

C.O. 4076 of 2025

15.09.2026

ct.652, sl.9
sk

Branch Manager, Indian Bank
vs
Minsarulla Mallik & Ors.

Mr. Shamit Sanyal
Ms. Mekhala Kanji ...for the petitioner

1. This is a revision challenging an order of the learned Civil Judge, (Senior Division) at Kandi, Murshidabad dated September 3, 2025, in Partition Suit No. 115 of 2025.
2. Vide the said order, the Trial Court has rejected petition filed by the defendant/revisionist/bank raising a point of non-maintainability of the suit before the learned Trial Court.
3. Mr. Sanyal, learned advocate has represented the petitioner/bank. In spite of service, none appears for the opposite party.
4. It appears from record as well as submissions made on behalf of the petitioner that the petitioner/defendant resisted the suit on the ground of non-maintainability of the same in so far as part of the suit property involved a proceeding under the SARFAESI Act, 2002. The petitioner's ground was that jurisdiction of the Civil Court is ousted by operation of provisions under the said Act and hence, in this case too,

the Civil Court should have been considered to have no jurisdiction to entertain the suit under the law.

5. The Trial Court has held otherwise in the said impugned order, that the suit is for partition of the property amongst the co-sharers and the issue of partition cannot be dealt with by the statutory authority under the SARFAESI Act, 2002.
6. The Court held further that the issue of partition of suit property is purely civil in nature and the statutory authority is denuded of a power to consider the question of partition between the co-sharers.
7. This Court while dealing in the instant civil revision, has found no illegality or impropriety in the said impugned order of the Trial Court, which is based on just, proper and legal grounds as well as due consideration of the materials on record. where the suit is genuinely for partition of a larger property, only a part of which is the subject matter of SARFAESI proceedings, as it is in the present case and the relief claimed before the Civil Court does not seek adjudication upon the validity of the measures taken by the secured creditor, and that the suit is not lodged

to frustrate the proceedings under the SARFAESI Act, there is no impediment for the Court, to entertain such a suit. The jurisdictional exclusion operates only in respect of such matters as the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine under the statutory scheme. A suit instituted for partition and separate possession of a larger body of property, comprising several properties or portions thereof, cannot, merely because one part thereof happens to be the subject matter of SARFAESI proceedings, be regarded as a proceeding challenging the measures adopted by the secured creditor. The determination of the inter se civil rights of the co-sharers, the ascertainment of their respective shares and the passing of a preliminary decree for partition are matters falling within the ordinary jurisdiction of the Civil Court and are not matters which the DRT is competent to adjudicate as a court of partition. The mere fact that the decree may have an incidental bearing upon a property in respect of which security interest has been created cannot, by itself, enlarge the statutory jurisdiction of the DRT or extinguish the jurisdiction vested in the Civil

Court under Section 9 of the Code of Civil Procedure.

8. For the reason as above, this Court finds no justifiable ground to interfere with the order of the learned Trial Court dated September 3, 2025, in Partition Suit No. 115 of 2025 as impugned in the instant civil revision.
9. The civil revision therefore, fails and is hereby dismissed.
10. However, let the trial court be directed to make all endeavour for disposal of the suit as expeditiously as possible preferably within a period of six months from the next date fixed.

(Rai Chattopadhyay, J.)