IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BEFORE:
The Hon'ble Justice Ravi Krishan Kapur

WPO/97/2026

M/S. R.S.H.S IMPEX PRIVATE LIMITED
VS
UNION OF INDIA AND OTHERS

For the petitioner	: Mr. Pranit Bag, Advocate Mr. Pradeep Jewrajka, Advocate Ms. Pooja Jewrajka, Advocate Mr. Ayush Singhania, Advocate Mr. Rahul Poddar, Advocate.
For the respondent bank	: Mr. Probal Mukherjee, Senior Advocate Ms. Deblina Lahiri, Advocate Mr. Mrinmoy Chatterjee, Advocate
For the Union of India	: Mr. Rajesh Kumar Shah, Advocate
Heard on	: 13.05.2026
Judgment on	: 21.05.2026

Ravi Krishan Kapur, J.:

1. The grievance of the petitioner is directed against the respondent, State Bank of India in not issuing a Sale Certificate in favour of the petitioner in terms of the Security Interest (Enforcement) Rules, 2002. In the alternative, the petitioner seeks refund of the money paid as sale consideration alongwith interest in respect of an auction sale conducted by the respondent bank.

2. Briefly, the respondent, State Bank of India had initiated an auction sale in respect of a property situated at 19B, Shakespeare Sarani, Kolkata, West Bengal-700071. The auction sale had been necessitated primarily in view of the original borrower, T.M Exports Private Limited, having defaulted in the repayment of loan taken from the respondent bank. The sale was conducted by the respondent bank, in respect of two commercial spaces, one being a super built-up area of 1565.75 sq.ft. on the ground floor of 19B, Shakespeare Sarani, Kolkata-700071 and the other being a super built-up area of about 1569.92 sq.ft. on the ground floor of 19B, Shakespeare Sarani, Kolkata-700071. The reserve price for each of the properties was Rs.3 crores respectively. Ultimately, the petitioner was adjudged as the successful bidder for the properties and a sum of Rs.11,41,00,000/- was paid by the petitioner as consideration.

3. Subsequently, by an order dated 3 February, 2023, the Debts Recovery Tribunal, Kolkata had in a proceeding being SA No.17 of 2023 granted an interim order restraining issuance of the sale certificate in respect of the above auction. The physical possession in respect of the auction properties were handed over to the respondent bank by the Shakespeare Sarani Police Station in terms of an order passed by this Court in CAN No.1 of 2022 in WP No.19879 of 2022.

4. It is contended by the respondent bank that the draft sale certificate was sent through an e-mail in favour of the petitioner with a request to the petitioner to take physical possession of the secured asset. Despite several

requests, the petitioner refused to take possession of the same. Nevertheless, since the sale certificate had not been finally issued, the petitioner was unable to take physical possession and requested for further time. In this background, it is contended on behalf of the petitioner that the respondent bank has failed to act in terms of the above request and has not adhered to the mandate of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022 (SARFAESI Act) and the Rules framed thereunder. Hence, this writ petition. In support of such contention, the petitioner relies on the decision in *Celir Llp –vs.- Bafna Motors (Mumbai) Pvt. Ltd. & Ors.[(2024) 2 SCC 1*].

5. On behalf of the respondent bank, it is submitted that the petitioner has failed to exhaust its efficacious alternative statutory remedy under the SARFAESI Act, 2002. The main proceeding being SA No.7 of 2023 is pending before the Learned Debts Recovery Tribunal-1, Kolkata, wherein the petitioner has also been added as a party respondent on 21 June, 2024. All steps culminating in the auction sale have been duly complied with by both the parties. However, in view of an application filed at the behest of one of the guarantors-cum-mortgagors, M/s. Westwind Marketing Private Limited, an order dated 3 February, 2023 has been passed by the Learned Debts Recovery Tribunal whereby the respondent bank had been directed not to issue the sale certificate. The interim order passed by the Debts Recovery Tribunal restraining the respondent bank from issuing the sale certificate has been extended from time to time since 24 March, 2023. It is also

contended that the respondent bank has no objection in issuing the sale certificate but has been unable to issue the same in view of the interim order passed by the Debts Recovery Tribunal. The decision cited in *Celir Llp –vs.- Bafna Motors (Mumbai) Pvt. Ltd. & Ors.(Supra)* is inapplicable and inapposite. In such circumstances, there is no ground to interfere in this writ petition and the same should be dismissed on the ground of alternative remedy.

6. The core of the argument of the petitioner is based on the decision in *Celir Llp –vs.- Bafna Motors (Mumbai) Pvt. Ltd. & Ors.(Supra*), wherein the Hon'ble Supreme Court had held as follows:

> ***110.*** *We summarise our final conclusion as under:*
> ***110.1.*** *The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the Sarfaesi Act.*
> ***110.2****. The confirmation of sale by the Bank under Rule 9(2) of the 2002 Rules invests the successful auction-purchaser with a vested right to obtain a certificate of sale of the immovable property in the form given in Appendix V to the Rules i.e. in accordance with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002.*
> ***110.3.*** *In accordance with the unamended Section 13(8) of the Sarfaesi Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction-sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction-purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the Sarfaesi Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the 2002 Rules. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the 2002 Rules and not till the completion of the sale or transfer of the secured asset in favour of the auction-purchaser.*
> ***110.4.*** *The Bank after having confirmed the sale under Rule 9(2) of the 2002 Rules could not have withheld the sale certificate under Rule 9(6) of the 2002 Rules, and entered into a private arrangement with a borrower.*
> ***110.5.*** *The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the Sarfaesi Act.*

7. The decision in *Celir Llp –vs.- Bafna Motors (Mumbai) Pvt. Ltd. & Ors.(Supra)* is distinguishable and inapplicable to the facts of this case. In the said decision, the Hon'ble Supreme Court of India had reversed the order of the High Court and arrived at a finding that after confirmation of the sale in terms of Rule 9(2) of 2002 Rules, there was no reason as to why the respondent bank had withheld issuance of the sale certificate under Rule 9(6) of the 2002 Rules. It was also held that the successful auction purchaser had a vested right to obtain the sale certificate and the High Court in exercising Article 226 could not have applied any equitable consideration to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act, 2002.

8. On the contrary, in the present case, the bank has been unable the issue the sale certificate only on the ground that there is an order of restraint passed by the Debts Recovery Tribunal. There is no other impediment in issuing the sale certificate. The petitioner is a party to such proceedings. The proceedings are still pending. In view of the above, there is no exceptional reason as to why this Court should bypass the alternative statutory mechanism under the SARFAESI 2002. In *Agarwal Tracom (P) Ltd. v. Punjab National Bank, (2018) 1 SCC 626* it has been held as follows:

> *32. In United Bank of India v. Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] this Court had the occasion to examine in detail the provisions of the Sarfaesi Act and the question regarding invocation of the extraordinary power under Articles 226/227 in challenging the actions taken under the Sarfaesi Act. Their Lordships gave a note of caution while dealing with the writ filed to challenge the actions taken under the Sarfaesi Act and made the following pertinent observations which, in our view, squarely apply to the case on hand: (SCC p. 143, paras 42-45)*

> *"42. There is another reason why the impugned order [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] 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.*
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> *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.*
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> *44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.*
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> *45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."*

9. Similarly, in *State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85*, it has been held as follows:

> *3. The Sarfaesi Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debts Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the respondent. The interim order was passed on the very first date, without an opportunity to the appellant to file a reply. Reliance was placed on United Bank of India v. Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] and Sri Siddeshwara Coop. Bank Ltd. v. Ikbal [Sri Siddeshwara Coop. Bank Ltd. v. Ikbal, (2013) 10 SCC 83 : (2013) 4 SCC (Civ) 638] . The writ petition*

> *ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same.*
> *5. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the Constitution is loath to interfere with an interim order passed in a pending proceeding before the High Court, except in special circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in dispute. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in CIT v. Chhabil Dass Agarwal [CIT v. Chhabil Dass Agarwal, (2014) 1 SCC 603] , as follows: (SCC p. 611, para 15)*
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> *"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [Thansingh Nathmal v. Supt. of Taxes, AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments 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 the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."*

10. The petitioner has participated in the auction process with full knowledge of the pending litigations which were disclosed in the sale notice. The petitioner has also been impleaded as a party to the proceedings before the Debts Recovery Tribunal. This is not a case where the respondent bank has failed to issue the sale certificate on its own volition. There is no arbitrariness, malafides or violation of any statutory duty of the respondent bank. On the contrary, there is an order of restraint passed by the Debts Recovery Tribunal prohibiting the respondent bank from issuing the sale certificate. In view of the efficacious statutory alternative remedy available to the petitioner, it would be appropriate for the petitioner to approach the Debts Recovery Tribunal. This would also avoid any conflicting judicial decisions. To this

extent, the prayer of the petitioner that they are no longer interested in the sale and only seek refund of the entire consideration alongwith interest also cannot be entertained by this Court.

11. For the above reasons, WPO/97/2026 is dismissed.

12. Liberty is granted to the petitioner to approach the Debts Recovery Tribunal in accordance with law for seeking appropriate reliefs, it is made clear that there has been no adjudication on the merits of the case and the the Debts Recovery Tribunal is directed to consider the same in accordance with law and without being influenced by any observation or finding in this order.

(Ravi Krishan Kapur, J.)