WPA 18602 of 2026

01.09.26
D/L
Sl-04
Ct. 07
(Samar)

Bikash Kumar Dutta & Ors.
Vs.
M/s. Prajukta Construction & Ors.

Mr. Rabi Lal Maitra, Ld. Sr. Adv.,
Mr. Dipanjan Dutta,
Mr. Amlan Mukerhee,
Mr. Govinda Kar,
Mr. Rajit Lal Maitra,
Mr. Jay Manna,
Mr. Subhajit Chowdhury,
Ms. Esha Basak,
….for the petitioners.

Ms. Soni Ojha,
Ms. S.B. Chatterjee,
Mr. Pranit Biswas,
….for the respondent no. 3.

Mr. Swarajit Dey,
Mr. Saptarshi Kar,
…..for the respondent no. 6.

Mr. Anit Karmakar,
….for the respondent no. 6.

1. This writ petition assails the action taken by the respondent no. 3 (i.e. authorised officer of L & T Finance) under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
2. The petitioners complain that they have been defrauded by the respondent nos. 1 and 2. They assert that despite a development agreement having been entered into between them and the said respondents specifying the owner's allocation (i.e. the petitioners' allocation) and the developer's

allocation (i.e. the allocation of the respondent nos. 1 and 2), the developers have sold the developed property in such manner that areas or spaces which fall under the owner's allocation have also been illegally conveyed.

3. Mr. Maitra, learned senior advocate appearing for the petitioner nos. 2, 3 and 4 submits that this Court should intervene under Article 226 of the Constitution of India in the present case since fraud has been practised.

4. It is further submitted that in any event the respondent nos. 1 and 2 could not have acted on the basis of a power of attorney that was cancelled.

5. It is next submitted that the respondent secured creditor did not exercise due diligence and allowed the properties that had been fraudulently conveyed to third parties, to be mortgaged with it and granted credit facilities on the basis of such fraudulently created mortgage by accepting deposit of title deeds from the respondent nos. 5,6 and 7.

6. Mr. Datta, learned Advocate appearing for the petitioner no. 1 submits that the petitioner no. 1 has already approached the Debts Recovery Tribunal No. II, Kolkata by filing an application under Section 17 of the 2002 Act, which has been registered as SA 1150 of 2026, but the same is yet to be heard and this Court should protect the

petitioner in the interregnum.

7. Ms. Ojha, learned advocate appearing for the respondent no. 3 submits that the secured creditor has taken all due care to examine the relevant documents and has granted credit facilities to the respondent nos. 6 and 7 on the basis of registered conveyances executed in their favour by the respondent nos. 1 and 2 on the strength of registered power of attorney executed by the petitioners in favour of the said respondent nos. 1 and 2.

8. It is submitted that insofar as the respondent no. 5 is concerned, the respondent no. 3 is not his lender.

9. It is further submitted that the secured creditor has also registered its mortgage over the subject property under CERSAI and the power of attorney being a registered one could not have been cancelled by the petitioners by any unregistered document.

10. Learned advocate appearing for the respondent no. 6 submits that the said respondent has purchased the property upon properly verifying the relevant documents.

11. Both the secured creditor as well as the respondent no. 6 submit that the writ petition should not be entertained inasmuch as the petitioners have an efficacious alternative remedy before the relevant

Debts Recovery Tribunal.

12. Heard the learned advocates appearing for the respective parties and considered the material on record.

13. The petitioners assail the action of a secured creditor under the 2002 Act.

14. *Prima facie* since the secured creditor has in its possession the title deeds of the property in question which have been executed on the basis of a registered power of attorney, it cannot be said that the secured creditor has acted wholly without jurisdiction in exercising powers under the provisions of the 2002 Act.

15. The question of fraud raised by Mr. Maitra is a disputed question of the fact, which cannot be properly adjudicated on affidavit evidence in a summary proceeding under Article 226 of the Constitution of India.

16. That apart, it is noticed that the secured creditor is a private entity. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Phoenix ARC Limited vs. Vishwa Bharati Vidya Mandir & Ors.*** reported in ***(2022) 5 SCC 345*** the writ petition itself is not maintainable.

17. The present case thus neither involves any public law element nor falls within any of the well-settled exceptions (i.e. violation of principles of natural

justice or enforcement of fundamental right or challenge to the vires of any statute or an Act wholly without jurisdiction) justifying interference under Article 226 of the Constitution of India.

18. In such view of the matter, this Court does not find this case fit to exercise discretion in favour of the petitioner. The writ petition is therefore not entertained.

19. Ms. Ojha, learned advocate appearing for the respondent no. 3 submits, on instructions, that the respondent no. 3 was supposed to take possession of the property today itself, however, the same could not be done as the writ petition was pending. It is submitted that, in any case, a time of seven days may be required for the respondent no. 3 to take possession of the property in question.

20. Since the petitioner no. 1 has already approached the Debts Recovery Tribunal, the said petitioner would be entitled to file an application for preponement of the hearing of the interlocutory application that has been filed along with the SARFAESI application.

21. If such an application is filed, the Debts Recovery Tribunal shall hear out the said application as expeditiously as possible and preferably not later than September 08, 2026.

22. It is clarified that this Court has not gone into the

merits of the matter and all points are left open to be urged and decided before the relevant Debts Recovery Tribunal, in accordance with law without being influenced by any observation made hereinabove.

23. It is further clarified that this order will not preclude the other petitioners, who have not yet approached the Debts Recovery Tribunal from approaching the Debts Recovery Tribunal in accordance with law.

24. With the aforesaid observations, WPA 18602 of 2026 stands disposed of. No Costs.

25. 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.)