

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/23/2026
IA NO: GA/1/2026, GA/2/2026

SRI NIRMAL KANTI CHOWDHURY AND ANR.
VS
SRI SHANKAR HALDER AND ORS.

BEFORE:
The HON'BLE JUSTICE SHAMPA SARKAR
The HON'BLE JUSTICE AJAY KUMAR GUPTA
Date: 20th May, 2026.

Appearance:

Mr. Saurabh Guhathakurta, Adv.
Mr. Subit Bhattacharya, Adv.
Mr. Dhiman Roy, Adv.
Mr. Abhratanu Sarkar, Adv. ...for appellants.

Mr. Kaushik Chandra Gupta, Adv.
Mr. Raja Adhikary, Adv.
Mr. Mrinal Das, Adv. ...for respondent no.1.

Mr. Debashis Saha, Adv.
Mr. Avirup Roy Sanyal, Adv.
Ms. Sucheta Pal, Adv.
Mr. Jyotishman Sarkar, Adv. ...for SBI.

The Court: The appeal is at the instance of the added party, who claims to be in possession of the mortgage property. A special leave application has been filed on the ground that despite order of His Lordship to incorporate the applicants as respondents, such direction was not followed. The applicants are aggrieved, as possession of the premises will be handed over to the auction purchaser. The order has affected their right in the said property. It is submitted that the appellants have been in possession and were residing in the premises, but upon execution of the order under section 14 of the SARFAESI Act, 2002 passed by the District Magistrate, the possession was taken over by the bank.

As the order passed by His Lordship affects the rights of the applicants, we are inclined to allow the special leave to appeal. In our view, there was no need to file the special leave to appeal as His Lordship already directed their addition.

Unfortunately, the writ petitioner did not comply with the order of His Lordship and failed to add the applicants. Hence the application for leave to appeal has been filed. We find that the applicants were not added as respondents in the writ petition. We allow the application and regularize the appeal.

Perused the schedule of the mortgaged property and the schedule of the property purchased by the appellants. Both the borrower and the appellants have registered deeds of conveyance.

We find that there is discrepancy in the description of the mortgaged property and the flat in respect of which the order has been passed. This issue will have to be looked into in greater detail by the Writ Court upon exchange of affidavits. Let affidavit in opposition be filed within two weeks, after vacation. Reply two weeks thereafter.

It is submitted that the bank has already handed over the keys of the property to the auction purchaser but the materials are lying inside. Under such circumstances, the property will remain under lock and key and shall not be either encumbered or alienated. The nature and character will not be changed. The materials will not be removed and no further action will be taken by the banks, till further orders by His Lordship.

It also appears that the order impugned was passed, when the proceeding of the appellants was pending before the DRT, challenging the action of the bank.

With the above observations, the appeal and the application are disposed of accordingly.

(SHAMPA SARKAR, J.)

(AJAY KUMAR GUPTA, J.)