

WPA 22156 of 2026

28.08.26
D/L
Sl-08
Ct. 07
(Samar)

Jayasri Acharya
Vs.
The State of West Bengal & Ors.

Mr. Asis Bhattacharya,
Mr. B. Mitra,
Ms. Antara Chaudhuary

....for the petitioner.

Mr. Anindya BASu,
Mr. Partha Sarathi Basu,,

....for the State.

1. The petitioner has approached this Court seeking a restraint order against the Bank in taking possession of a property whereof the petitioner claims to be a tenant.
2. Attention of this Court is invited to an order dated August 12, 2026 passed by the learned Civil Judge (Senior Division), 5th Court, Alipore, South 24 Parganas passed in Title Suit No. 1191 of 2026 whereby the defendants in the suit have been restrained from taking forceful possession of the suit property and from the disturbing the plaintiff's possession over the suit property till September 15, 2026.
3. The Cause Title of the plaint annexed at page 40 of the writ petition reveals that the said suit has been filed by the petitioner and the authorised officer of the Bank (who is the respondent no. 5 herein) has also been arrayed as a party in the suit.

4. The petitioner alleges that the petitioner has approached the Debts Recovery Tribunal against the action of the respondent Bank and that the Debts Recovery Tribunal has heard the matter and reserved judgment on July 23, 2026.
5. It is submitted that the petitioner apprehend that during the pendency of the matter before the Debts Recovery Tribunal, the petitioner may be dispossessed.
6. It is submitted on behalf of the Bank authorities that as a stay order has been passed by the Civil Court and the matter is pending before the DRT therefore the Bank has not been able to take possession of the mortgaged property.
7. It is further submitted that in any case, the civil suit filed by the petitioner is barred under the relevant provisions of 2002 Act.
8. Learned advocate appearing for the State respondents has handed up to Court a copy of the written instruction forwarded to him by the Officer-in-charge, Garfa P.S, Kolkata, which does not reveal any threat of eviction of the petitioner as alleged in the writ petition.
9. When the petitioner has already approached the relevant Debts Recovery Tribunal and has filed SARFAESI Application there it was open for the petitioner to pray for an order of stay before the Debts Recovery Tribunal itself. The order dated July

23, 2026 passed by the Tribunal in SA 268 of 2026 (at page 38 of the writ petition) reveals that the matter has been finally heard and judgment has been reserved without granting any stay in favour of the petitioner. If the petitioner did not make any prayer for stay before the Tribunal, this Court cannot grant it now and if the petitioner's prayer was made and was not expressly granted, then also this writ petition cannot be entertained for the purpose of granting any interim stay which was impliedly refused by the Debts Recovery Tribunal.

10. In such situation, if the petitioner was aggrieved by the implied refusal to grant stay by the Debts Recovery Tribunal the petitioner had her remedy before the learned Debts Recovery Appellate Tribunal.

11. In any case the action of a private Bank has been questioned by way of this writ petition. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Federal Bank Limited Vs Sagar Thomas & Ors.*** reported at ***(2003) 10 SCC 733***. This writ petition is not maintainable.

12. In such view of the matter, WPA 22156 of 2026 stands dismissed. No Costs.

13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)

