

19-03-2025
Item No.51
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.3344 of 2025

Dilip Malakar

-vs-

The State of West Bengal & Ors.

Mr. Sanjay Mukherjee
Mr. Dhananjay Nayak
Mr. Abhinaba Mukherjee ...for the petitioner

Mr. Sudipto Panda
Ms. Ananya Neogi ...for the State

Mr. Ranajit Chowdhury
Mr. Sudipto Chowdhury ...for the bank

1. Perused the report forwarded by the Officer-in-charge, SARFAESI Section, Office of the District Magistrate, South 24 Parganas wherefrom it is clearly evident that Union Bank of India filed an affidavit before the District Magistrate disclosing that the secured asset is not in possession of any lessee/sub-lessee/tenant under the valid lease made prior to creation of the mortgage by the borrower.
2. From the documents annexed to the writ petition it appears that a suit being Title Suit No.5761 of 2013 was filed by the petitioner against his landlord seeking declaration that he is a lawful tenant in respect of one room with asbestos shed (workshop) on the ground floor of premises no.164A, S.P. Mukherjee Road, Kol-26. Copy of the decree dated June 24, 2016 passed by the learned Civil Judge (Junior Division), 3rd Court,

Alipore in his favour is annexed.

3. Learned counsel representing the bank submits that the borrower never disclosed the tenancy at the time of obtaining the loan. It has further been submitted that it is not believable that the petitioner claiming himself to be the tenant of the subject premises was not aware of the steps taken by the bank to recover possession as several notices were affixed on the outer wall of the said premises.
4. Reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of **PHR INVENT EDUCATIONAL SOCIETY V. UCO BANK & ORS.** reported in **(2024) 6 SCC 579** in support of the submission that the High Court will not entertain a petition under Article 226 of the Constitution, if an effective alternative remedy is available to the aggrieved person or if the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.
5. Admittedly, in the instant case, it appears that the petitioner, as tenant, was already in possession of a portion of the subject property long prior to the mortgaged. By virtue of the order of physical possession, a lawful tenant ought not to be evicted.
6. Learned counsel for the bank seeks further time to rely upon precedents in this regard.
7. On such prayer, the writ petition stands adjourned till March 28, 2025.
8. The interim order which is subsisting shall remain in force till May 23, 2025 or until further order, whichever is earlier.

9. All parties are to act on the server copy of this order duly downloaded from the official website of this Court.
10. Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]