07.10.2026
sl.12
Ct No. 446
tkm

WPA 28459 of 2026

Maity Enterprise & Ors.

Vs
Canara Bank & Ors.

Mr. Aniket Nanda
...for the petitioners

Mr. Dibasish Basu
Ms. Sneha Dutta
Mr. Purnendu Das
Mr. Chandrachur Lahiri
...for the State
Ms. Sreemoyee Mitra
...for the Bank

1. Affidavit of service as filed by the petitioner is taken on record.

2. The petitioner-borrower has invoked the extraordinary jurisdiction of this Court by filing the present writ petition, seeking, inter alia, an order directing respondent nos. 1 to 4 herein not to dispossess the petitioner from the secured asset.

3. Mr. Nanda, learned Advocate appearing for the petitioners, submits that the petitioners-borrowers have challenged the measure taken by the secured creditor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the "SARFAESI Act") by preferring an application under section 17 of the SARFAESI Act before the Debt Recovery Tribunal. However, the tribunal declined to accept such

challenge and dismissed the said application. Aggrieved thereby, the borrower preferred an appeal before the Debt Recovery Appellate Tribunal. However, due to certain reasons beyond the control of the petitioners, the petitioners could not appear on the date, the appeal was taken up for hearing and the appeal was dismissed for default. He submits that the petitioners have filed an application for restoration of the said appeal along with an application for condonation of delay. However, during the pendency of these two applications, the secured creditor has taken steps to take over the physical possession of the secured asset. Given such facts and circumstances, the petitioners have been constrained to prefer the present writ petition.

4. He submits unless and until an order is passed restraining the respondents from taking any steps to dispossess the petitioners from the property in question, the petitioners will be highly prejudiced and suffer irreversible injury.

5. Ms. Mitra, learned Advocate appearing for the respondent Bank submits that in the given case, auction of the property in question, has been held, sale certificate has also been issued in favour of the auction purchaser and the bank is going to invoke section 14 of the SARFAESI Act.

6. She submits that the borrower has even lost his right to redeem the mortgage. In support of her contention, she cites two decisions reported in 2025 INSC 1137 (M

Rajendran & Ors. Vs. M/s. KPK Oils and Protiens India Pvt. Ltd & Ors.) and (2023) 13 SCR 53 (CELIR LLP vs. Bafna Motors (Mumbai) Pvt. Ltd. & Ors.). She produces certain documents including a copy of the order passed in appeal being **DY 56 of 2026** on 6th February by the Debt Recovery Appellate Tribunal at Kolkata and submits that not only on the date when the appeal was taken up for hearing but previously also on 5th February 2026, the petitioners remained unrepresented before the Debt Recovery Appellate Tribunal. She submits that taking note of such conduct of the petitioners, the appeal was dismissed for default. She submits even there was inordinate delay in preferring the application for restoration and accordingly the restoration application was filed along with an application for condonation of delay. The documents, as placed on behalf of the secured creditor are taken on record.

7. Ms. Dutta, learned advocate appearing for the State, submits that the secured creditor has already approached the concerned District Magistrate by filing an application under Section 14 of the Act, pursuant to which an order has also been passed and a person has been deputed to take over physical possession of the secured asset. She further submits that the requisite cost towards police assistance has already been deposited and that physical possession of the secured asset is likely to be taken over shortly.

8. Heard learned advocates appearing for the respective parties and perused the materials on record.

9. Admittedly, the petitioners preferred an appeal challenging the order dismissing their application under Section 17 of the Act, which was registered as D.Y. 56 of 2026. On two occasions, the petitioners, who were the appellants therein, remained unrepresented, as a result whereof the appeal was dismissed for default. Thereafter, an application for restoration was filed along with an application for condonation of delay, which itself indicates that the restoration application was filed beyond the prescribed period. Thus, the petitioners have also failed to act with due diligence in seeking restoration of the appeal.

10. A Court of equity, while considering whether to grant an order in the nature of an interim order in favour of any party, is required to take into consideration the conduct of such party in the proceedings. Equitable relief is available to a litigant who has been vigilant and has diligently pursued his remedy before the appropriate Court or forum. In the present case, the conduct of the petitioner, as reflected from the documents placed on record by the respondents and from the submissions advanced on behalf of the respective parties, does not inspire confidence. Furthermore, the auction sale has already been concluded and a sale certificate has also been issued. In such circumstances, the petitioner has lost his right of redemption of the mortgage.

11. The materials on record indicate that, on an earlier occasion, the petitioners had invoked the extraordinary writ jurisdiction of this Court. The said writ petition was

dismissed, whereupon the petitioners preferred an intra-court appeal, being MAT 98 of 2026, which was also decided against them.

12. Therefore, having regard to the aforesaid facts and circumstances, and particularly in view of the orders passed in the earlier proceedings, I do not find any justification to exercise the writ jurisdiction of this Court in the present proceedings. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

13. However, it is clarified that this order shall not preclude the petitioners from approaching the appropriate forum in accordance with law.

14. Since no affidavit is called for, allegations made in the writ petition are deemed to have been denied.

(Partha Sarathi Chatterjee, J.)