

In the High Court at Calcutta

Constitutional Writ Jurisdiction

APPELLATE SIDE

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 22668 of 2026

Amit Kumar Saha & Anr.

Vs.

Canara Bank & Ors.

For the Petitioners :

Mr. Nimish Mishra

Mr. Abir Mondal.

For the Bank:

Mr. Farooque Ali.

Heard On :

08.10.2026

Judgment on :

08.10.2026

Partha Sarathi Chatterjee, J.:-

1. Fundamentally, the present writ petition has been preferred challenging the legality and/or tenability of the possession notice dated 1st October, 2026 issued by the respondent no. 2 on behalf of the respondent no. 1, namely, Canara Bank, the secured creditor.

2. Mr. Mishra, learned Advocate appearing for the petitioners, submits that the petitioners are the lawful owners and in possession of a residential flat situated at

Premises No. 237, Netaji Subhas Chandra Bose Road, Block-A, Flat No. 3A, 3rd Floor, P.O. Naktala, P.S. Netaaji Nagar, Kolkata-700047 (hereinafter referred to as “the said property”). He submits that the petitioners purchased the said property from the developer as well as the owner of the land by virtue of a deed of conveyance registered on 4th December, 2021. Referring to various documents, he submits that the said property has since been mutated in the names of the petitioners in the assessment records of the Kolkata Municipal Corporation and that the petitioners have been regularly paying municipal taxes in respect thereof. He further submits that the Corporation has also issued a “No Outstanding Certificate” in their favour. He has also placed reliance upon the electricity bills to substantiate the petitioners’ contention that they have been in possession and occupation of the said flat since the year 2021.

3. Mr. Mishra submits that, all of a sudden, on 1st August, 2026, a possession notice was affixed to the outer door of the said flat by the respondent nos. 1 and 2. Upon making enquiries, the petitioners came to learn that one Rishita Nandi had, by executing an instrument, created an equitable mortgage over the said flat and availed of a credit facility from the Bank. Since the borrower allegedly defaulted in servicing the loan in accordance with the repayment schedule, the Bank initiated measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the “SARFAESI Act”) and obtained an order under Section 14 of the said Act from the learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas. Pursuant to the said order, the respondent authorities proceeded to take physical possession of the flat in question.

4. He submits that, at the time when Rishita Nandi purportedly created the equitable mortgage in favour of the Bank, she had no right, title or transferable interest

in the said property. Consequently, according to him, the Bank could not have acquired any valid security interest therein. He therefore contends that the measures taken by the Bank under the SARFAESI Act are wholly unsustainable in law and that the physical possession of the property taken pursuant to the order obtained under Section 14 of the said Act is arbitrary and without lawful authority. According to him, the aforesaid circumstances furnish sufficient justification for this Court to exercise its jurisdiction under Article 226 of the Constitution. He further submits that, on the selfsame floor, similar fraudulent transactions had been perpetrated by different persons in respect of two other flats.

5. In response, Mr. Ali, learned Advocate appearing for the Bank, submits that the very authenticity of the deed on the strength whereof the petitioners claim title to the flat in question is under serious dispute. He submits that one of the owners had expired prior to the execution of the said deed and, notwithstanding such fact, the deed came to be executed thereafter. According to him, the circumstances surrounding the execution of the said deed give rise to a serious dispute as to its genuineness and validity, which cannot appropriately be adjudicated upon in the present writ petition.

6. In reply, Mr. Mishra submits that, in the course of hearing of the present writ petition before another Co-ordinate Bench, the respondent Bank was directed to obtain information from the website maintained by the Directorate of Registration and Stamp Revenue, Finance Department, Government of West Bengal. In compliance with the said direction, a search was undertaken and a document was produced on behalf of respondent no. 1. Referring to the relevant portion thereof, Mr. Mishra submits that the said document records registration of Deed No. 160503373/2021 on 14th December, 2021 in respect of a flat measuring 1750 sq. ft., situated on the 3rd Floor of Premises No.

237, N.S.C. Bose Road, Ward No. 100, Jadavpur, Kolkata. According to him, the said record leaves little scope for dispute as regards the identity of the property and the petitioners' title thereto. He submits that the documents evidencing the petitioners' ownership, coupled with the materials demonstrating their possession over the said flat, constitute admitted facts. It is, therefore, contended that, on the strength of such admitted facts, the extraordinary jurisdiction of this Court under Article 226 of the Constitution can legitimately be invoked.

7. However, Mr. Ali disputes the aforesaid contention and submits that there are several towers within the said premises and, therefore, the document relied upon by Mr. Mishra, by itself, is not sufficient to establish that the deed registered on 14th December, 2021 was executed in favour of the petitioners or that, on the strength thereof, the petitioners acquired valid title to the flat in question.

8. Heard learned advocates appearing for the respective parties and perused the materials on record.

9. The materials on record indicate that a deed No. 160503373/2021 in respect of a flat measuring 1750 sq. ft., situated on the 3rd Floor of Premises No. 237, N.S.C. Bose Road, Ward No. 100, Jadavpur, Kolkata was executed on 14th December, 2021 in favour of the petitioners. The said deed, on the face of it, also purports to confer title upon the petitioners. The documents produced by the petitioners, including the property tax receipts and electricity bills, prima facie indicate their possession over the said property. The respondent Bank, however, has seriously disputed the authenticity and genuineness of the said deed and has questioned the petitioners' claim of title on the strength thereof. Once the very foundation of the petitioners' claim to title is put in issue, the question as to whether the petitioners have acquired a valid and enforceable title under

the said deed would necessarily require adjudication upon the genuineness, validity and legal effect of the instrument, upon appreciation of the evidence that may be adduced by the respective parties. Such an adjudication, involving disputed questions of fact and title, falls within the province of the competent Civil Court and cannot appropriately be undertaken in exercise of the extraordinary jurisdiction under Article 226 of the Constitution. The petitioners would, therefore, be required to seek appropriate relief before the competent Civil Court.

10. The institution of such a suit, in the facts and circumstances of the present case, cannot be said to be barred merely by reason of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Section 34 bars the jurisdiction of a Civil Court in respect of matters which the Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under the said Act to determine. The Tribunal, while exercising jurisdiction under the SARFAESI Act, is required to act within the four corners of the statute and its jurisdiction cannot be extended to adjudication of a substantive dispute as to the validity or genuineness of a deed of title, particularly where such determination is foundational to the claim of ownership itself. In this context, useful reference may be made to the decision of the Hon'ble Supreme Court in *Central Bank of India & Anr. v. Prabha Jain & Ors.*, reported in (2025) 4 SCC 38. Thus, where the very title claimed by a person is founded upon a document whose genuineness or validity is seriously disputed, the appropriate remedy for obtaining an authoritative determination of such dispute would lie before the competent Civil Court, and the bar contained in Section 34 of the SARFAESI Act would not, merely on account of the existence of SARFAESI measures, preclude institution of such a suit.

11. In view of the foregoing discussion, the present writ petition is disposed of by granting liberty to the petitioners to institute an appropriate suit before the competent Civil Court having territorial jurisdiction over the property in question.

12. Having regard to the peculiar facts and circumstances of the case, the possession notice dated 1st October, 2026 is hereby set aside. Respondent no. 1 is directed to restore possession of the property in question to the petitioners forthwith. The respondents shall, however, stand restrained from taking any coercive steps in respect of the said property for a period of two months from date, so as to enable the petitioners to approach the competent Civil Court and seek appropriate interim relief in accordance with law.

13. It is clarified that, within the aforesaid period of two months, the petitioners shall institute an appropriate suit before the competent Civil Court and seek appropriate interim relief therein. In the event the petitioners fail to institute such suit and seek interim protection within the said period, the protection granted by this Court shall stand vacated automatically.

14. It is further clarified that this Court has not expressed any opinion on the validity, genuineness or legal effect of the deed of conveyance executed in favour of the petitioners or on the validity or enforceability of the deed of mortgage relied upon by respondent no. 1. All questions in that regard are left open for determination by the competent Civil Court in accordance with law. The question as to whether possession of the property ought ultimately to remain with the petitioners shall also abide by the determination of the Civil Court while considering the petitioners' application for interim relief.

15. With the aforesaid observation, the writ petition is disposed of.

16. Since no affidavit has been called for, allegations made in the writ petition are deemed not to have been admitted.

17. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Partha Sarathi Chatterjee, J.)

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