01.08.2026
Item No.44 (DL)
Court No.7
AJ.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

W.P.A. 17064 of 2026

M/s. Biswas Fly Ash Bricks Industry
-Vs-
The State of West Bengal & Ors.

Mr. Saikat Ray Chowdhury,
Mr. Aritra Ghosh.
.... for the petitioner.

Mr. Indrajit Roy Chowdhury, Ld. A.G.P.,
Mr. Siddhartha Roy.
... ...for the State.

Mr. Pijush Kanti Ray,
Mr. Subir Hazra,.
....for the respondent nos. 2 & 3.

1. Supplementary affidavit filed in Court today is taken on record.

2. This writ petition assails an order dated December 30, 2025 passed by the District Magistrate, Birbhum on an application filed by the respondent no.2 (bank) under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 seeking police assistance for taking possession of the property mortgaged with it by the petitioner.

3. The petitioner has availed certain credit facilities from the bank which are allegedly in default. In order to secure repayment of the said

credit facilities, the petitioner has mortgaged an immovable property with the bank.

4. The bank has initiated proceedings under the 2002 Act and has taken steps under Section 13(4) thereof. In furtherance of the said proceedings, the bank had, on May 21, 2025, filed an application under Section 14 of the 2002 Act praying for police assistance in order to take possession of the mortgaged property i.e. the secured asset of the bank.

5. Such application under Section 14 of the 2002 Act was disposed of by the District Magistrate, Birbhum by an order dated December 30, 2025. However, the same has been communicated to the petitioner under a Memo dated June 29, 2026. It is the petitioner's case that the petitioner has received such order only on July 04, 2026.

6. Feeling aggrieved by such order, the petitioner has approached this Court by filing the present writ petition.

7. Mr. Roy Chowdhury, learned Advocate appearing for the petitioner submits that the order under Section 14 of the 2002 Act is a nullity. It is submitted that the bank has acted in derogation of the principles of fair play by suppressing the fact that there was an order of injunction (in the nature of *status* quo) operating

in respect of the said property in a suit for partition instituted by the respondent no.7 herein against the petitioner and other co-owners of the said property.

8. It is next submitted that in the said suit, an order directing the parties to maintain status quo as regards nature, character and possession in respect of the suit property (which includes the property mortgaged with the bank) has been passed and the bank is in the know of such order.

9. Mr. Roy Chowdhury further submits that the bank also made an application under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 seeking to be added as a party defendant in the said suit. Such application filed by the bank was allowed on February 21, 2026.

10. It is next submitted by Mr. Roy Chowdhury that once the bank got aware of the order passed by a competent Civil Court directing the parties to maintain *status quo* it was the duty of the bank to inform the District Magistrate, Birbhum about such order.

11. Mr. Roy Chowdhury further invites the attention of this Court to an application filed by the respondent bank under Order XXXIX Rule 4

of the Code, in the said suit seeking vacation of the said ad-interim order of *status quo*.

12. He submits that since, the nature of duty discharged by the District Magistrate, in considering and disposing of applications under section 14 of the 2002 Act is ministerial in nature therefore, there is an added responsibility on nationalized banks, (who answer the definition of a State within the meaning of the same under Article 12 of the Constitution of India) to act with fairness. It is then submitted that this is all the more so since the borrower has no right of audience before the District Magistrate, in a Section 14 Proceeding.

13. In order to drive home the point that existence of an alternative remedy should not deter this Court from exercising its jurisdiction under Article 226 of the Constitution of India when a statutory authority or Tribunal has acted unfairly or not in accordance with the statute in question. Mr. Roy Chowdhury relies on the following judgments of the Hon'ble Supreme Court (i) ***State of Uttar Pradesh –Vs-Mohammad Nooh*** reported at ***1957 SCR 595 PHR Invent Educational Society vs. UCO Bank & Ors.*** reported at ***(2024) 5 SCR 541***.

14. Mr. Roy, learned Advocate appearing for the respondent bank authorities submits that

although the bank was aware of the order of injunction passed by the learned Civil Court, the same was not binding on the bank inasmuch as, the bank was not a party to the suit at the time when the said order of injunction was passed. He invites the attention of this Court to the order dated February 21, 2026 passed by the learned Civil Court to demonstrate that the bank was added as a party to the suit only on February 21, 2026 and the Section 14 proceedings were disposed of by the District Magistrate, Birbhum much earlier than that, on December 30, 2025.

15. It is further submitted that the petitioner's assertion that the borrower got no opportunity of hearing before the District Magistrate is not correct since by a memo dated November 26, 2025 the District Magistrate had called upon the borrower along with the bank for a hearing prior to disposing of the bank's application under Section 14 of the 2002 Act.

16. It is next submitted that although the bank was not a party to the proceeding and therefore not bound by the order of injunction yet, the bank had supplied all the relevant records pertaining to the SARFAESI application that has been instituted by the petitioner before the relevant Debts Recovery Tribunal during the Section 14 proceedings and the said records

indicated the suit as well as the order referred to by the petitioner. In such regard, he invites the attention of the Court to an affidavit that was filed by the Authorizing Officer of the bank before the District Magistrate, Birbhum.

17. It is further submitted that since the petitioner has already approached the Debts Recovery Tribunal by filing a SARFAESI application under Section 17 of the 2002 Act therefore, in any case, the instant writ petition should not be entertained.

18. In order to assert that a Writ Court should refrain from entertaining any writ petition against an action of a secured creditor under Section 13(4) of the 2002 Act in view of the availability of an efficacious and alternative remedy to the person aggrieved before the Debts Recovery Tribunal, he relies on the following judgments of the Hon'ble Supreme Court:-

(a) ***United Bank of India –Vs- Satyawati Tondon & Ors.*** reported at ***(2010) 8 SCC 110***.

(b) ***Kanaiyalal Lalchand Sachdev & Ors. –Vs- The State of Maharashtra & Ors.*** reported at ***(2011)2 SCC 782.***

(c) ***Phoenix ARC Private Limited –Vs- Vishwa Bharati Vidyta Mandir & Ors.*** reported at ***(2022)5 SCC 345.***

19. Heard learned Advocates appearing for the respective parties and considered the material-on-record.

20. It is now well settled that existence of an alternative remedy is not a bar to the High Court exercising jurisdiction under Article 226 of the Constitution of India and that High Court can exercise discretion in favour of a writ petitioner only in cases where either a public law element is involved or an extraordinary case of exceptional nature is made out as indicated in the judgments cited by the parties namely ***Mohammad Nooh*** (supra), ***Satyawati Tandon*** (supra) and ***PHR Invent Education Society*** (supra).

21. The judgment of ***PHR Invent Education Society*** (supra) relied on by Mr. Roy Chowdhury reiterates the said exceptions stated by the Hon'ble Supreme Court in a catena of decisions thus :-

> *"**29.** It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:*
> *(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;*
>
> *(ii) it has acted in defiance of the fundamental principles of judicial procedure;*

> *(iii) it has resorted to invoke the provisions which are repealed; and*
>
> *(iv) when an order has been passed in total violation of the principles of natural justice."*

22. The Hon'ble Supreme Court has very illustratively indicated the difference between "maintainability" and "entertainability" of a writ petition in the case of ***Godrej Sara Lee Ltd. vs. Excise and Taxation Officer cum Assessing Authority*** reported at ***2023 SCC Online SC 95***. The Hon'ble Court has held that while on the one hand objection as to maintainability goes to the root of the matter, if the same has substance, thereby rendering the Court unable to even receive the matter, on the other hand entertainability of a writ petition under Article 226 of the Constitution of India is entirely in the realm of discretion.

23. Coming to the facts of the present case, the same are not so strong as to persuade this Court to exercise discretion in favour of the petitioner despite availability of an alternative remedy under Section 17 of the 2002 Act before the relevant Debts Recovery Tribunal.

24. In so far as the petitioner's contention that the bank has suppressed the order of *status quo* before the District Magistrate, Birbhum is concerned, the same does not appear to be a

reason good enough for this Court to exercise its writ jurisdiction in favour of the petitioner inasmuch as, evidently, the bank was not a party to the suit at the time when the order under Section 14 of the 2002 Act was passed by the District Magistrate, Birbhum.

25. While the bank may have been in the know of the order of *status quo* that was passed by the learned Civil Court but that does not become a relevant fact till such time that such order of *status quo* visits the rights of the bank or in any manner curtails its authority under the 2002 Act.

26. It is well settled that to successfully sustain the change of suppression it must be proved that the fact was so material and relevant that if it had not been suppressed, it would have affected the merits of the case. Suppression of any other fact would not vitiate any action. In the facts of the case as stated above, an order of *status quo* which did not bind the bank was not so relevant that it’s absence would have vitiated the order of the District Magistrate, Birbhum.

27. Whether, the subsequent addition of the bank to the suit, without any further extension of the order of injunction upon the bank would have affected the bank or not would be a question to be decided in an appropriate

proceeding. However, as at present, there is no case made out for interference by the Court with the order passed by the District Magistrate, Birbhum, under Article 226 of the Constitution on the ground that the bank has suppressed any material.

28. Moreover, since the borrower has already approached the relevant Debts Recovery Tribunal by filing an application under Section 176 of the 2002 Act that is all the more reason for this Court to refrain from exercising its writ jurisdiction.

29. The judgments in the case of ***Mohammad Nooh*** (supra) and ***PHR Invest*** (supra) fail to aid the petitioner in the present case inasmuch as, neither any extraordinary case has been made out nor any public law element is involved nor does the petitioners' case fall within any of the exceptions carved out justifying exercise of writ jurisdiction despite availability of alternative remedy.

30. For all the reasons aforesaid, WPA 17064 of 2026 is not entertained.

31. The petitioner is left free to approach the relevant Debts Recovery Tribunal by way of an appropriate application, in accordance with law.

32. It is made clear that all the observations made hereinabove are only for the purpose of deciding the present writ petition and the same would not influence the Debts Recovery Tribunal in deciding the petitioner's application on merits, in accordance with law, if the same is filed.

33. With the aforesaid observations, WPA 17064 of 2026 stands disposed of. There shall be no order as to costs.

34. 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.)