

28.10.2026

Ct. No. 3

Sl. No. 15

tbsr/MD

WPA 31206 of 2026

Rita Bose Saha & Ors.

Vs.

Union of India & Ors.

Mr. Ivan Roy, Adv.

Mr. Kaustav Banerjee, Adv.

...for the petitioners

Mr. Sukanta Banerjee, Adv.

Mr. Sukanta Manna, Adv.

....For the U.O.I.

Mr. Susanta Dutta, Adv.

Mr. Mukunda Lal Sarkar, Adv.

Mr. Nilendra Narayan Roy, Adv.

... for the State

1. Affidavit-of-service filed today be kept on record.
2. Heard the learned Counsel appearing for the parties.
3. In the writ petition, the writ petitioners challenged the action by way of eviction of the writ petitioner from their residential house by executing the order passed by the learned Additional Chief Judicial Magistrate at Alipore South 24 Parganas in Misc. Case no. 237 of 2026. By executing the said order in connection with Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

(SARFAESI Act), the eviction of the petitioners has been made. The petitioners proceeded before the Debt Recovery Tribunal seeking redressal of their grievances with regard to restoration of possession but the Debt Recovery Tribunal could not pass any order before it closed for vacation.

4. The learned Counsel appearing for the writ petitioners submitted that by virtue of the notifications dated 24th February, 2020 subsequently modified by notification dated 12th February, 2021, the Non-Banking Financial companies would be entitled for enforcement of security interest in secured debts of Rs.20 lakhs and above. In the instant case as it appears from the affidavit of the bank before the learned Magistrate, the amount of debt is to the tune of Rs.16,55,621.71. As such, the learned Magistrate could not pass the order of taking possession as the Magistrate did not have jurisdiction to pass such order in view of the aforesaid notifications.
5. Learned Counsel for the petitioners relied upon a Division Bench judgment of this Court passed in FMA 161 of 2026 wherein the Division Bench of this Court held that a combined reading of

the notifications dated 24th February, 2020 and 17th June, 2021 would indicate the Central Government specified that such Non-Banking Financial Companies which fall within the definition of Section 45-I(f) of the RBI Act being a Financial Institution, would be entitled to proceed under the SARFAESI Act to recover secured debt of Rs.50 lakhs and above, which was later reduced to Rs.20 lakhs upon granting HFCs the status of a Financial Institution. The notification of June 17, 2021 also granted HFCs, the status of Financial Institution for the purpose of the SARFAESI Act and moreover, as per Section 45-I(f), Financial Institutions were companies following within the definition of NBFC.

6. Under the circumstances, the Division Bench held that the notifications of February 24, 2020 and February 12, 2021 would be applicable in the case of HFC. It was further held that there was no reason to hold that HFC would not be bound by the notification dated February 24, 2020 as modified on February 12, 2021, the HFC was clearly covered by the notifications and could not proceed under SARFAESI Act in respect of the

claim against the petitioners, which was below Rs.20 lakhs.

7. The learned counsel appearing for the respondent nos. 3 to 5 being the Housing Finance Company (HFC) submitted that in view of the notification dated June 17, 2021 of the Ministry of Finance, the Housing Finance Companies are excluded from the purview of notifications dated 24th February, 2020 and 12th February 2021. As such, the HFC rightly proceeded in the recovery procedure with regard to the loan amount below Rs.20 lakhs.
8. In view of the decision rendered by the Division Bench of this Court, it is clear that the HFC is governed by the notifications dated 24th February, 2020 read with 12th February, 2021. As such, the HFC could not have proceeded for recovery of an amount below Rs.20 lakhs before the learned Magistrate and there was inherent lack of jurisdiction of the learned Magistrate while taking up the matter.
9. As such, the order passed by the learned Magistrate dated June 9, 2026 and September 14, 2026 are without jurisdiction

and are, therefore, set aside. The respondent nos. 3 to 5 are directed to restore possession of the residential house to the petitioner within a period of 15 days from today.

10. However, it is made clear that the respondent nos. 3 to 5 shall be at liberty to recover the dues from the petitioner who is the borrower, in accordance with law.

11. The writ petition being WPA 31206 of 2026 stands allowed.

12. No order as to costs.

13. Urgent photostat certified copy of this order if applied for be furnished on completion of all formalities.

(Sandip Kumar De, J.)