

05.05.2026
M/L No.13
Court No.12
(gc)

**FMA 34 of 2026
CAN 1 of 2025**

**S M Ashique
Vs.
Union of India & Ors.**

Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta,
Mr. Suhotro Palit

...for the Appellant.

1. Affidavit of service is taken on record.
2. Despite service, none appears on behalf of the respondents.
3. The appellant has raised a question of jurisdiction of the lender to initiate SARFAESI proceeding for the first time in the appeal. It is contended by the appellant that the lender was a Housing Finance Company and as such could not proceed under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as the "SARFAESI Act) as the claim was below Rs.20 lakhs. Reference is made to the order passed by the Chief Judicial Magistrate, North 24 Parganas, Barasat in Misc. 99 of 2025.
4. Mr. Samanta, learned Advocate relies on the notification of the Ministry of Finance, Department of Financial Services dated February 12, 2021, inter alia, stating that the notification of the Government of India, Ministry of Finance (Department of

Financial Services), number S.O. 856(E), dated February 24, 2020 has been further amended and SARFAESI proceedings cannot be initiated either by a HFC or any non-banking financial corporation or any bank whatsoever, if the claim is below Rs.20 lakhs. We find substance in what Mr. Samanta has submitted, but we find from the order which is impugned before us that this point was not raised before His Lordship. Mr. Samanta also relies on decisions of this Court in support of his contention.

5. The writ petition was filed challenging an order passed by the Chief Judicial Magistrate, North 24 Parganas, Barasat under Section 14 of the SARFAESI Act. His Lordship was of the view that, by applying the decisions of the Hon'ble Apex Court, a narrow interpretation of the authority empowered by law to pass orders under Section 14, should not be made and restricted to the District Magistrate alone. The Chief Judicial Magistrate could also pass orders under the said provision of law, even if a District Magistrate was available.

6. As such, His Lordship held that the Chief Judicial Magistrate was empowered as the designated authority to act under Section 14 of the said Act, upon taking note of the legal position that, the power conferred under Section 14 was administrative. As the issue before His Lordship

was not the jurisdictional competence of the HFC to initiate such proceeding, and as such, has been raised before this Court for the first time in the appeal, we are of the view that the appellant should file a fresh writ petition challenging the jurisdiction of the concerned HFC in initiating proceedings under the SARFAESI Act, on the ground that the demand at the relevant time when the SARFAESI proceedings were initiated, was allegedly less than Rs.20 lakhs.

7. If such writ petition is filed, the same shall be considered in accordance with law and upon contested hearing. The matter will be decided independently.
8. If any coercive measure has been taken on the basis of the order impugned before us or is taken, the same shall be subject to the result of the writ petition.
9. If the SARFAESI proceedings are found to be without jurisdiction, upon the writ Court determining the issue, the appellant will get the benefit of the order and possession will be resorted, despite the order passed under Section 14 of the SARFAESI Act, which will then be rendered a nullity and void ab initio.
10. The appellant is at liberty to communicate this order to the concerned HFC.

11. Accordingly, the appeal and the connected application are disposed of.
12. There shall be no order as to costs.
13. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)