IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE

FMA 628 of 2026
With
CAN No. 1 of 2026

M/s. Kriti Commosales LLP & Ors.
vs.
Canara Bank & Ors.

For the Appellant	: Mr. Arindam Banerjee, Sr. Adv. Mr. Vikas Baisya, Adv. Mr. Dyutimoy Paul, Adv. Mr. Ritoban Sarkar, Adv.
For the Respondent Nos. 1 to 6	: Mr. Jishnu Chowdhury, Sr. Adv. Mr. Farooque Ali, Adv. Mr. Andolan Sarkar, Adv. Mr. Faizan Md. Zafar, Adv.
For the Respondent No. 8	: Mr. Pradeep Jewrajka, Adv. Mr. Ayush Singhania, Adv.
Judgment reserved on	: 21.08.2026
Judgment pronounced on	: 15.09.2026
Judgment uploaded on	: 15.09.2026

Shampa Sarkar, J.

1. The appeal arises out of a judgment and order dated April 8, 2026 passed by a learned Single Judge in WPA No. 4060 of 2026. His Lordship dismissed the writ petition, inter alia, holding that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002 (hereinafter referred to as the 'SARFAESI Act') was a complete code and exercise of a discretionary jurisdiction under Article 226 of the Constitution of India was contrary to the ratio laid down by the Hon'ble Apex Court in a catena of decisions. His Lordship observed that, courts should be extremely careful in exercising any discretion while entertaining writ petitions challenging actions taken by the secured creditors under the SARFAESI Act. Hence, according to His Lordship, all questions on merits of the issues raised by the appellants should be decided by the Debts Recovery Tribunal having jurisdiction.

2. Despite service, none appears for the respondent No. 7.

3. According to His Lordship, Section 17 of the SARFAESI Act provided an alternative remedy. The appellants could challenge any proceeding under the SARFAESI Act before the Tribunal. The appellants, who were the auction purchasers, were covered by the expression 'person aggrieved' in the said Section. Moreover, the appellants failed to assign any reason for the delay in claiming refund of the consideration amount that was paid for purchase of the secured asset. The sale was conducted by the secured creditor on "as is where is basis". The said phrase was not limited to the physical condition of the property alone, but also extended to the title of the property or any litigation arising therefrom. The auction notice also indicated that the sale would be on "as is where is basis". The said expression was included in the notice, for the knowledge of the intending bidders that the seller did not take any responsibility either in respect of the condition of the property or in respect of any liability or charge attached to it. The phrase postulated that the purchaser would be acquiring an asset with all its existing rights,

obligations and liabilities. Thus, the appellants, as prospective auction purchasers, were put on adequate notice that the sale of the property in auction was conducted by the secured creditor with all its hidden liabilities. It was the duty of the auction purchasers to exercise due diligence before bidding at the auction. The learned Single Judge relied on the doctrine of *caveat emptor*. Upon carefully examining the factual background of the case, His Lordship formulated the following disputed questions involved in the adjudication of writ petition:-

a. Whether the borrower had title over the property when the security interest was created;
b. Whether the bank had acquired any right as a secured creditor over such security interest and had the right to sell the property at an auction;
c. Whether the sale conducted by the bank was valid, or not;
d. Whether the appellant was entitled to restitution, or not;
e. Whether there was any scope to grant any relief to the appellants when the sale was on "as is where is basis";
f. Whether the appellants were the alter-ego of the respondent No. 7/ borrower and had been set up by the said borrower.

4. According to His Lordship, such questions would necessarily require adjudication, as the issues involved mixed questions of law and fact.

5. His Lordship held that the case did not fall within any of the exceptions under which the writ court could exercise its discretion and grant equitable reliefs, notwithstanding the alternative statutory remedy under Section 17 of the SARFAESI Act. Reference was made to the decisions of ***Whirlpool***

Corpn. vs. Registrar of Trade Marks reported in ***(1998) 8 SCC 1 , Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-Cum-Assessing Authority & Ors.*** reported in ***2023 SCC OnLine SC 95, State of UP vs. Mohammad Nooh*** reported in ***1957 SCC OnLine SC 21, Mr. Mandava Krishna Chaitanya vs. UCO Bank, Asset Management Branch,*** reported in ***2018 SCC OnLine Hyd 196***, ***United Bank of India vs. Satyawati Tondon and Ors.*** reported in ***(2010) 8 SCC 110, Agarwal Tracom Pvt. Ltd. vs. Punjab National Bank and Ors.*** reported in ***(2018) 1 SCC 626, K.C Ninan vs. Kerala State electricity (Board)*** reported in ***(2023) 14 SCC 431.***

6. Mr. Arindam Banerjee, learned senior Advocate for the appellants submitted that His Lordship failed to appreciate the fact that the writ petition was filed alleging fraud on the part of the bank in selling the property by auction purchase, although no security interest could be created by the borrower in respect thereof. Such questions could not have been decided by the Tribunal.

7. According to Mr. Banerjee, the learned Single Judge ought to have appreciated the fact that the borrower purchased the property on November 25, 2021. He could not have mortgaged the said property, as the respondent No. 8 had become the owner thereof by a prior deed of sale dated June 7, 2019.

8. The case run by the appellants was that, credit facility was sanctioned in favour of respondent No. 7 against creation of an equitable mortgage in respect of the said property, by deposit of the title deed being the deed of conveyance dated November 25, 2021, registered at the office of the A.D.S.R,

Alipore recorded in Book No. 1, Volume No. 1605-2021, Pages 133025 to 133067, bearing deed No. 160503170/2021. The said loan account of the borrower was classified as a Non Performing asset with effect from April 17, 2023.

9. The appellant No. 1 participated in the e-auction conducted by the bank on February 17, 2024 and submitted a bid for Rs. 1,49,95,000/-. The appellant No. 1 was declared the highest and successful bidder in respect of the property in question. Thereafter, upon receipt of the entire sale consideration amount, the authorized officer of the bank issued a certificate of sale dated February 26, 2024 in favour of the appellant No. 1, which was subsequently presented for registration and duly registered on April 18, 2024 at the office of the A.R.A.-III, Kolkata recorded in Book No. 1, Volume No. 1903-2024 bearing deed No. 190303010/2024. When the appellant No. 1 approached the Kolkata Municipal Corporation for mutation of the property in its name, the appellants were shocked to discover that, the name of the borrower was not entered as owner of the property in the municipal records. Upon enquiry, it was revealed that the property had been sold and transferred by a registered deed of conveyance in favour of the respondent No. 8, prior to the conveyance in favour of the respondent No. 7. It was alleged that, the bank did not acquire any right over the mortgaged property. As the borrower lacked any subsisting right, title and interest in the said property, the equitable mortgage was null and void. The action of the bank in holding the auction purchase and in conducting the impugned auction sale stood vitiated. The bank did not do its due diligence while accepting the creation of the mortgage. As per the municipal assessment book, the

property stood in the name of M/s. Helios Infrapro Private Limited, respondent No. 8, and such fact could have been easily discovered by the bank, had some amount of searching and enquiry been made.

10. Reliance was placed on the deed of conveyance dated November 25, 2021, the extract of the Municipal Assessment Book and the deed of conveyance dated June 7, 2019 entered into between Sri Anamitra Chakraborty, Sri Amitrajit Chakraborty and the respondent No. 8 and M/s. Millennium India Construction.

11. According to Mr. Banerjee, as fraud had been practised by the bank in conducting the auction purchase of a property over which no security interest had been created, the learned Single Judge ought to have entertained the writ petition and granted the reliefs, thereby, directing the bank to refund the entire sale consideration of Rs. 1,49,95,000/- together with interest at the rate of 18% per annum from the date of deposit of the sale consideration, till actual refund and realization. Mr. Banerjee submitted that fraud could easily be detected from the manner in which the bank conducted itself. It was the primary duty of the secured creditor to conduct a thorough search and due diligence, to satisfy itself that a clear, marketable and enforceable title vested in the borrower, prior to creation of any mortgage or security interest. The defect in the title went to the very root of the sale of the property and the sale was invalid. No right, title and interest had passed to the auction purchaser. The auction purchasers were thus entitled to refund of the amount as the said auction purchasers were the victims of fraud and misrepresentation. The deception practised by the bank in conducting the e-auction of the encumbered property, demonstrably

constituted fraud, and as such, the constitutional court had ample jurisdiction to direct refund.

12. Mr. Banerjee, relied upon the representation of the appellants dated December 26, 2025, by which refund was claimed. By the said representation, the fundamental defect in the title of the borrower and the illegality in the creation of the equitable mortgage by the borrower were pointed out. The bank rejected the request of the appellants by a letter dated January 29, 2026. The bank contended that the property was sold on “as is where is and what is basis”. The bank wrongfully shifted the entire burden with regard to verification of the title of the borrower, to the auction purchaser. Challenging such stand of the bank and contents of the letter of rejection, the writ petition was rightly filed, Mr. Banerjee urged.

13. Learned Advocate for the bank submitted that the sale had been successfully conducted and the sale certificate was issued two years prior to filing of the writ petition. The title had passed on to the appellants. The delay remained un-explained. The learned Single Judge took notice of such fact and held that the appellants had failed to justify the delay in approaching the writ court. He further submitted that the appellants had an alternative remedy before the Debts Recovery Tribunal, but they did not avail of such remedy within the statutory period of limitation. Therefore, the learned writ court had rightly rejected the writ petition.

14. Considered by the submission of the learned Advocates for the respective parties. The scope of adjudication in this intra court appeal is limited. The question which falls for our consideration is whether, the learned Single Judge failed to appreciate the issue involved and erred in

rejecting the writ petition. The ground for dismissal of the writ petition by His Lordship was the existence of an alternative remedy. According to His Lordship, the relief claimed by the appellants involved adjudication of mixed questions of law and facts, which was beyond the jurisdiction of the writ court.

15. We agree with His Lordship. First and foremost, in order to decide whether the appellants were entitled to refund of the sale consideration together with interest thereon, we would have to come to the conclusion that the respondent No. 7 did not acquire any right, title and interest over the property, although, there is evidence that the property was sold to the said respondent No. 7 by a registered deed of conveyance dated November 25, 2021. There is a presumption of correctness in respect of a registered document. A registered deed of conveyance cannot be cancelled by the writ court, upon declaring the same to be invalid. Moreover, to arrive at a conclusion that the deed of conveyance dated November 25, 2021 did not vest any right, title and interest on the respondent No. 7, we would have to uphold the sale of the property in favour of the respondent No. 8 and in doing so, the facts and circumstances leading to the execution of the sale deeds would have to be adjudicated on the basis of evidence. Moreover, we find that, under the deed of conveyance dated November 25, 2021, the property so transferred was a residential property and the schedule thereof is quoted below :-

> *"**ALL THAT** piece and parcel the One self-contained residential **Flat** measuring about super built-up area **4050** Sq. ft. more or less, on the Entire Fourth Floor (Marble), in Block **"A"** and One Open **Car Parking space** admeasuring about 135 Sq. ft. on the Ground Floor of the said **G+V (Five)** storied building, together with undivided proportionate share of land*

> *at the Kolkata Municipal Corporation Premises No.* ***237, N.S.C. Bose Road, P.O. Naktala, - P.S. jadavpur (now Netaji Nagar), under Ward No. 100, Borough No. X, Kolkata – 700 047, in the District of South 24-Parganas****, which is more fully and particularly described in the First Schedule 'A' above together with the benefit of common areas and facilities referred in the Schedule hereunder. The said Flat and Car Parking space is delineated with "RED" border in the annexed plan and the plan should be treated as part of this Deed."*

16. Equitable mortgage was created in favour of the bank in respect of the said property.

17. We find from the deed executed between the respondent No. 8 and Sri Anamitra Chakraborty as also the developer that the property so sought to be transferred was commercial property. The schedule thereof is quoted below :-

> *"**ALL THAT** piece and parcel of **Commercial space** measuring about super built-up area 4050 sq. ft. more or less, on the **Fourth** Floor, and Block **'A'** of the **G+V** (**Five**) storied building, together with undivided proportionate share of land at the K.M.C. Premises No.* ***237, N.S.C. Bose Road, P.O. Naktala, P.S. Jadavpur (now Netaji Nagar), under Ward No. 100, Borough No. X, Kolkata – 700 047, in the District of South 24-Parganas****, provided with all common facilities and other civic amenities."*

18. The description of the property sold to the appellants is as hereunder:-

> *"**ALL THAT** piece and parcel of homestead land measuring about 01 Bigha, 12 Cottahs, 08 Chittaks & 27 Sq.ft. more or less, lying and situates at Mouza – Naktala, J.L No. 32, Touzi No. 56, Khatian Nos. 199 & 278, Dag No. 86, 82 & 214, being the Kolkata Municipal Corporation premises No. 237, N.S.C. Bose Road, P.O. Naktala, P.S. Jadavpur (now Netaji Nagar), under Ward No. 100, Borough No. X, Kolkata – 700 047, in the District of South 24-Parganas, sub-Registry Office at Alipore, is butted and bounded in Four sides as under :*
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> *On the North : By Netaji Subhas Chandra Bose Road,*
> *On the East : By Tolly Height Complex,*
> *On the South : By Tolly Canal, Metro Rly,*
> *On the West : By Todi Residential Complex, house of D. Ghosh and UCO bank."*

19. Thus, in view of the discrepancies in the description of the property, the writ court was not the proper forum to decide as to whether the properties were the same and identical and whether the respondent No. 8 had a better

title over the property than the respondent No. 7. Even if the property appears to have been mutated in favour of the respondent No. 8, we are of the view that mutation in the municipal record does not create any title. It is not evidence of title. His Lordship rightly dismissed the writ petition.

20. The description of the property auctioned and those contained in the schedule of the two deeds of conveyance, do not tally. The writ court was not in a position to hold that no security interest could be created in respect of the property by the respondent No. 7. Thus, the allegation that the bank had perpetrated fraud by misrepresenting to the auction purchasers and had sold the property knowing fully well about its hidden liabilities, cannot be decided here. Whether the property was encumbered, is again a matter of adjudication upon appreciation of evidence. The writ court was not in a position to decide whether the respondent No. 8 had a better title than the respondent No. 7 and whether the creation of the security interest in favour of the bank was illegal, invalid and non-est. The issue of fraud could not be decided without allowing the parties to lead evidence.

21. Most importantly, the e-auction notice was published in the newspaper on January 17, 2024. The appellants participated in the bidding process on February 17, 2024. The sale certificate was issued on February 26, 2024 and the registration was completed on April 18, 2024. The appellants filed the writ petition sometime in February 2026 i.e. 2 years after the sale certificate was issued. There is not a single averment in the writ petition which would indicate that, after the registration of the deed and upon the appellants being put in possession of the property, their possession had either been disturbed or threatened in any way by the respondent No. 8.

22. Learned counsel for the respondent No. 8 submitted that, the issue involved did not concern his client and as such, he chose not to advance any argument on the issues raised by the appellant and the bank.

23. The decision in ***Whirlpool Corpn.*** (supra) and ***Godrej Sara Lee Ltd.*** (supra) do not lend any assistance to the appellants. The writ petition was filed in respect of a money claim, which required adjudication of disputed questions of law and fact. Without evidence, the court could not have come to a specific finding as to the right, title and interest of either the respondent No. 7, or the respondent No. 8, or the bank, in respect of the mortgaged property. Moreover, we have already discussed hereinabove that there are discrepancies in the description of the property.

24. Under such circumstances, we do not find any reason to interfere with the order of the learned Single Judge.

25. The order impugned is upheld.

26. The appeal and connected application are dismissed.

27. Urgent Photostat certified copies of this judgment, if prayed for, be supplied to the parties upon fulfillment of requisite formalities.

(**Shampa Sarkar, J.**)

I agree.

(**Arjun Ray Mukherjee, J.**)