

In the High Court at Calcutta

Constitutional Writ Jurisdiction

APPELLATE SIDE

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 30179 of 2026

Unique Procon Private Limited

Vs.

Punjab National Bank & Ors.

For the petitioner

: Mr. Debashis Banerjee

Mr. Rakesh Jana

For respondent nos. 1 to 3

: Ms. Parna Roy Chowdhury.

Heard on

: 15.10.2026

Judgment on

: 15.10.2026

Partha Sarathi Chatterjee, J.:-

1. Affidavit-of-service filed in Court today is taken on record.
2. Invoking the extraordinary writ jurisdiction of this Court, the petitioner, an auction purchaser, has challenged the letter dated 7th October, 2023, issued by the respondent, Punjab National Bank (hereinafter referred to as "the secured creditor"), whereby the amount of Rs. 8,20,047.20/-, equivalent to 10% of the bid amount and deposited by the petitioner, forfeited. In addition, the petitioner prays

for cancellation of the subsequent e-auction of the secured asset held on 5th October, 2023.

3. Mr. Banerjee, learned Advocate appearing for the petitioner, submits that the petitioner participated in the auction process conducted by the secured creditor for enforcing its security interest over two parcels of land, together with a building situated at L.R. Plot Nos. 878 and 899 at Mouza: Shankarpur, P.S. Durgapur, District Paschim Burdwan. He further submits that, having emerged as the highest bidder, the petitioner was asked to deposit an amount equivalent to 10% of the total bid value. Accordingly, the petitioner deposited the said amount of Rs. 8,20,047.20/-. Immediately thereafter, the petitioner came to know that the said property was encumbered and, upon enquiry, it came to his notice that the land bearing L.R. Plot No. 878 was a barga land and that barga rights had been created in favour of one Chittaranjan Bagdi. Furthermore, a portion of the parcel of land bearing L.R. Plot No. 878 had been acquired by the Asansol Durgapur Development Authority. The petitioner immediately brought these facts to the notice of the secured creditor. However, the secured creditor continued to exert pressure upon the petitioner to deposit the remaining amount of the bid value. Ultimately, by a letter dated 7th October, 2023, the amount deposited by the petitioner was forfeited, the auction process was cancelled, and a subsequent e-auction was conducted.

4. Aggrieved thereby, the petitioner instituted Title Suit No. 40 of 2025 before the Court of the learned Civil Judge (Junior Division) at Durgapur. An interim order was passed in favour of the petitioner. However, the secured creditor entered appearance and filed an application under Order VII Rule 11 of the Code of Civil

Procedure, 1908 (in short, “CPC”), praying for rejection of the plaint. By an order dated 21st September, 2026, the application filed by the secured creditor under Order VII Rule 11 of the CPC was allowed and the plaint was rejected. In the aforesaid circumstances, the petitioner was compelled to prefer the present writ petition.

5. Mr. Banerjee prays for the issuance of a direction to complete the sale process in respect of the aforesaid property and register the same in favour of the petitioner upon acceptance of the remaining bid amount. He also prays that a demarcation process be undertaken to hand over physical possession of the said property to the petitioner.

6. In rebuttal, Ms. Roy Chowdhury, learned Advocate representing respondent nos. 1 to 3, denies and disputes the contentions advanced on behalf of the petitioner by Mr. Banerjee. She submits that, since the petitioner failed to deposit the remaining bid value, the secured creditor, in exercise of its power under subsection (5) of Section 9 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the SARFAESI Act”), forfeited the amount deposited by the petitioner. Subsequently, a second auction was held and, upon completion of all necessary formalities, a sale certificate was issued in favour of the successful bidder and physical possession of the property in question was handed over to the auction purchaser. According to her, the petitioner can no longer claim any right, title or interest in respect of the said property.

7. Ms. Roy Chowdhury further submits that the petitioner could have ventilated his grievances before the Debts Recovery Tribunal (in short, “DRT”).

However, without exhausting the efficacious alternative statutory remedy available to him, the petitioner has preferred the present writ petition. She contends that the writ petition is not maintainable in its present form.

8. In response, Mr. Banerjee submits that, despite the existence of an efficacious alternative statutory remedy, a writ petition can be entertained. He further submits that there is no absolute bar to entertaining a writ petition where an efficacious alternative statutory remedy is available. He also submits that the present writ petition has been preferred for the enforcement of the petitioner's fundamental rights and, accordingly, the same can be entertained. In support of his contentions, he relies on a decision of the Hon'ble Apex Court in the case of South Indian Bank Limited & Ors. vs. Naveen Mathew Philip &Anr., reported in (2023) 17 SCC 311.

9. Heard the learned Advocates appearing for both the parties and perused the materials on record.

10. Record reveals that, to enforce its security interest, the secured creditor initiated the auction process in respect of the property detailed in the sale notice, appearing at page 34 of the writ petition. The said property was put up for sale on an "as is where is", "as is what is" and "whatever there is" basis. These clauses cannot confer absolute immunity or liberty upon the secured creditor to commit any irregularity and/or illegality in conducting the auction process, and the doctrine of caveat emptor (buyer beware) cannot be used as a shield against any illegality in conducting the sale process. However, it is also equally well settled that a person intending to participate in an auction process shall obtain information regarding the land and/or property in question.

11. In the present case, citing the reason that the petitioner failed to deposit the remaining bid value within the specified period, the secured creditor, in exercise of its power under sub-section (5) of Section 9 of the SARFAESI Act, forfeited the amount deposited by the petitioner. Thereafter, the secured creditor held a second auction, and the sale process was completed, the sale certificate was issued, and physical possession of the property in question was handed over to the successful bidder. The petitioner instituted a suit. However, ultimately, the plaint was rejected. If the petitioner considers that the issue involved in the case at hand cannot be adjudicated by the learned Tribunal in exercise of its powers under Section 17 of the SARFAESI Act and that intervention by a civil court is required, then his remedy lies in challenging the order rejecting the plaint before the appropriate forum. If the petitioner considers that his grievances can be adjudicated by the learned Tribunal upon an application filed under Section 17 of the SARFAESI Act, he is at liberty to approach the Tribunal by filing an appropriate application.

12. Undisputedly, despite the existence of an efficacious alternative statutory remedy, a writ petition can be entertained on four grounds, namely: (i) enforcement of fundamental rights; (ii) violation of the principles of natural justice; (iii) where the authority acts without jurisdiction; and (iv) where the vires of any provision of law is challenged. Therefore, there can be no doubt in accepting the precedent laid down by the Hon'ble Apex Court in *South Indian Bank Limited & Ors.* (supra). However, the said precedent will not come to the assistance of the petitioner, since the violation of any right relating to property, if any, cannot be construed as a violation of a fundamental right. Accordingly, it cannot be said that

the secured creditor acted in contravention of the principles of natural justice or acted without jurisdiction in forfeiting the amount deposited by the petitioner or in conducting the second auction sale. However, the propriety of the forfeiture of the amount deposited by the petitioner, the cancellation of the earlier e-auction and the conduct of the subsequent e-auction are matters to be adjudicated by the appropriate forum in an appropriately instituted proceeding.

13. Therefore, based on the reasoning discussed in the preceding paragraphs, I am of the view that this writ petition cannot be entertained and the same is accordingly, dismissed.

14. Accordingly, the writ petition being WPA 30179 of 2026 stands dismissed.

15. However, it is clarified that this order shall not preclude the petitioner from approaching the appropriate forum for redressal of their grievances in accordance with law, and the petitioner shall be at liberty to raise all issues before such forum.

16. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall be deemed to have not been admitted by the respondents.

17. There shall be no order as to costs.

18. Let urgent Photostat certified copy of this order be made available to the parties, if applied for, upon compliance of usual formalities.

(Partha Sarathi Chatterjee, J.)

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