

18.06.2026
Court No. 12
Item No. 10
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 924 of 2026
I.A. No : CAN 1 of 2026

M/s. R. K.D. Infrastructure Private Limited
Vs.
Union of India & Ors.

Mr. S. S. Roy,
Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta
.....for the appellant.
Ms. Parna Roy Choudhury,
Ms. Trisa Chanda
....for the respondent nos. 3 & 4.

- 1) The appeal arises out of an order dated May 21, 2026 passed in W.P.A. 11525 of 2026.
- 2) The grievance of the appellant in the writ petition was that the order dated January 22, 2026 and consequential order dated March 31, 2026 passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) were wholly without jurisdiction.
- 3) It was contended that the order was passed beyond the period specified by the statute. The Chief Judicial Magistrate did not have the authority under the law to pass any order beyond a period of 60 days from the filing of the application under Section 14 of the SARFAESI Act.
- 4) According to the learned advocate for the appellant, the moment an order was passed on

January 22, 2026, the Chief Judicial Magistrate had become functus officio and did not retain any authority to pass further orders in favour of the lender, by permitting them to take over possession of the mortgaged property.

5) Reliance was placed on different judgments of this Court in support of the mandatory nature of the statutory time limit.

6) The respondent bank submitted before His Lordship that the writ petition was liable to be dismissed on the ground of suppression and mis-representation of the facts. It was contended that the appellant had filed an application under Section 17 of the said Act, challenging the SARFAESI proceeding. The total dues from the appellant and the other co-borrowers in respect of the subject loan was more than 22 lakhs. It was further contended that the other co-borrowers also challenged the entire SARFAESI proceedings before the learned Tribunal.

7) His Lordship considered the provisions of the SARFAESI Act and was of the view that a special statute had been promulgated by the Parliament to ensure speedy recovery of public money and the writ court should not interfere with the proceedings initiated by the lender. His Lordship also considered the decision of the Supreme Court in C. Bright Vs. Distt. Collector, reported in (2021) 2 SCC 392 and held that the remedy of the appellant was before the tribunal and not before the High Court, by filing a writ petition.

8) Before us, Mr. Roy, learned senior advocate submits that the third proviso to Section 14 of the said Act, clearly stipulates the

time frame within which either the Chief Judicial Magistrate or the authority empowered under the said section, can pass an order under Section 14 of the SARFAESI Act. The statute provides that the order should be passed within 30 days from the date of receipt of the application and for reasons beyond control, within 60 days. However, the reasons as to why the order could not be passed within 30 days, should be recorded when the time is extended by the said authority.

9) Reliance has been placed on the decision of the Nazir Ahmad Vs. The King-Emperor, reported in 1936 SCC Online PC 41, on the proposition that, when the statute requires a particular thing to be done in a particular way, the Court or the authority exercising such power or authority under the said statute should proceed in such manner as prescribed, or not at all.

10) Admittedly, the challenge to the SARFAESI proceeding is pending before the tribunal, both at the instance of other co-borrowers and the appellant. Thus, we do not find any illegality in the order of His Lordship while holding that the appellant had an efficacious alternative remedy. Secondly, although it is submitted that the efficacious alternative remedy would not be a bar in this case, as the jurisdiction of the Chief Judicial Magistrate has been challenged, we find that the order under Section 14 was passed within 30 days. The application was filed on December 12, 2025. The order was passed on January 22, 2026 and directions were issued upon the court appointed commissioner i.e., the seal bailiff to hand over

the possession to the authorized officers of the secured creditor. The seal bailiff was also directed to protect the possession of the said property. The next date was fixed on March 16, 2026 for compliance of the order and a report with regard to the execution of the writ of delivery of possession. The order is quoted below :-

“That the seal bailiff of this court is hereby appointed as court commissioner to take possession of the secured assets situated as mentioned above.

Appointed commissioner shall give possession notice to the authorized officer of the secured creditor and the borrowers, to be served personally/speed post at least seven days’ in advance.

A copy of such seven days advance notice shall also be affixed on the main door or other conspicuous part of the said property. A copy of this order be also affixed along with such notice.

After expiry of the notice, the seal bailiff shall take possession of the aforesaid property and handover it to the aforesaid authorized officer namely Mr. Amit Kumar Jha of creditor under proper receipts to that effect. The entire proceedings shall be photographed or video-recorded as per the demand of the situation.

The court commissioner to take such steps and use such force including breaking open the lock or any hurdle thereof by taking assistance of police if required at the expenses of the applicant and if any articles/documents found in the secured asset, then deliver its possession to the authorized officer of the creditor after prepare

list of articles and making inventory. Photographs be also taken as proof of the same. Copies of the inventory shall be handed over to the borrowers. If present at the site under acknowledgment and also to the authorized officer of the creditor.

The court appointed commissioner shall exercise all due care and caution and not to violate the orders of any court of forum relating to the aforesaid property.

The creditor shall furnish all necessary details to the receiver and would extend full co-operation for the purpose of execution of this order.

The O/c of the concerned PS is also directed to provide police assistance to the court appointed commissioner to ensure smooth execution of this order.

The seal bailiff of this court shall file his report along with photograph/video, CD, documents, if any, inventory prepared if any, etc. within two months from the date of this order.

For removal of doubts, it is made clear that objections/applications, if any, may be preferred by any borrowers, guarantor, mortgagor, lessee or any other aggrieved person before the Debt Recovery Tribunal having jurisdiction, as per the amended provisions of Section 17 of SARFAESI Act.

Issue writ of commission accordingly on payment of Rs. 10,000/- (Rupees Ten Thousand Only). The said amount shall be deposited with the cashier attached to this establishment under non-refundable head.

All miscellaneous and incidental expenses shall be borne by the creditor. A copy of this order be given to the creditor and Seal Bailiff of this court.

To 16.03.2026 for E/R of writ of delivery of possession.”

11) On March 31, 2026 a prayer was made for extension of time for taking over possession.

12) As the order could not be executed by the court appointed Commissioner, the lender made a prayer that time for execution of the order be extended. The learned Chief Judicial Magistrate extended the time. The extension of the time was merely an administrative order. It is well settled that, an order under Section 14 is not a judicial order, but an administrative order. Secondly, in C. Bright Vs. District Collector & Ors., the Hon’ble Apex Court had held that, inability to take possession within the time limit did not render the District Magistrate functus officio. The secured creditor had no control over the District Magistrate who was exercising jurisdiction under Section 14 of the Act for public good, to facilitate recovery of public dues. Therefore, Section 14 of the Act should not be interpreted literally, without considering the object and purpose of the Act. If any other interpretation was placed upon the language of Section 14, it would be contrary to the purpose of the Act. The time limit was provided by the Parliament, in order to instill confidence in the creditors that, the District Magistrate would make a speedy attempt to deliver possession. It also imposed a duty on the District Magistrate to make an earnest

effort to comply with the mandate of the statute and deliver the possession within the time fixed.

13) Under such circumstances, the remedy under Section 14 of the Act could not be rendered redundant, only because the administration failed to hand over possession within the time prescribed. The second proviso to Section 14 of the said Act stipulates that the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall, after being satisfied with the contents of the affidavits, pass suitable orders for the purpose of taking possession of the secured asset, within the period of 30 days from the date of application. This requirement of law was complied with by the learned Chief Judicial Magistrate.

14) The third proviso mentions that, if no order was passed for reasons beyond the control of the authority, then the order may be passed within such period, but not exceeding an aggregate of 60 days. In our view, the third proviso is not applicable as the second proviso was complied with. Extension of the date for handing over possession was a procedural aspect. The learned Chief Judicial Magistrate had not become functus officio. We make these, prima facie, observations in order to record that the writ petition was not maintainable even on the allegation that the order impugned was wholly without jurisdiction.

15) The remedy of the appellant under the SARFAESI Act is before the Tribunal, which was kept open by His Lordship. The appellant

should have approached the appropriate forum, strictly in accordance with law.

16) Cost was imposed by His Lordship, upon finding that there was suppression of materials facts before the Court. Upon perusal of the documents, we find that the appellant had not suppressed anything before the writ Court.

17) Accordingly, the appeal and the connected application are disposed of.

18) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)