

30.10.2026
Sl. No. 11
Ct. No.07
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA/17965/2026
GURUVAYOOR INFRASTRUCTURE PRIVATE LIMITED
(GIPL) & ANR.
VS
IDFC FIRST BANK LIMITED AND ANR.

Mr. Suddhasatva Banerjee
Mr. Avrin Chakraborty
Ms. Bhawna Tekriwal

...for the Petitioners.

Mr. Anirban Ray, Id. Sr. Adv.
Mr. Soumava Mukherjee
Mr. Manmeet Singh
Ms. S. Kumar

...for respondent no. 1

Ms. Pubali Sinha Chowdhury
Ms. Rajeshwari Prasad

...for respondent no. 2

Mr. Ankur Mittal

...for the NHAI

1. Affidavit-of-service filed on behalf of the petitioners in Court today is taken on record.
2. Heard learned advocates appearing for the respective parties.
3. In this writ petition, the writ petitioners have prayed for reliefs with regard to the payment of transfer remittance and release of the receivables and account lying in the Escrow accounts in favour of respondent no. 2 by respondent no. 1.

4. It appears that one agreement for payment of amount from the Escrow account of respondent no. 1 was entered into by the National Highways Authority of India (in short, NHAI). Such agreement was entered into in pursuance of the agreement between the petitioners and the NHAI.
5. Learned senior advocate appearing for the respondent no. 1, at the outset, raises the question of maintainability of the writ petition as the respondents are the companies within the meaning of Companies Act, 2013 and involved in the business of banking. The NHAI has not been made a party. Therefore, learned senior advocate appearing for the respondent no. 1 submitted that the writ petition cannot be entertained to enforce the commercial contract between the petitioners and the respondent no. 1.
6. Learned advocate appearing for the petitioners relied upon a judgment of the Division Bench of Bombay High Court in the case of *IRB Ahmedabad Vadodra Super Express Tollay Pvt. Ltd. vs. Union of India & ors. being writ petition no. 3415 of 2019* pronounced on 16th April, 2019 wherein a similar agreement was in consideration before the said Hon'ble Court and the reliefs were granted to the petitioners in respect of the concession agreement.
7. Learned advocate appearing for the petitioners further relies upon the judgment of the Hon'ble Supreme Court delivered in the case of *Andi Mukta Sadguru Shree*

Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & ors. vs. V. R. Rudani & ors. reported in (1989) 2 SCC 691 and submits that the writ petition is maintainable against the private bodies also in case the private bodies are having functions of public nature.

8. Learned senior advocate appearing for the respondent no. 1 distinguished *IRB Ahmedabad Vadodra Super Express Tollay Pvt. Ltd.* (supra) on facts and submits that the said judgment relates to a set of facts where the contractual obligations between the petitioners and the NHAI were in question which is not the case in hand.
9. Learned senior advocate appearing for the respondent no. 1 further submits that respondent no. 1 being a banking authority is not having any public duty and as such it will not fall within the scope of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* (supra).
10. Learned senior advocate appearing for the respondent no. 1 placed reliance upon a judgment of the Hon'ble Supreme Court in the case of *S. Shobha vs. Muthoot Finance Limited reported in (2025) 11 SCC 335* and relying on paragraphs 7 and 9.4 of the said judgment, he strenuously argued that respondent no. 1 is not the entity against whom the writ petition would lie and the same is liable to be dismissed.
11. Learned advocate appearing for the petitioners, in reply, placed reliance on page 523 of the writ petition wherefrom it appears that the agreement was entered

into where respondent no. 1 and the NHAI were the parties and the same is connected to the agreement between the petitioners and the NHAI.

12. Upon considering the submissions of the respective parties and the decisions as cited above, it appears that the decision rendered in *IRB Ahmedabad Vadodra Super Express Tollay Pvt. Ltd.* (supra), the Bombay High Court considered the matter where the Union of India and the NHAI were the parties. Therefore, the fact situation of the said judgment is absolutely different from the case in hand.

13. So far as *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* (supra) is concerned, it appears that it is the clear declaration of the Hon'ble Supreme Court in paragraph 20 that the words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

14. From the decision of the Hon'ble Supreme Court rendered in paragraph 7 of *S. Shobha* (supra), it is also

clear from the declaration of the Hon'ble Supreme Court that banking company has no duty towards the public. It has duty towards its account holders, which may include the borrowers having availed of the loan facility. It has no power to take any action, or pass any order affecting the rights of the members of the public. The binding nature of its orders and actions is confined to its account holders and borrowers and to its employees. Its functions are also not akin to Government functions.

15. In paragraph 9.4, it has been clearly declared that a private company carrying on banking business as a scheduled bank cannot be termed as a company carrying on any public function or public duty.

16. Thus, in the light of the discussions made hereinabove, it is clear that the present writ petition is not maintainable against the respondents as the respondents are not having any public functions or public duty. As such, the respondents are not amenable to Article 226 of the Constitution of India.

17. The matter can be looked into from another angle. If the petitioners rely on the agreement appearing at page 523 of the writ petition, such agreement was entered into amongst the petitioners, respondent no. 1 and the NHAI. However, the NHAI has not been made a party in the present writ petition. In that case, due to non-joinder of NHAI, as a necessary party, the writ petition is bound to fail on that score.

18. Consequently, the writ petition being **WPA 17965 of 2026** is **dismissed as not maintainable** without any order as to costs.

19. Connected application, if any, also stands dismissed.

20. Interim orders, if any, stand vacated.

21. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Sandip Kumar De, J.)