IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE

MAT 1688 of 2026
With
CAN 1 of 2026

Basudeb Ghosh
Vs.
Union of India & Ors.

For the Appellant	: Sardar Amjad Ali, Sr. Adv. Mr. Dilip Kumar Samanta, Adv. Mr. Biswapriya Samanta, Adv.
For the Respondent No.1	: Ms. Sipra Chanda, Adv.,
For the Respondent No.3 & 4	: Mr. Mohit Gupta, Adv. Mr. Kaushik Modak, Adv. Ms. Mousumi Pal, Adv.
Judgment reserved on	: 12.10.2026
Judgment pronounced on	: **15.10.2026**

Shampa Sarkar, J :-

1. The appeal arises out of an order dated September 25, 2026, passed in WPA 26825 of 2026. By the order impugned, the learned Judge dismissed the writ petition, inter alia holding that taking over physical possession of the secured asset which had already been sold in favour of an auction purchaser, was merely a consequential step in furtherance to the sale of the

asset. His Lordship held that, there was no difference between the schedule of the property referred to in the order of the Division Bench passed in the first round of litigation in MAT 640 of 2026 and in the order of the learned Chief Judicial Magistrate dated December 17, 2025.

2. The Writ petition was filed challenging the legality of the notice captioned as 'Vacation Notice' dated September 15, 2026, issued by the learned Advocate Commissioner, who was deputed by the learned Chief Judicial Magistrate, Purba Bardhaman, for taking over possession of the secured asset towards implementation of the order dated December 17, 2025, passed by the Chief Judicial Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (for short the SARFAESI Act). The same was dismissed.

3. Mr. Ali, learned Senior Advocate appearing on behalf of the appellant, submitted that the learned Judge failed to take into consideration that a suit was pending before the learned civil court over the self-same property and an order of status quo in respect of nature, character, and possession was subsisting. The order of the Division Bench also called for a reconsideration on such ground. The civil court had plenary jurisdiction and the order could not have been passed either by the Division Bench or by the learned Chief Judicial Magistrate, by allowing the bank to take over possession of the property as a consequence to the proceedings under the SARFAESI Act.

4. Reliance was placed on the decision of ***Mulraj v. Murti Raghonathji Maharah*** reported in ***1967 SCC OnLine SC 260*** in support of his contention that, as soon as the order of status quo was brought to the notice of the learned Court, the Court was required to stay its hand. Refusal by the learned Single Judge to take note of the order of status quo passed by the civil court, was an act of illegality.

5. According to Mr. Ali, the entire property comprised of 0.008 acres and the bank had attempted to take over possession of the entire property, although there were other claimants to the same. The mortgaged property comprised of 0.005 acres and not the entirety of the property. The property originally belonged to late Guruprasad Ghosh, who was the father of the appellant and the father-in-law of the borrower. The appellant was the guarantor. According to Mr. Ali, another son of Guruprasad Ghosh, namely Arindam Ghosh, filed a partition suit before the learned Civil Judge (Senior Division), 2nd Additional Court, Burdwan. The suit was registered as Title Suit No. 98 of the 25. Upon considering the plaintiff's case in brief, the learned civil court recorded that it, prima facie, appeared that the plaintiff was in possession of the suit property and the balance of convenience and inconvenience was in favour of the plaintiff. Thus, in order to avoid multiplicity of proceedings and in view of the urgency involved, the learned court directed both parties to maintain status quo in respect of nature, character, and possession of the suit property until April 11, 2025. According to Mr. Ali, the interim order had been extended from time to time, and was still operating.

6. Under such circumstances, the action of the bank in taking over possession of the property in the teeth of the order of injunction was illegal. Similarly, the order of the learned Single Judge in refusing to restrain the Advocate Commissioner appointed by the Chief Judicial Magistrate from dispossessing the family members of the mortgagor was erroneous and to some extent perverse.

7. The learned advocate for the bank submitted that the bank was not a party to the suit. The interim order of status quo was binding between the parties. The bank had the right to take over possession of the secured asset even after the auction purchase. The SARFAESI Act, had an overriding effect over all other laws.

8. Relying on the decision of ***ITC Limited vs Blue Coast Hotels Limited and Ors.*** reported in ***(2018) 15 SCC 99***, Mr. Gupta submitted that the Hon'ble Apex Court had held that the creditor could maintain an application for taking over possession under Section 14 of the SARFAESI Act, even though symbolic possession had been taken before the sale of the property, and the sale had been effected. The relevant paragraphs are quoted below:-

> "**46.** The question, however, whether the creditor could maintain an application of possession under Section 14 of the Act even though it had taken over only symbolic possession before the sale of the property to the auction-purchaser, depends on whether it remained a secured creditor after having done so. Section 2(1)(*d*) of the Act defines "secured creditor" to mean a "banking company" *having the meaning assigned to it in clause (c) of Section 5 of the Banking Regulation Act, 1949*; Section 2(1)(*l*) [2(1)(*l*), SARFAESI Act] includes debts or receivables and any right or interest in the security whether full or part underlying such debt or receivables or any beneficial interest in property vide Sections 2(*l*)(*i*), (*iv*) and (*v*) ["**2. (1)(*l*)"financial asset"** means debt or receivables and includes—(*i*) a claim to any debt

or receivables or part thereof, whether secured or unsecured; or***(*iv*) any right or interest in the security, whether full or part underlying such debt or receivables; or(*v*) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or"] . Sub-section (6) of Section 13 ["**13. (6)** Any transfer of secured asset after taking possession thereof or takeover of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset."] posits that the transfer of the secured asset by the secured creditor shall vest in the transferee all the rights as if the transfer had been made by the owner of the secured asset.

47. In *Mulla's The Transfer of Property Act* [Pp. 104-105] :

> "The section (Section 8) does not apply to court sales, *for such sales effect a transfer by the operation of law*. The principle of the section was, however, applied in a case decided by the Madras High Court where a debt for unpaid purchase money on a sale of land was attached and sold, and the auction-purchaser was held entitled to the charge which the vendor had under Section 55(4)(*b*) on the property in the hands of the buyer. The Court, after observing that the present section did not apply to court sales, said:
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> > '*7.* … The effect of applying Section 8 is to strengthen the sale certificate by transferring the lien along with it.' [**Ed.**: As observed in *A.G. Sambasiva Iyer* v. *Venkatarama Iyer*, 1926 SCC OnLine Mad 355, para 7.] "

This Court observed in *Abdul Aziz* [*Abdul Aziz Khan Sahib* v. *Appayasami Naicker*, 1903 SCC OnLine PC 32 : (1903-04) 31 IA 1 : ILR (1904) 27 Mad 131] that a sale through court is different from a sale inter partes: (SCC OnLine PC)

> "What is sold at a court sale is the right, title and interest of the judgment-debtor, and the extent of that interest is a mixed question of fact and law to be decided according to the circumstances of each particular case, and depends upon what the court intended to sell, and the purchaser intended to buy."

We note that even though the entire right, title and interest were purported to have been transferred, all the rights, transfer and interest could not be said to have been transferred since the possession of the property was not transferred to creditor. The possession was retained by the debtor who continued to do business and receive rent from the rooms on the property and has in fact continued to do so till date. There is no doubt that after taking over the property from debtor, the creditor also acquired the right to receive the usufruct of the property i.e. the rent in this case. However,

this was an interest in the property which was not at any point of time transferred to the auction-purchaser.

48. In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. The transfer of the secured asset by the creditor therefore cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act. The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction-purchaser under the agreement. [Dated 25-2-2015] Thus, the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction-purchaser and thus remained a secured creditor in the Act."

9. ***Bajarang Shyamsunder Agarwal vs Central Bank of India and Anr.*** reported in ***(2019) 9 SCC 94*** was relied upon in support of a similar proposition.

10. Heard the parties.

11. The writ petition was filed challenging a notice dated September 15, 2026, issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate, Purba Bardhaman. The borrowers, the appellant and other heirs of the Guruprasad Ghosh, (mortgager), were asked to vacate the premises, failing which the Advocate Commissioner reserved the right to take over possession and hand over the same to the authorised officer of the Indian Bank, (a secured creditor). The schedule of the secured property mentioned in the said notice was as hereunder:-

" SCHEDULE OF THE SECURED ASSET

All that piece and parcel of Property Land and building Standing in the name of Sri Guru Prasad Ghosh situated at Mouza-Radhanagar, J.L. No.- 39, R.S Khatian No.- 726, L.R Khatian No.- 1393, R.S Plot No.- 1557 & L.R Plot No. 2278, measuring 0.005 acre along with Showroom under the name and style "Discovery", P.O. & P.S. – Burdwan, Word No.- 31 under

> Burdwan Municipality, Holding No.- 120, Mahalla B B Ghosh Road, Butted and bounded by East: Other's Shop, West: Other's Shop, North: Other's Shop & South: Road."

12. The contention of the appellant was that, late Guruprasad Ghosh was the owner of the ground floor property which measured 0.008 acres, bearing Municipal Holding No. 120, Mahalla B.B Ghosh Road, Police Station Burdwan Sadar, District Purba Bardhaman, Pin 713101. He was also the owner of an area of 0.011 acres of the self-same holding from the 1st to the 3rd floor. The appellant claimed to be a tenant and was running a garment shop under the name and style of "Discovery". Guruprasad Ghosh died intestate, leaving behind Rina Ghosh, (wife), Arindam Ghosh (elder son), Soma Ghosh (daughter) and the appellant (son). The appellant stood as a guarantor in respect of a loan account, which was released and disbursed in favour 'M/s. Rina Textiles', of which Juliet Ghosh (wife of the appellant) was the proprietor.

13. The loan was secured by deposit of title deed to the extent of 0.005 acres in the ground floor, which measured around 217.8 square feet. A proceeding under the SARFAESI Act, 2002 was initiated by the secured creditor as the loan account turned into a non-performing asset. The elder brother of the appellant, Arindam Ghosh, filed a partition suit before the Learned Civil Judge (Senior Division), 2nd Additional Court Burdwan, which was registered as Title Suit No. 98 of 2025. An ad interim order was passed directing the parties to maintain status quo in respect of nature, character and possession of the property. The contention of the appellant was that, in

the teeth of the order of the civil court, the notice issued by the Advocate Commissioner was illegal, contemptuous, and liable to be set aside.

14. With such challenge, the Writ Court was approached. Admittedly, notices under Sections 13(2) and 13(4) of the SARFAESI Act, had been issued by the Bank and the Bank had also invoked the provisions of Section 14. Order was passed by the learned Chief Judicial Magistrate, Purba Bardhaman. The property was sold by way of auction on the basis of symbolic possession. The secured creditor attempted to take over actual possession and make the transfer complete. The decision of the Hon'ble Apex Court in ITC Limited (supra), clearly lays down the proposition that, the creditor had a right to take actual possession of the secured asset, even after the limited transfer had been made in favour of the the auction purchaser. The other contention of Mr. Ali, that the property was a joint property and the possession of the same could not be taken away, is contrary to the scheme of the SARFAESI Act. Section 35 of the Act is quoted below:-

> **"35. The provisions of this Act to override other laws.**
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> The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

15. The provisions of the Act have overriding effect over other laws and instruments. The heirs of the mortgagor did not have any right over and above that of the bank, irrespective of the pending suit. Section 34 provides that no civil court shall have jurisdiction to execute any suit or proceeding

in respect of any matter over which a Debt Recovery Tribunal or the Appellate Tribunal has been empowered by or under the Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act or under the Recovery of Debts Due to Banks and Financial Institutions Act. Thus, the writ petition was not maintainable, in view of the alternative remedy.

16. Juliet Ghosh, the wife of the appellant, was the proprietor of M/s. Rina Textiles. The mortgage deed was executed by the father-in-law of the borrower and the father of the guarantor. The appellant was a personal guarantor to the loan facility. Guruprasad Ghosh was the mortgager and the heirs left behind by Guruprasad Ghosh, were bound by the deed of mortgage. The heirs of the mortgagor inherited the property along with the encumbrance. They had a right of redemption, which they did not avail of. They are bound by the mortgage and do not have a better right than that of the mortgagor. The definition of 'borrower' under Section 2(1)(f) of the SARFAESI Act includes any person who had been extended financial assistance by any bank or financial institution or who had extended or created any mortgage as security for the financial assistance granted by the bank. In terms of the definition of borrower, both the appellant and late Guruprasad Ghosh would fall under the said category. Thus, the bank had every right to proceed against the said property even against the heirs of the mortgager.

17. Section 2(1)(f) of the SARFAESI Act is quoted below:-

> "2(1)(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a [asset reconstruction company] consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance [or who has raised funds through issue of debt securities]"

18. The records reveal that on September 27, 2018, a credit facility of Rs. 1.45 crores were sanctioned in favour of M/s Rina Textiles and Juliet Ghosh, wife of the appellant, was the proprietor. Subsequently, on June 2, 2022, a further credit facility of Rs. 43.5 lakhs were sanctioned in favour of M/s Rina Textiles. The borrower committed default in repayment of the loan. Accordingly, the secured creditor initiated proceedings under the SARFAESI Act and issued a notice under Section 13(2) of the Act on December 20, 2025. Thereafter, the bank also issued a notice under Section 13(4) of the Act on September 18, 2025. The bank approached the Learned Chief Judicial Magistrate, Purba Bardhaman, by filing an application under Section 14 of the Act. By an order dated December 17, 2025, the Learned Chief Judicial Magistrate allowed the application and appointed an Advocate Commissioner to take over physical possession of the secured asset and hand over the same to the secured creditor. Arindam Ghosh, one of the sons of Guruprasad Ghosh and the plaintiff in the partition suit, filed a writ petition bearing number WPA 7246 of 2026. The action of the bank in taking over possession was challenged. A learned Single Judge dismissed the writ

petition on the ground of maintainability, in view of the alternative remedy under Section 17 of the SARFAESI Act, by an order dated March 30, 2026.

19. The said order was challenged in an appeal being MAT 640 of 2026. It was contended before the appeal court that, apart from the property which was mortgaged, no further steps should be taken by the bank in respect of the portion of the property which was in excess of the mortgaged property. The factum of pendency of the civil suit was also brought to the notice of the appeal court. The appeal court observed that the bank had taken steps in respect of the mortgaged property and such action was restricted to an area of 0.005 acres, along with a showroom under the name and style 'Discovery', bearing holding number 120, Mohalla B.B, Ghosh Road, Bardhaman.

20. Mr. Gupta submitted that, before the appeal was heard, the property had already been sold by way of an auction, but further steps had not been taken.

21. The decision of the Division Bench is quoted below:-

> "6) According to Mr. Gupta, the schedule of the property as mentioned in paragraph 13 of the writ petition already sold and he relies on the sale notice, which is at page 17 of the writ petition. The details and description of the mortgaged assets appears to be scheduled in the sale notice, which is quoted below :-
>
> **SCHEDULE**
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> The specific details of the assets which were intended to be brought to sale is enumerated hereunder:

Details/Description of Mortgaged Assets	Reserve Price Rs.	**EMD Rs.**	**Date, Time for e-auction Property ID**	**Prior Encumbrance**
All the piece and parcel of property land & building standing in the name of Sri Guru Prasad Ghosh Situated at Mouza-Radhanagar, J L	1,00,00,000 .00 (Rupees One Crore Only)	1,000,000.0 0 (Rupees Ten Lakh Only)	30.03.2026 10:00 AM to 04.00 PM	Not Known to us

No-39, RS Khatian No- 726, LR Khatian No- 1393, RS Plot no- 1557, LR Plot No – 2278, land measuring an area of 0.005 acre alongwith showroom under name and style of "Discovery", PO & PS-Burdwan, W no-31 under burdwan Municipality, Holding No- 120, Mohalla- B B Ghosh Road, registered vide deed no- I-6388/1989 registered in Book No-I, Vol no-122, Page No-78 to 85			IDIB501392 68211	

7) Mr. Gupta further submits that the sale notice also indicates that steps were taken by the bank by issuing notice to the deceased father of the appellant, who was the guarantor. Notices under Sections 13 (2) and 13 (4) of the SARFAESI Act had been issued. After the issuance of the sale notice the appellant had approached the writ Court with incorrect submissions, upon the death of his father.
8) Under such circumstances, the action of the bank appears to be restricted to the 0.005 acres along with the showroom as described hereinabove. It does not appear that the bank had proceeded in respect of the excess land as alleged by Mr. Ali. The bank's claims shall be restricted only to the schedule as stated hereinabove.
9) It is submitted that the sale has taken place but the certificate is yet to be issued. The bank can proceed with the said formalities.
10) Accordingly, the appeal and the connected the application are disposed of. The other legal remedies available to the appellant are kept open."

22. The Division Bench observed that the bank's claim was restricted only to the schedule as stated in the sale notice. The bank was allowed to proceed with further formalities, by issuance of sale certificate, etc.

23. Thus, the plaintiff in the civil suit had already taken a chance by approaching the writ court with certain prayers, which were turned down in view of the existence of an alternative remedy and the appeal was also disposed of upon recording that the bank had the right to proceed in respect of the mortgaged property. By filing another writ petition, the appellant has

tried to reopen the self-same issue, after his brother, had failed. This, in our view is in abuse of process of court. It is well settled that, the expression 'borrower' includes the 'guarantor' and the 'mortgager'. The appellant feebly tried to set up a case of being a monthly tenant in respect of the property, but he has not produced any registered deed which would indicate that any right had been created in his favour in respect of the property. In any event, his remedy lies before the appropriate forum even assuming he had an informal agreement with his father. The plaintiff and defendants in the suit are the legal heirs of the mortgager and they are bound by the mortgage to the extent of the property mentioned in the vacation notice and in the sale notice. Section 17 of the SARFAESI Act provides that, any person who is aggrieved by the steps taken by the bank, has a right to approach the tribunal by filing an application. The expression 'any person' has a wide import and also includes the guarantor or any person aggrieved by the measures taken by the bank, including the heirs of the mortgager. Reference is made to the decision of the ***United Bank of India vs Satyawati Tondon and Ors.*** reported in ***(2010) 8 SCC 110***. Paragraphs 42 and 43 are quoted below:-

> "**42.** There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a

fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

24. In the matter of **Union Bank of India v. Rajat Infrastructure (P) Ltd.** *reported in* **(2020) 3 SCC 770**, the Hon'ble Apex Court held as follows:-

"**12.** In view of the law laid down by this Court, we are clearly of the view that the observation made by the High Court was totally incorrect.

13. We are not in agreement with the submission of Mr Chaudhri that the High Court has exercised its discretionary powers under Article 226 of the Constitution. The order of the High Court does not show any exercise of such discretionary powers but according to the High Court on an interpretation of the section, pre-deposit was not required. We are also not impressed with the argument of Mr Chaudhri that his client is not a borrower. A guarantor or a mortgagor, who has mortgaged its property to secure the repayment of the loan, stands on the same footing as a borrower and if he wants to file an appeal, he must comply with the terms of Section 18 of the SARFAESI Act.

14. Furthermore, we may add that the High Court has no powers akin to powers vested in this Court under Article 142 of the Constitution. The High Court cannot give directions which are contrary to law."

In the matter of ***R.D. Jain & Co. v. Capital First Ltd.*****,** reported in **(2023) 1 SCC 675 ,** the Hon'ble Apex Court held as follows:-

"**22.** Thus, considering the scheme of the SARFAESI Act, it is explicit and crystal clear that possession of the secured assets can be taken by the secured creditor before confirmation of sale of the secured assets as well as post-confirmation of sale. For taking possession of the secured assets, it could be done by the "authorised officer" of the Bank as noted in Rule 8 of the Security Interest (Enforcement) Rules, 2002."

25. Thus, His Lordship was right in holding that, in view of the order of the Division Bench and the overriding provisions of the SARFAESI Act, the secured creditor would have a prior claim to the secured asset. If any person is aggrieved by the said order, the remedy against the secured creditor lies before the Tribunal.

26. Under such circumstances, we do not find any illegality in the order impugned. The order impugned is upheld.

27. The appeal is dismissed with cost of Rs. 20,000, to be paid to the funds of the State Legal Services Authority, West Bengal towards the fund of the Juvenile Justice Committee, High Court.

28. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

I Agree

(Arjun Ray Mukherjee, J.) **(Shampa Sarkar, J.)**