

I.No.14.

Form No. J(2)

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Present: **The Hon'ble Justice Reetobroto Kumar Mitra**

**W.P.A.25447 of 2024
with
CAN 1 of 2025
with
CAN 2 of 2025**

**Maghesh Shaw & Ors.
Vs.
The State of West Bengal & Ors.**

For the petitioner	:	Mr. Subhankar Nag, Mr. Aritra Shankar Ray.
For the State	:	Mr. Amal Kr. Sen, Addl. Adv. General, Mr. Lal Mohan Basu.
For the Respondent No.3.	:	Mr. Aniruddha Chatterjee, Ld. Sr. Adv., Mr. Sarathi Das Gupta, Mr. Pratik Ghose, Mr. Avishek Roy Chowdhury.
For the Respondent No.13	:	Ms. Nandini Mitra.
Heard on	:	29.01.2026
Judgment dictated in open Court on	:	29.01.2026

Reetobroto Kumar Mitra, J.:-

1. The petitioners are students of various colleges under the umbrella of the respondent Nos.6, 7 and 13. The respondent No.4 is the defaulting

borrower against whom proceeding under the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the said Act), has been initiated by the respondent No.3 herein, an Asset Reconstruction Company.

2. The respondent No.4 has already filed a writ petition, which is pending adjudication before this Hon'ble Court and has also initiated proceedings under Section 17 of the said Act, in which several orders have been passed.

3. The facts leading to this writ petition are slightly checkered.

4. The respondent No.3 had obtained an order from the learned Additional Chief Judicial Magistrate, South 24-Paraganas, Alipore sometime in July and September, 2024. These orders was assailed by the respondent No.4 before the Debts Recovery Tribunal, which has *prima facie* upheld the orders and left the correctness of the orders to be decided along with the SARFAESI application filed by the respondent No.4. This order was made by the Debts Recovery Tribunal on September 5, 2024. This order has not been carried in appeal by any of the contesting parties.

5. On the ground of the petitioners well being as students of various colleges, the Additional Chief Judicial Magistrate, South 24-Paraganas, Alipore by an order of March 26, 2025 kept in abeyance the earlier orders passed by him, thereby delaying the entire process of taking possession of the mortgage property. It would not be out of place to mention here that the outstandings of the respondent No.4 are in excess of Rs.80 crores.

This is public money which has not been paid and from the facts urged and disclosed in this petition, looks unlikely to be paid.

6. The order of the learned Additional Chief Judicial Magistrate on March 26, 2025 has been challenged by the respondent No.3 herein in WPA 14564 of 2025. The primary ground of challenge is that while discharging a ministerial/administrative function, the authority under Section 14 of the said Act has not been vested with the power to review and consequentially to stay its own order.

7. The present objection by the students emanates from a primal fear that their educational pursuits and consequentially their careers may be severely disrupted in the event the respondent no.3 takes over possession of the premises and sells the same with the sole intention of recovery of the sum in excess of Rs.80 crores.

8. Mr. Chatterjee, learned Senior Advocate appearing for the respondent No.3 has raised three primary issues in respect of this petition. The issues may be summarized as under;

(a) There is an alternative, efficacious and statutory remedy available to the petitioners.

(b) The petitioners are merely an alter ego of the respondent No.4 and have been foisted with an ulterior motive and intent to completely derail the process of recovery public money.

(c) This petition is also an attempt to subvert the pending writ petition of the respondent No.3 herein.

9. Mr. Nag, learned Advocate appearing for the petitioner has replied to the aforesaid issues in the following manner;

- i) It is true that there is an alternative remedy, though it may not be efficacious. This, since a sum of Rs.50,000/- on account of court fees have to be paid, if the petitioners, all of whom are students were to initiate an action under Section 17 of the said Act, being the alternative remedy. This would be extremely onerous for the petitioners, being students. He has relied upon the decisions in the matters of ***Himmatlal Harilal Mehta Vs. State of Madhya Pradesh and others***, reported in ***(1954) 1 SCC 405*** and ***United Bank of India Vs. Satyawati Tondon and Others.***, reported in ***(2010) 8 SCC 110.***
- ii) It would also not be feasible for the petitioners to approach the Debts Recovery Tribunal, as the petitioners are really enforcing a class action. As the petitioners are espousing their right to education, the question of an alternative or efficacious remedy, even if germane, would be secondary. For such purpose, he has referred to the decisions of the Hon'ble Supreme Court of India in the matters of ***Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others***, reported in ***2023 SCC OnLine SC 95*** and ***PHR Invent Educational Society Vs. UCO Bank and Others***, reported in ***(2024) 6 SCC 579.***
- iii) To prove his *bona fide* and his distance from the principal borrower, the respondent No.4 herein, Mr. Nag has specifically submitted that the students are not concerned

with the process of recovery or repayment, since the same is an affair between the financial institution and the borrower and does not concern the students. The petitioners only concern is that in the event the respondent No.3 decides to take up the management of the colleges under the umbrella of the respondent No.4, the educational institutions should be permitted to continue with their duty of imparting education to the students, which includes the petitioners herein.

- iv) It is also his submission that possession cannot be taken by the respondent No.3, without taking over management of the educational institution affiliated to the respondent No.4.

10. I have heard the learned Counsel appearing for the parties and gone through the records as well as the decisions cited by the parties.

11. The primary issue of whether this writ petition is maintainable or not has to be addressed at the inception. It is a well accepted proposition that a Court exercising jurisdiction under Article 226 of the Constitution of India has plenary powers. The only fetters to such plenary power are balanced on both sides. The first, by way of self-imposed restriction that if an alternative and efficacious remedy is available, the litigant should first avail of it before knocking the doors of the Court exercising jurisdiction under Article 226 of the Constitution of India. At the same time, even if there is an alternative and efficacious remedy available, a litigant whose fundamental right is affected or may be affected, could not be pushed away merely because there is an alternative remedy and the Writ Courts have repeatedly interfered and upheld such rights of litigants.

12. In this case, since the students are espousing their cause only for the purpose of education, it would not be proper to send such students away on the ground that an alternative and efficacious remedy is available to them.

13. However, it cannot be said that the petitioners would be cast an onerous duty by paying a court fees of Rs.50,000/-.

14. I am in respectful agreement with the decisions of the Hon'ble Apex Court, reported in ***Himmatlal Harilal Mehta*** (supra) and ***United Bank of India*** (supra).

15. However, the issues may not be applicable to the instant case as nine (9) students to pay a sum of Rs.50,000/- would come to a meager amount each.

16. It is axiomatic that High Courts exercising jurisdiction under Article 226 of the Constitution of India have a discretion whether to entertain a writ petition or not. Such discretion depends on the facts of the case and the infraction of a right complained of by the petitioners.

17. In this particular case since the petitioners are apprehending an action by the respondent No.3 which could impede their right to education, I am inclined to entertain the instant writ petition.

18. Having said that, I find that any order passed in terms of the prayers made in the writ petition would amount to subverting the statutory jurisdiction vested with the Debts Recovery Tribunal. In fact, the orders challenged in this writ petition have already been upheld, at least at the *prima facie* stage and have been kept pending for final adjudication with the SARFAESI application filed by the principal borrower, the

respondent No.4 herein. Hence, the question of interfering, setting aside or cancelling the orders passed by the learned Additional Chief Judicial Magistrate, South 24-Paraganas, Alipore cannot be entertained in this writ petition.

19. The only factor that has weighed with this Court while passing the instant order is that the petitioners are students whose right to education ought to be protected. Such protection is the mandate and responsibility of the principal borrower, the respondent No.4 herein.

20. The right of possession of the premises is an issue pending adjudication before the Debts Recovery Tribunal and I find no reason to usurp such jurisdiction statutorily vested with the Tribunal at this stage.

21. It is, however, made clear that in the event, the respondent No.3 chooses to exercise its powers under Section 13 of the said Act or in terms of the order passed by the Additional Chief Judicial Magistrate, South 24-Paraganas, as one of the measures, it will be mandated upon them to continue with the management and administration of the colleges, without disturbing the students admitted thereat for the batches ending in the session 2026.

22. Any further action in this regard will be subject to the jurisdiction of the Debts Recovery Tribunal, which the petitioners are entitled to avail, if so advised.

23. Mr. Chatterjee, learned Senior Advocate appearing for the respondent No.3, Ms. Mitra, learned Advocate appearing for the respondent No.13 and Mr. Sen, learned Additional Advocate General with Mr. Basu, appearing for the State have all declined to file their affidavits in

opposition to the instant petition. Allegations on facts made in the petition are deemed to be denied.

24. With the aforestated direction, the writ petition and the connected applications being CAN 1 of 2025 and CAN 2 of 2025 are disposed of.

25. There shall be no order as to costs.

26. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(*Reetobroto Kumar Mitra, J.*)