09-01-2026
ct no. 13
Sl. 3
sp

MAT 2012 of 2025
With
CAN 1 of 2025

Manish Kumar Mishra & Anr.

-Versus-

LIC Housing Finance Limited & Ors.

Mr. Shatadru Chakraborty, ld. Sr. Adv.
Mr. Tanish Ganeriwala,
Ms. Khuhi Khaitan.

...for the appellants.

Mr. Hemant Tiwari.

..for the respondent nos. 1 and 2.

1. Affidavit of service filed in Court today is taken on record.

2. The appeal is directed against order dated 28th October, 2025 whereby the Single Bench of this Court on the returnable day of the writ petition, refused to extend the impugned order originally passed on 3rd October, 2025 when it was moved before the Vacation Bench.

3. A peculiar set of facts are emerge in the instant case. The appellant/third party claims to be a bona fide purchaser for value of a secured asset of the respondents secured creditor under a private treaty in terms of Rule 8(5)(d) of the

Security Interest (Enforcement) Rules, 2002. The appellant claims that the sale was effected in their favour sometime in the year 2021. The appellant is in physical possession occupying the said property as his residence since then.

4. Learned counsel for the appellant submits that his client was surprised to have seen a notice under Section 13(2) of the SARFAESI Act, 2002 pasted on the wall of the secured asset sometime on 3rd June, 2025. The said notice under Section 13(2) of the Act of 2002 was issued by the secured creditor LIC Housing Finance Limited to its original borrower Manas Roy claiming a sum of Rs. 1,78,39,290/-. The default in payment of loans is stated to have occurred in the year 2017 and the account was declared a Non-Performing Asset (NPA) on 1st May, 2025.

5. The appellant replied to the notice dated 3rd June, 2025, vide letter dated 09/7/2025 claiming to be a bona fide purchaser for value of the secured asset under a private treaty from an authorized officer of the LICHFL, called 'Arindam Nandy'.

6. In reply thereto, the secured creditor stated that the LIC Housing Finance Limited does not conduct any sale by private treaty under the

SARFAESI Act, 2002 and that they did not have any employee, much less an authorized officer in the name of Arindam Nandy at any point of time.

7. The appellant thereupon, filed the writ petition and moved the same and obtained interim orders on 3rd October, 2025 whereby and under the notice of LICHFL dated 3rd June, 2025 was stayed.

8. On the returnable date, i.e., 28th October, 2025 before the Regular Bench, the Single Judge refused to extend the interim order any further, inter alia, on the ground that the secured creditor has not chosen to take any steps pursuant to Notice dated 3rd June, 2025 under Section 13(2) of the SARFAESI Act, 2002.

9. Learned counsel for the appellants is aggrieved by the order, inter alia, on the ground that the respondents have not filed any application for vacating of the interim order. It is also submitted the parameters for vacating interim order has not been followed by the Single Bench.

10. On being questioned about the maintainability of the writ petition, it is argued by the appellants by reference to a decision of the Supreme Court in the case of ***Central Bank of***

India and another Vs. Prabha Jain and others reported in ***(2025) 4 SCC 38*** that a writ petition or a civil suit are the only remedies available to the appellant who is neither a borrower nor a guarantor. It is also argued that the interim order ought to have been continued by the Single Bench since the bank may proceed against its alleged secured asset under the provisions of the SARFAESI Act, 2002 and the aforesaid Rules of 2002.

11. This Court has carefully considered the arguments advanced by the learned counsel for the appellants as well as the respondents.

12. The facts of the case in ***Prabha Jain case (supra)*** are distinguishable from the facts of the instant case. In ***Prabha Jain (supra)***, the respondent who was the plaintiff, was not in possession of the property secured to the bank therein. Her claim was that, without a partition of the property of which she was a co-sharer, was sold. The subsequent purchaser had mortgaged the property to the bank concerned. The plaintiff therein alleged that the sale as well as the mortgage was null and void. It is in that context that the Hon'ble Supreme Court had held at paragraph no. 22.2.1 and 22.2.2 that the plaintiff could not have sought any relief

from the DRT as she was, inter alia, not in possession of the property in question.

13. It is now well-settled by several decisions of the Supreme Court that “any person” aggrieved by the Actions of the bank post issuance of notice under Section 13(4) of the Act of 2002, can file an application challenging the bank’s action under Section 17 of the SARFAESI Act, 2002.

14. In the light of the above, this Court is of the view that the writ petition may have been premature since the secured creditor was yet to take steps under Section 13(4) of the Act of 2002 or for that matter under Section 14 of the Act of 2002. The bank may take steps in the matter as it may be advised in law.

15. The writ petitioner/appellant may file an appropriate proceeding before the Fora prescribed under the SARFAESI Act, 2002 as and when the cause of action, therefor, would arise, i.e., inter alia receipt of a notice under Section 13(4) of the Act of 2002.

16. The respondent/secured creditor LICHFL is hereby restrained from dispossessing the appellant until issuance of the notice under Section 13(4) of the Act of 2002 and for a further period of 3 months thereafter.

17. With the aforesaid directiona, MAT 2012 of 2025 shall stand disposed of.

18. Since nothing further remains to be adjudicated in the writ petition being WPA 18209 of 2025, the same shall also stand disposed of.

19. Consequently, CAN 1 of 2025 shall also stand disposed of.

20. It is made clear that all questions are kept open to be decided by the appropriate forum independent of any observations made hereinabove.

21. Since the respondents have not used any affidavit to the stay application, none of the allegations contained therein shall be deemed to have been admitted by them.

22. There shall be no order as to costs.

23. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)