

02
17.02.2025
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 3344 of 2025

**Dilip Malakar
-versus
The State of West Bengal & Ors.**

**Mr. Sanjay Mukherjee,
Mr. Dhananjay Nayek,
Mr. Abhinaba Mukherjee.
...For the Petitioner.**

**Mr. Sudipto Panda,
Ms. Ananya Neogi.
...For the State.**

**Mr. Ranojit Chowdhury,
Mr. Sudipto Chowdhury,
Mr. Purnendu Modal,
Ms. Aparupa Chakraborty,
Ms. Sampoorna Saha.
...For the Respondent
Nos. 3 and 4.**

1. Affidavit-of-service filed in Court today is taken on record.

2. The notice dated 28th January, 2025 issued by the authorized officer of the Union Bank of India in respect of the property at 164A and 164B, Shyama Prasad Mukherjee Road, P.S.- Tollygunge, Kolkata-700026 is impugned in the instant writ petition.

3. The notice was issued by the Bank for taking possession of the property which was mortgaged to the Bank. To recover the loan amount, the Bank is taking steps under the SARFAESI Act.

4. The petitioner claims to be a pre-mortgage tenant in the said property comprising of total 160 sq.ft. for a considerable period of time. A title suit in

connection with the said property is pending consideration before the Learned Civil Court being T.S. No. 5761 of 2013.

5. The petitioner apprehends that relying on the order passed by the District Magistrate on 31st July, 2024, the Bank may take steps to dispossess the petitioner from the tenanted premises.

6. Prayer has been made to restrain the Bank from dispossessing the petitioner.

7. Learned advocate appearing on behalf of the Bank raises an issue with regard to the maintainability of the writ petition. In support of the submission that the writ petition will not be maintainable, the Bank has relied on the judgment passed by the Hon'ble Supreme Court in the matter of **CELIR LLP -vs- Bafna Motors (Mumbai) Private Limited and Others** reported in **(2024) 2 SCC 1**.

8. It has been submitted that the petitioner ought to approach the Debts Recovery Tribunal for relief.

9. Learned advocate appearing on behalf of the District Magistrate seeks time to take instruction.

10. According to the provisions of Section 14 of the SARFAESI Act, 2002, the secured creditor may obtain order under the said provision of the Act only upon filing an affidavit affirmed by the authorized officer of the Bank giving certain declaration.

11. Let the said affidavit relying upon which the District Magistrate passed order under Section 14 of the Act be placed before this Court on the adjourned date with an advance copy to the learned advocate appearing on behalf of the petitioner.

12. Let the matter appear in the list on 17th March, 2025.

13. The Court is to adjudicate as to whether there has been any violation of the fundamental right of the petitioner and whether steps were taken by the secured creditor in terms of Section 14 of the SARFAESI Act. The Bank is restrained from taking any coercive step against the petitioner to dispossess him from the tenanted premises till 20th March, 2025 or until further order, whichever is earlier.

14. It is, however, made clear that it will be open for the Bank to take steps in the matter but without dispossessing the petitioner from the tenanted premises.

15. The Bank may handover possession of the secured asset to the purchaser in 'as is where is' basis, without disturbing the possession of the petitioner in any manner whatsoever.

(Amrita Sinha, J.)