OD 1

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

APO/68/2025 WITH
WPO/530/2025
IA GA 1 OF 2025
CANARA BANK AND ANR.
VS
SANT KUMAR TIBREWAL AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
The Hon’ble JUSTICE AJAY KUMAR GUPTA
Date: 12^{th} May, 2026.

Appearance:
Mr. Shaswat Nayak, Adv.
Mr. Dipankar Das, Adv.
Mr. Mridut Pal Bhattacharyya, Adv.
…for Canara Bank
Mr. Sabyasachi Chakraborty, Sr.Adv.
Mr. Rajarshi Dutta, Adv.
Ms. Sutapa Mitra, Adv.
…for the respondents

The Court : Mr. Nayak, learned advocate appearing for the appellant assailed the order passed by the learned Single Judge in WPO 530 of 2025. Learned Single Judge restrained the bank from recovering the loan from the writ petitioners for a limited period. Mr. Nayak submits that the demand notice issued by the secured creditor under the Insolvency and Bankruptcy Code, 2016 (IBC) against the guarantors, could not have been stayed by the Writ Court, inasmuch as, interference by the Writ Court resulted in ouster of the jurisdiction of the competent forum to adjudicate the issues involved. He submits that limitation is a mixed question of law and fact. The Writ Court could not have decided on such issue. It is for the Interim Resolution Professional, (IRP) to prepare a report and submit the same before the National Company Law Tribunal (NCLT). If the claim is found to be time barred, IRP will indicate so in the report and the question of limitation will be decided, upon appreciation of the evidence. The IBC is a complete code and the Writ Court could not assume jurisdiction by deciding whether the debt was due or not. The matter should have been left for adjudication by the NCLT, upon admission of the application under Section 95 of the Code. Reliance has been placed on the decision of the Hon'ble Apex Court in the matter of Bank of Baroda vs. Farooq Ali Khan and Ors. reported in (2025) SCC OnLine SC 374, in support of the contention that, the question whether the debt exists or not, should be decided by the adjudicating authority (NCLT) and not by the Writ Court in exercise of the power of judicial review.

Mr. Chowdhury, learned senior advocate appearing for the writ petitioners submits that a notice invoking the personal guarantee was issued some time in 2013. The demand notice categorically indicates that the debt became due some time in 2013. The bank slept over its right and issued the notice under the IBC in 2025. By that time, the claim had become time barred. According to Mr. Chowdhury, as the claim appeared to be ex facie time barred, and the Writ Court prevented abuse of power by the secured creditor. The jurisdiction of the Writ Court was all pervasive and could not be exercised to ensure complete justice.

Upon prolonged hearing, we are of the view that the maintainability of the writ petition should be decided by the learned Single Judge along with the issues raised by the appellant. Report in the form of affidavit has been filed by the appellant. We, prima facie, find that the Writ Court had kept the matter for hearing by granting a short stay.

Circumstances did not permit the Writ Court to hear out the matter, as a result, the bank has not been able to continue with the proceedings to recover its dues and take the appropriate course of law.

According to our, prima facie, view the Writ Court failed to adduce proper reasons. However, the fact that the claim of the bank was highly belated was recorded. The writ petitioners case was that, the demand notice was nothing but a harassive step and an attempt to drag the writ petitioners to a unnecessary litigation.

Under such circumstances, the appeal and the application are disposed of with a direction upon the learned Single Judge to proceed independently on the issues raised by the parties. The maintainability of the writ petition shall be decided first. Learned Single Judge is requested to hear out the matter before expiry of the extended interim order.

(SHAMPA SARKAR, J.)

(AJAY KUMAR GUPTA, J.)

TR/