeding against the private respondent nos.6 and 7 who are the actual developer and owner of the land in question.
8. In view of the above, WPA 13075 of 2026 stands dismissed on the ground of maintainability.
9. It is made clear that there has been no expression on the merits of the case and all issues are left open for the concerned Debts Recovery Tribunal to decide in accordance with law.

(Ravi Krishan Kapur, J.)