

30.03.2026
SL No.6
Court No.12
(gc)

MAT 2178 of 2025
CAN 1 of 2025
CAN 2 of 2026
CAN 3 of 2026

Polash Bhattacharyya
Vs.
Union Bank of India & Ors.

Mr. Arindam Banerjee, Sr. Adv.,
Mr. Subhojit Saha,
Ms. Srijani Mukherjee

...for the Appellant.

Mr. Sailesh Mishra,
Mr. Prosenjit Das,
Mr. T.N. Jha

... for the Respondent/Bank.

1. We are not inclined to interfere with the order passed in WPA 27640 of 2025 dated December 10, 2025. Although, Mr. Banerjee learned senior Advocate for the appellant submits that the third party auction purchaser is a necessary party. We are not inclined to add the third party auction purchaser as we are not passing any order adverse to the interest of the auction purchaser.
2. As right has been created in favour of the auction purchaser, we make it clear that in the proceedings which are pending before the DRT, the auction purchaser will be added as a party.
3. It is submitted by the learned Advocate for the lender/secured creditor that, the secured creditor is still in possession of the property in question.

4. Mr. Banerjee, learned Senior Advocate submits that the order passed under Section 14 of the SARFAESI Act was challenged before the DRT III by filing an SA under Section 17 of the SARFAESI Act. A prayer for interim protection was made, which was refused upon making certain observations. Mr. Banerjee submits that, while refusing the interim protection, the DRT made incorrect observations with regard to the submissions made by the appellant. It is further submitted that in order to bring such incorrect recordings to the notice of the learned DRT and for removal of those from the order, a modification application was filed and the modification application has been kept pending. Mr. Banerjee further submits that there was a need for urgent interim relief, as the bank was proceeding under the SARFAESI Act.
5. The Bank has sold the property. Third party right has been created. In our view, the remedy of the appellant was before the DRAT against the order refusing interim protection. The order of the DRT could have been challenged also on the ground that the DRT proceeded on an erroneous understanding of the submissions made by the appellant. Such appeal was not filed. Instead, the writ petition was filed. The secured creditor disclosed about the sale/auction and issuance

of the sale certificate in favour of a third party for the first time before the Division Bench.

6. We find from the order impugned that the learned Judge had recorded four points as grounds of challenge of the order passed by the DRT III, which are quoted below:-

- (i) *There are multiple notices under Section 13(2) of the SARFAESI Act which have not been taken into account and not recorded by the Tribunal;*
- (ii) *There is a gross violation of the Rule 8 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the "said Rules") which has also not been recorded.*
- (iii) *The Additional Chief Judicial Magistrate could not have adjudicated the debts which it has proceeded to do, which was one of the foremost points argued by the petitioner before the Debts Recovery Tribunal, though the same has been glossed over and not recorded;*
- (iv) *The petitioner had also argued before the Tribunal that there was no sale notice ever issued in respect of the property, mortgaged and sold, belonging to the petitioner. This also does not find place in the order passed by the Debts Recovery Tribunal – III, Kolkata.*

7. His Lordship was of the view that those issues should be ventilated before the appellate tribunal. His Lordship relied on a decision of the Hon'ble Apex Court reported in **(2020) 19 SCC 681** on the point that the appellant ought to have availed of a statutory remedy

under the law. The contention that the learned Debt Recovery Tribunal had wrongly recorded the submissions was also left to be agitated in the appeal before the DRAT.

8. Under such circumstances, we do not find any material irregularity or perversity in the order impugned. However, the subsequent issue of sale, etc., which allegedly came to the knowledge of the appellant at a later stage can be challenged before the learned DRT by filing appropriate applications, strictly in accordance with law. The learned DRT is directed to dispose of the SA arising out of the order passed under Section 14 of the SARFAESI Act expeditiously.
9. We are disposing of the modification application as we are of the view that at this stage the main SA should be disposed of on its own merits along with other applications that may be filed challenging the sale.
10. We are informed that the DRT-III is vacant. As such, we request the Tribunal in-charge of the DRT-III to dispose of the SA and the pending applications expeditiously.
11. The proceeding will continue independently.
12. Accordingly, the appeal and the connected applications are disposed of. The order of His Lordship is upheld.
13. There shall be no order as to costs.

14. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)