IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]
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WPA/167/2026

Smt Punam Kumari

Vs

The Branch Manager and others

Mr. Gopala Binnu Kumar ... for the petitioner

Mr. Alokesh Sarkar ... for the Administration

April 21, 2026
[SR]
Item No.13

1. Affidavit of service filed by the petitioner be kept on record.

2. The litigation is a story of an unfortunate lady whose husband, the sole bread-earner of the family, met his demise on May 24, 2025.

3. The writ petitioner has three school-going children and has almost no source of income. After running from pillar to post, the writ petitioner could somehow obtain an order from the court to have the pensionary benefits, which she is entitled to on the demise of her husband, disbursed in her favour.

4. However, the petitioner discovered that her husband had left a house loan, with which the dwelling house of the petitioner and her three minor children was constructed.

5. The petitioner, upon coming to know of the same, approached the bank authorities with an offer to pay whatsoever amount she could, going to the extent of 50% of the monthly pension which she was receiving.

6. However, the Bank expressed its empty empathy but proceeded with measures under 13(2) of the SARFAESI Act,

2002 and thereafter took symbolic possession of the same by publication of a possession notice under section 13(4) of the said Act.

7. Learned counsel for the petitioner contends, as per instruction that the petitioner, that having somehow accumulated money, the petitioner is willing to show her bona fides by paying an amount of Rs.6.00 lakhs within a week from date, in part payment of the loan dues. The petitioner further seeks easy instalments in order to clear off the balance unpaid dues in respect of the loan taken by her husband.

8. Learned counsel appearing for the Authorised Officer of the bank, being respondent no. 2 herein, controverts the submissions made by the petitioner and submits that the writ petition is barred under the provisions of the SARFAESI Act.

9. Moreover, it is submitted that the Bank has already taken possession of the property of the petitioner under Section 13(4) of the SARFAESI Act.

10. Upon query of Court, learned counsel for the respondent no.2, who is Authorised Officer of the concerned Bank, asserts that he is appearing only for respondent no.2. Such conduct of the bank is rather surprising, having engaged counsel to appear for the Authorised Officer but having not entered appearance itself through counsel.

11. Evidently, it is a ploy to avoid any adverse orders being passed against the bank. If the Authorised Officer could be represented through counsel, the Court finds no reason as to why the Branch Manager of the State Bank of India, Main

Branch and/or the Branch Manager, State Bank of India, Evening Branch, Sri Vijaya Puram, who are the other respondents in the writ petition, could not represent themselves through counsel in the matter.

12. Be that as it may, the Court is fully aware of the restriction under Section 34 of the SARFAESI Act,2002 which debars only civil courts, in matters which are within power of the authorities under the said Act to do, to entertain any civil suit. Moreover, the Court is also not unmindful of the legal position that since measures have already been taken under Section 13 of the SARFAESI Act, an alternative remedy is available to the petitioner under Section 17 of the said Act, under which the petitioner may approach the concerned Debts Recovery Tribunal.

13. However, two aspects of the matter have to be factored in.

14. First, the bar under Section 34 pertains only to civil courts and not to judicial review by Constitutional courts under Article 226/227 and/or under Article 32 of the Constitution of India. Secondly, the power of judicial review, which forms a component of the basic structure of the Constitution of India, cannot be curtailed by a piece of legislation of the Parliament subordinate to the Constitution, which the SARFAESI Act is.

15. It is also well-settled that the Constitutional courts, in exercise of writ jurisdiction, have ample power to interfere if gross injustice is done or the legal or Constitutional rights of a person are violated.

16. In the present case, although the bank abided by the letter of the law, it completely missed out the forest for the trees by failing to appreciate the spirit of the law. The petitioner, despite being in the unenviable position that she is, has shown utmost bona fides in her letter dated March 30, 2026, annexed at page 51 of the writ petition, by offering to pay to the extent of 50% of her monthly pensionary income. Despite the same, the respondent-bank played Shylock and went after its pound of flesh by going ahead with the measures taken under Section 13(2) and Section 13 (4) of the SARFASEI Act, without responding to the request of the petitioner to meet the dues by paying 50% of her pensionary income.

17. The Court is taken aback by such approach of a nationalized bank, the function of which is not restricted only to the recovery of loans but also to provide succour to the marginalized sections of the society by formulating beneficial schemes and considering One Time Settlement schemes for the disadvantaged.

18. In the present case, sufficient bona fides have been shown by the petitioner by approaching the bank to give her best offer but the same was spurned by the bank without giving any reason whatsoever or even responding to the same.

19. Even otherwise, the so-called ‘possession’ taken under Section 13(4) of SARFAESI Act is only a symbolic possession and physical possession of her dwelling house (which is the secured asset) is still with the petitioner and her family.

20. In view of the above exceptional circumstances, this Court invokes its powers of judicial review under Article 226 and entertains the present writ petition to be heard on merits.

21. The respondents shall remain restrained by an order of injunction from taking any further steps pursuant to the demand notice under Section 13 (2) and possession notice under Section 13 (4) of the SARFASEI Act, 2002 issued by the respondent-bank to the petitioner, as well as from selling, transferring, alienating, encumbering and/or creating any third party interest in respect of the secured asset, which is incidentally the only dwelling house of the petitioner and her three school-going children, till the disposal of the writ petition.

22. The respondents shall further remain restrained by an order of injunction from disturbing from the possession and enjoyment of the petitioner and her family in respect of the secured asset in any manner whatsoever, also till the disposal of the writ petition.

23. However, such order shall be conditional upon the petitioner paying an amount of Rs.6.00 lakh, as offered by her, within May 15, 2026 to the respondent no.1. If such payment is made, the respondent no.1 shall accept the same without prejudice to the rights and contention of either of the parties in the writ petition and/or in any other proceeding.

24. The petitioner shall serve copies of the writ petition afresh, along with the server copy of this order, on the respondent no.1 as well as the respondent no.3 and file an affidavit of service to the effect on the returnable day. Service on

the respondent no.2 is dispensed with in view of the appearance of the said respondent through counsel.

25. The parties as well as all concerned shall act on the server copy of this order for the purpose of compliance, without insisting upon prior production of a certified copy of the order.

26. The matter shall be next be listed before the appropriate Bench in the Circuit after the next for hearing.

(Sabyasachi Bhattacharyya, J.)