IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA

AND

THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA

F.M.A.T 493 of 2025
IA No. CAN 2 of 2025

BOON REALTORS PRIVATE LIMITED

VS.

JULIEN EDUCATIONAL TRUST AND OTHERS

For the appellant	:	Mr. Joydip Kar, Sr. Adv. Mr. Rahul Das, Mr. Amit Kr. Nag Mr. Partha Banerjee, Ms. Rishita Sarkar
For the respondent No. 1	:	Mr. Surajit Nath Mitra, Sr. Adv. Mr. Shameek Ray Mr. Abir Lal Ghosh Mr. Aritra Pal
For the respondent No. 2 &3	:	Mr. Shubham Gupta, Mr. Siddhany Makkar Mr. Rajsekhar Bal Bakshi
Heard on	:	April 07, 2026 and April 08, 2026
Judgment delivered on	:	June 09, 2026

SABYASACHI BHATTACHARYYA, J.

1. The present appeal has been preferred against an order dated July 19, 2025 passed in Title Suit No.744 of 2025, by which the temporary injunction application of the plaintiff/respondent no.1 was disposed of by directing the defendants (the present appellant being defendant no. 3) to maintain status quo with regard to the nature, character, possession and alienation of the suit property till disposal of the suit.

2. Learned senior counsel appearing for the appellant submits that the plaintiff/respondent no.1 claims title and possession in respect of the suit property by dint of a purported tenancy agreement dated January 04, 2016 created in its favour by the original owners. However, prior thereto, the suit property was auction-sold to the appellant under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") in view of the borrowers/original owners' account having turned NPA (Non Performing Asset) and the said borrowers having failed to repay the loan of the defendant no.1/Bank. The plaintiff/respondent no.1 as well as the defendant no.3/appellant participated in the auction sale and the appellant came out successful. A sale certificate pursuant thereto was issued in favour of the appellant on June 30, 2021 and a formal sale deed executed on October 08, 2021. The account of the borrowers, being three private companies, namely Mehul Overseas Private Limited, Kundan Investment Private Limited and Prime Global Private Limited, had turned NPA on March 31, 2011. Notice under Section 13(2) of the SARFAESI Act was issued to the borrowers/original owners on May 13, 2011 and notice of possession under Section 13(4) of the said Act on July 18, 2011.

3. Thus, it is contended that the purported tenancy created in favour of the plaintiff/respondent no.1 by the borrowers subsequent to the notice under

Section 13(2), was bad in law, being violative of the specific bar under Section 13(13) of the SARFAESI Act. Hence, the said tenancy was *void ab initio* and could not confer any right, title and interest on the plaintiff.

4. It is next argued by the appellant that the respondent no.1 admits having started using the suit property only since September, 2023. Such admission is borne out by a letter dated November 06, 2023 issued by the respondent no.1 to the appellant, which was a part of the materials before the Trial Court. Hence, the plaintiff's claim to have been in possession of the suit property since inception of the purported tenancy in 2016 and/or prior to the sale in favour of the appellant in 2021 is self-contradictory.

5. The above position, it is argued, is further corroborated by the fact that the defendant no.3/appellant had issued a letter to the plaintiff/respondent no.1 on October, 2023 alleging that the respondent no. 1-School, through its students, was trespassing into the property. Hence, the plaintiff was not in possession of the suit property at any point of time.

6. Learned senior counsel appearing for the appellant further argues that Appendix IV-A of the Security Interest (Enforcement) Rules, 2002, (hereinafter referred to as "the 2002 Rules"), provides the format of the sale notice for sale of immovable properties under Rule 8(6) thereof. The expression "as is where is" in the sale notice was in terms of the said format and inserted therein in regular course of affairs under the Rules.

7. However, even going by the expression, at the juncture when the sale certificate was issued, the respondent no.1 was admittedly not in possession of the suit property. Hence, there was no 'encumbrance' on the suit property at the relevant juncture, neither any possession of the plaintiff/respondent no.1, on the date of purchase by the appellant.

8. Learned senior counsel appearing for the defendant no. 3/appellant next submits that no declaration or permanent injunction regarding possession has been sought in the reliefs of the plaint of the suit filed by the respondent no. 1. On the contrary, the appellant's prior suit incorporated such relief. Initially, *ad interim* order being refused in the appellant's suit, a Miscellaneous Appeal was filed, in which an order of injunction protecting the appellant's possession in respect of the suit property was passed on November 12, 2024. Thus, the impugned order of *status quo* is contrary to and in the teeth of such prior injunction obtained by the appellant.

9. Learned senior counsel points out the contradictory plea taken by the plaintiff/respondent no.1 as to 'irrevocable licence' in the prior suit of the appellant, as recorded in its order by the appellate court in the Miscellaneous Appeal filed by the appellant, on the one hand, and on the other, that of 'permanent tenancy' in the present *lis*. Hence, it is argued that no *prima facie* case was made out by the plaintiff/respondent no1.

10. Lastly, learned senior counsel for the defendant no.3/appellant places reliance on the exclusion of the jurisdiction of Civil Courts under Section 34 of the SARFAESI Act and argues that the reliefs sought by the respondent no.1 in the present suit are squarely debarred under the said provision, since similar reliefs could be granted by the Debts Recovery Tribunal. The remedy for the plaintiff/respondent no.1, thus, lay before the Tribunal and not before the Civil Court. Since the suit is barred *ex facie,* it is argued the interim order of injunction could not have been passed.

11. In reply, learned senior counsel appearing for the plaintiff/respondent no.1 contends that the defendant no.3/appellant never had physical possession of the suit property; rather, it was all along aware the plaintiff's tenancy and possession in respect thereof.

12. In support of such contention, learned senior counsel places reliance on the sale notice, pursuant to which the property was purchased by the appellant, which specifically mentioned that the subject property was "tenanted" and under "symbolic" possession of the Bank.

13. Furthermore, in the sale deed of the appellant, the expressions "as is where is" and "deemed possession", etc., were used, which clearly indicated that the property was being sold subject to the tenancy and possession of the plaintiff/respondent no.1. Furthermore, in the sale deed formally executed in favour of the appellant, it was categorically mentioned that the purchaser shall not claim any right of occupancy and possessory rights in respect of the secured assets, thus precluding the appellant from claiming any such possession in respect of the suit property.

14. Learned senior counsel appearing for the respondent no.1 next submits that whereas the appellant has pleaded that it took possession pursuant to the "sale certificate" which preceded the sale deed, the sale deed itself says that "deemed possession" was given to the appellant, further mentioning that the property was a "vacant property". Apart from such patent contradiction, no document was produced at any point of time by the appellant to establish that actual physical possession of the property was ever handed over either to the Bank or to the appellant. Thus, the claim of possession made by the appellant is baseless.

15. Thirdly, learned senior counsel for the plaintiff/respondent no.1 contends that the reliefs in its suit cannot be granted by the Debts Recovery Tribunal but only by a regular Civil Court. Hence, Section 34 of the SARFAESI Act does not operate as a bar to the suit. It is contended that the scope of the suit and the reliefs which can be claimed before the Debts Recovery Tribunal operate in different spheres.

16. Learned senior counsel next argues that there cannot be a mini-trial at the injunction stage and the appellant's bid to argue the merits of the suit itself cannot be permitted at the juncture of disposal of the injunction application.

17. Insofar as the alleged bar of Section 13(13) of the SARFAESI Act is concerned, learned senior counsel for the plaintiff/respondent no.1 argues that there are no pleadings or materials on record to show that the notice of possession under Section 13(4) of the said Act was given within the knowledge of the plaintiff/respondent no.1 or that the notice under Section 13(2) was served on the borrowers/owners, who granted tenancy in favour of the plaintiff.

18. Alternatively, it is argued by respondent no.1 that even if it is assumed (without admitting) that respondent no.1 is a trespasser to the suit property, still, even a trespasser cannot be evicted without due process of law, and as such, is entitled to injunction.

19. Lastly, learned senior counsel appearing for the responded no.1 argues that there is a clear contravention of the 2002 Rules inasmuch as the sale certificate in favour of the appellant is not as per the form provided in Appendix V of the said Rules. The term "as is where is", as required by the said format, is absent in the sale certificate or the sale notice, although mentioned in the subsequent sale deed. Moreover, the provisions of Rule 9, sub-Rules (7) and (9) of the 2002 Rules, pertaining to payment of money to discharge and remove encumbrances, have not been complied with. There is no pleading or proof on such counts, it is submitted.

20. Thus, the plaintiff/respondent no.1 supports the impugned order.

21. Upon hearing learned senior counsel appearing for both the parties, the Courts\ comes to the following conclusions:

Right, Title and Interest

22. The moot contention raised by the appellant is that the tenancy agreement executed in favour of the plaintiff/respondent no.1 is vitiated due to the contravention of Section 13(13) of the SARFAESI Act.

23. An examination of the said provision would be useful in the context and the same is set out below:

> ***"13. Enforcement of security interest***
>
> ... ...
>
> *(13) No borrower shall, after receipt of notice referred to in sub-Section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor."*

24. In the present case, the notice under Section 13(2) was issued on May 13, 2011 and the notice of possession under Section 13(4) on July 18, 2011. On the other hand, the tenancy in favour of the plaintiff/respondent no.1 was entered into on January 04, 2016, that is, much after the notice under Section 13(2). The language of Section 13(13) is couched negatively, thereby precluding any transfer, including sale, lease or otherwise, from being effected in any way with regard to the secured assets referred to in the Section 13(2) notice after issuance of the same without prior written consent of the secured creditors. No case has been made out by the plaintiff/respondent no.1 as to any written consent having been taken from the secured creditor/Bank. Hence, having been executed admittedly post the Section 13(2) notice in the teeth of the said bar, the tenancy is a nullity and no title passed through the same in favour of the respondent no.1.

25. The respondent no.1 argues that there is no material on record to show that the said notice was given within its knowledge or that the notice under Section 13(2) was served on the borrowers. However, having claimed through the borrowers and having acquired no title through such transfer, the respondent no.1 does not even have any *locus standi* to raise any question as to the propriety of such notice, particularly after the same culminated in a valid sale certificate being issued and a consequential sale deed being executed in favour of the appellant.

26. Moreover, the law does not require service of notice under Section 13(2) or Section 13(4) of the SARFAESI Act on anyone else but the borrowers. That apart, at the juncture when the sale notice was issued, admittedly the respondent no.1 was not even in possession of the suit property, having only entered into the same as per its own letter in the month of September, 2023. Thus, neither any title nor possession passed in favour of the respondent no.1 by dint of the purported tenancy agreement. Hence, the plaintiff has failed to make out any *prima facie* case of having right, title or interest in the suit property.

27. With regard to the title of the appellant, as per law, upon issuance of the sale certificate, the rights of the purchaser/appellant became conclusive, which was further consolidated by formal execution of a sale deed in its favour on October 08, 2021. The respondent no.1 contends that even a trespasser is entitled to due process of law being followed before being evicted.

28. However, under the scheme of the SARFAESI Act, due process is followed if the measures under Section 13 of the said Act, read with the corresponding Rules, are duly complied with, which were done in the present case.

29. Secondly, although even a trespasser is to be evicted by due process of law, the converse principle is not true, that is, a trespasser is not entitled to maintain a suit or seek injunction against the true owner. Since the present suit has been filed by the plaintiff/respondent no1, whose tenancy agreement was *prima facie* a nullity, the plea of "due process of law" is not available to the plaintiff/respondent no.1 on such count as well.

30. The respondent no.1 seeks to argue that its so-called tenancy was recognized in the sale notice, where it was mentioned that the secured assets were "tenanted" and under "symbolic possession" of the Bank. However, such argument is misplaced in view of the facts borne out by the order passed in appeal from the previous suit filed by the appellant. In the said order dated November 12, 2024, it was categorically recorded that one Ankit Aggarwal and one Ashok Aggarwal had instituted a suit bearing Title Suit No.2047 of 2021 before the Fourth Court of Civil Judge (Junior Division), claiming to be tenants in respect of one covered parking space of 300 sq.fts and open space measuring 300 sq.fts, totalling more or less 600 sq.fts, in respect of which they had got an order of status quo against the appellant, which property was described as a "B" scheduled property. Furthermore, upon deducting the "B" scheduled property from "A' scheduled property, Ankit and Ashok did not have any interest in the remaining "C" schedule property but were trying to interfere with the right, title and interest of the appellant therein. Accordingly, the appellant, it was recorded in the order, instituted Title Suit No.1907 of 2022 before the same court, in connection with which Miscellaneous Appeal No. 416 of 2022 was filed, in which, vide order dated December 17, 2022, the learned District Judge at Alipore had granted an interim order of injunction restraining the said Ankit and Ashok from disturbing the peaceful possession of the appellant in respect of the "C" scheduled property.

31. Also, in the plaint of the earlier suit filed by the appellant, it was pleaded, *inter alia,* that subsequently one Mahesh Singhania filed a suit bearing Title Suit No. 849 of 2023 before the Fourth Court of Civil Judge (Junior Division) at Alipore, also claiming to have tenancy right in respect of part of the 'A' Schedule property therein, which overlaps with the present suit property. Such suit, it was pleaded, is still pending although there was no subsisting interim order therein.

32. Thus, the "tenants" referred to in the sale notice were the said Mahesh Singhania and/or Ankit and Ashok Aggarwal, and not the present respondent no.1. As such, at no point of time was the alleged tenancy of the respondent no.1 recognized by the Bank or the appellant.

33. The expressions "as is where is" and the like used in the sale certificate and sale deed of the appellant do not come to the aid of the plaintiff/respondent no.1 in any manner, in the absence of the respondent no.1 having been able to establish either its tenancy or possession with regard to the suit property.

34. Much reliance has been placed by learned senior counsel for respondent no.1 on Clause 3 of the sale deed of the appellant, where the secured creditor/vendor-Bank declared that the premises-in-question was being transferred in favour of the purchaser/vendee on "as is where is" and "as is what is basis" "whatever there is" and as such the purchaser/vendee "shall not claim any right of occupancy, possessory in respect of the said secured assets" in future.

35. However, the said clause cannot be read in isolation and has to be read in conjunction with the rest of the sale deed as well as in the light of the sale certificate issued in favour of the appellant.

36. In the sale certificate, it was categorically mentioned that the possession of the schedule property was being handed over to the purchaser/appellant and that such sale was made "free from all encumbrances known to the secured creditors".

37. Again, in Clause (j) of the recital of the sale deed, it was categorically stated that the secured creditor/vendor had handed over deemed possession of the secured assets to the purchaser. It is only in such context that Clause 3 of the habendum clause enumerated that the purchaser shall not claim any right of occupancy in future, obviously referring to the fact that since possession had already been handed over to the purchaser/appellant, no further claim on such count would lie at the behest of the appellant against the vendor/Bank.

38. Even otherwise, it would be a ridiculous proposition to suggest that after going through the trouble of participating in the e-auction sale and having invested a considerable amount of money as consideration for the sale, the purchaser would only get notional rights in the property without having any right to possess the same. If such a construction is lent to the relevant clauses of the sale deed, it would denude the sale of its very character as a transfer of title. Thus, the said argument of the plaintiff/respondent no.1 on such score is entirely misplaced.

39. Hence, this issue is decided in favour of the appellant and against the respondent no.1.

<u>Possession</u>

40. A striking feature of the present case is that in the plaint itself, the plaintiff/respondent no.1 has not sought any prohibitory injunction decree to protect its possession. The Court is aware of the principle that even if a particular species of injunction is not claimed in the suit, a temporary injunction application may be made seeking such injunction, if it is in aid of the main relief sought in the suit. However, in the temporary injunction application as well, on the basis of which the impugned order was passed, no injunction in respect of possession was sought by the plaintiff/respondent no.1 at all.

41. It is well-settled that a Court cannot grant reliefs beyond the prayers made in an injunction application, unless the same is a lesser relief, in which case, the court can mould the original relief and grant subservient reliefs.

42. However, injunction regarding possession is a separate relief altogether than the reliefs sought in the suit. In its plaint and injunction application, the plaintiff/respondent no.1 specifically asked for injunction restraining the defendant no.2, that is, the authorised officer of the Indian Overseas Bank, from claiming any right, title and interest of the suit property based on the sale certificate and deed of sale issued in favour of the appellant.

43. Such prayer was modified to an extent in the temporary injunction, where similar injunction was sought in respect of all the defendants, along with temporary injunction restraining the defendants, their men, agents, servants or assigns from changing the nature and character of the suit property. Thus, in the absence of any such prayer in the injunction application, the learned Trial Judge acted beyond her jurisdiction in granting status quo in respect of possession.

44. Secondly, in its letter dated November 06, 2023 issued to the appellant, the plaintiff/respondent no.1 had categorically claimed that only in the month of September, 2023, the respondent no.1 could "beneficially use and utilize" the suit premises. The same is also corroborated by a contemporaneous letter of the appellant/respondent no.1 dated October 30, 2023, alleging that some students of the respondent no.1 school had entered into the suit property and had been playing and doing other co-curricular activities and that some other persons were illegally trying to lease out the suit property based on false and fabricated documents.

45. Conspicuously, even as per the claim of the plaintiff itself, it is not a right of 'possession' (which has to have an element of continuity) which is being claimed by it, but a mere right of 'user', which is intermittent in nature. The plaintiff alleges that its student play and guardians wait at the suit premises, which obviously has to be during the school hours. Such sporadic and intermittent/occasional user of the premises for specific purposes cannot tantamount to having "physical possession" of the property.

46. With regard to possession in respect of a vacant plot of land, in the absence of any structure which can be put under lock and key, even symbolic possession may tantamount to physical possession.

47. This, coupled with the fact that no possessory injunction has been sought at all in the suit or the temporary injunction application filed by the respondent no.1, whereas there was already a subsisting order of injunction in the miscellaneous appeal preferred in the appellant's prior suit restraining the respondent no.1 from disturbing the appellant's possession, there cannot be manner of doubt that the plaintiff/respondent no.1 was never in physical possession of the suit property.

48. On the other hand, the sale deed and the sale certificate issued in favour of the defendant no.3/appellant clearly show that possession has been handed over to the appellant.

49. Although it was stated to be "deemed possession" in certain places of the aforementioned documents, as discussed earlier, in respect of a vacant plot of land and in the absence of physical possession having been established by the respondent no.1, such deemed possession pursuant to a sale deed has to be construed equivalent to the physical possession of the appellant.

50. Insofar as the minor discrepancy in the format of the sale notice is concerned, it is trite law that procedure is a handmaid of justice and such minor irregularity, even if any, cannot vitiate the sale transaction itself, which has already attained finality in law. That apart, the borrowers, at best, could raise such question. They having not done so, the respondent no.1, claiming through them, cannot urge the issue.

51. Moreover, the pleadings of the plaintiff are contradictory, having claimed "irrevocable licence" in the earlier suit of the appellant but "permanent tenancy' in the present suit.

52. The expressions "as is where is" etc. in the sale certificate and the sale deed of the appellant have to be read in the context of the then prevalent circumstances. There was no tenancy in favour of the plaintiff/respondent no.1 in the eye of law in the teeth of Section 13(13) of SARFEASI Act bar. Also, the plaint case of the respondent no.1 restricts its alleged rights merely to that of a user on intermittent occasions during school hours by virtue of its students playing on the said property and the guardians allegedly waiting for their wards during school hours, which cannot be elevated to the plane of actual physical possession, which has to be continuous in character.

53. Even in its plaint, the respondent no.1 had not categorically claimed any relief to protect is alleged possession. Again, admittedly, it entered into possession in September 2023 (that is, much after the sale certificate, sale deed, and handing over of possession in favour of the appellant) and not contemporaneously with the creation of its purported tenancy in the year 2016, which strengthens the allegation of the appellants that there was forcible attempt on the part of the respondent to use the suit property in the month of October, 2023.

54. Hence, insofar as possession is concerned, the suit property being a vacant land, and in the absence of any continuous physical possession being established or pleaded by the plaintiff/respondent no.1, the symbolic possession handed over to the appellant at the time of sale in its favour was sufficient to clothe the appellant with possessory right in the property.

55. Thus, on the basis of the materials on record, this Court comes to the finding that it is the appellant which in possession of the suit property and not the plaintiff/respondent no.1.

Maintainability of suit

56. In order to adjudicate this issue, the reliefs claimed in the suit filed by the respondent no.1 are to be looked into. Those are as follows:

> a. *A decree declaring that the Sale Certificate dated 30th June, 2021 issued by Defendant No. 1 in favour of Defendant No. 2 and the registered Deed of Sale dated 8th October, 2021 are illegal, void, non-est and of no legal effect;*
>
> b. *A decree for delivery up and cancellation of the said Sale Certificate and registered Sale Deed;*
>
> c. *A decree of permanent injunction restraining Defendant No.2 from claiming any right, title or interest in the suit property based on the said documents;*
>
> d. *Costs of the suit;*
>
> e. *Injunction;*
>
> f. *Receiver;*
>
> g. *For such further or other reliefs as this Hon'ble Court may deem fit and proper.*

57. Contrary to the arguments of learned senior counsel for the respondent no.1, there is not a single prayer in the plaint which is not covered by the measures contemplated under Section 13 of the SARFEASI Act and the corresponding Rules. No independent declaration of title has been sought at all, but a declaratory relief has been claimed by the plaintiff/respondent no.1 assailing the sale certificate dated June 30, 2021 issued by the defendant no.1/Bank in favour of the appellant as well as the registered sale deed dated October 08,

2021. Consequential reliefs have also been sought for delivery up and cancellation of the sale certificate and the registered sale deed as well as permanent injunction restraining the appellant from claiming any right, title or interest in the suit property based on the said documents.

58. A bare perusal of the Section 13 of the SARFAESI Act and its sub-sections would indicate that the sale of property, issuance of sale certificate and execution of sale deed, as undertaken by the Bank in favour of the appellant in terms of Section 13, are precisely what have been challenged in the suit. All the aforesaid documents are the culmination of the measures taken under Section 13 of the SARFAESI Act by the creditor bank in favour of the appellant.

59. Section 34 of the SARFAESI Act is quoted below:

> ***"34. Civil court not to have jurisdiction.****—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."*

60. Even a plain reading of the said provision indicates that the jurisdiction of the civil court is barred in respect of any suit or proceeding in respect of any matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the SARFAESI Act to determine.

61. Section 17 (1) of the SARFAESI Act, which enumerates the powers of the Tribunal, reads as follows:-

> ***"17. Application against measures to recover secured debts****.—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-Section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter,[may make an application along with such fee, as may be prescribed,] to the Debts Recovery*

Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken;

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-Section."

62. Thus, the scope of challenge under Section 17 before the Debt Recovery Tribunal or from its orders, before the Appellate Tribunal, pertains to grievances in respect any of the measures referred to sub-section (4) of Section 13 taken by the secured creditor or its authorised officer. Section 17(1) further provides that "any person" (including the borrower) so aggrieved may make an application under Section 17(1) before the Tribunal.

63. Thus, Section 17, read in conjunction with Section 34, of the SARFAESI Act clearly precludes the Civil Court's jurisdiction in respect of any challenge to a measure taken by the secured creditor under Section 13(4) of the SARFAESI Act.

64. Section 13(4) is quoted hereinbelow:

"13 (4) In case the borrower fails to discharge his liability in full within the period specified in sub-Section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]
(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt."

65. If we compare the scope of Section 17 with the reliefs sought in the plaint of the present suit, there would be no manner of doubt that all the reliefs sought in the suit by the respondent no.1 not only could be but had to be granted by the Debts Recovery Tribunal under the SARFAESI Act and not by the Civil Court, whose jurisdiction is precluded by Section 34 of the said Act. Thus, the suit is palpably barred by Section 34 of the SARFAESI Act.

66. Section 9 of the Code of Civil Procedure, 1908 also recognizes such express bars as a limit to the powers of the Civil Court to entertain a suit.

67. It is settled law that maintainability of the suit in which the injunction is sought is an essential component of *prima facie* case for grant of injunction. Hence, in view of the aforementioned express bar hitting at the root of the jurisdiction of the Civil Court to entertain the suit, the plaintiff/respondent no.1 failed to establish even a *prima facie* case for grant of injunction.

68. The plaintiff /respondent no.1 cannot take shelter of ignorance of the measures taken under Section 13(4) of the SARFAESI Act, since it had participated in the e-auction sale, where the appellant turned out successful. Thus, the respondent no.1 had full knowledge of the measures taken under

Section 13(4) by the secured creditors/Bank. Even in the sale notice, pursuant to which the e-auction was initiated, the particulars of the dates on which the demand notice under Section 13 (2) of the SARFAESI Act as well as the possession notice under Section 13(4) thereof were issued were clearly enumerated.

69. Hence, the plaintiff/respondent no.1 was fully aware of the fact that the purported tenancy granted to it was barred under Section 13 (13) of the SARFAESI Act as well that there were claims of tenancy by third parties in respect of the suit property.

70. The respondent no.1 has argued that even a trespasser is to be evicted by due process of law. However, the converse is not true, that is, a trespasser cannot seek injunction against the true owner. Even otherwise, the aforesaid theory is not applicable in the present case, in view of the scheme of Sections 13 and 14 of the SARFAESI Act and the corresponding Rules by themselves forming a comprehensive code of procedure for eviction of all unauthorized occupants, more so when such occupants claim their title through the borrowers. Thus, measures taken under the said provisions sufficiently qualify as “due process of law”.

71. Hence, the present suit is *prima facie* not maintainable.

Errors in the impugned judgment

72. The learned Trial Judge failed to advert to the aspects discussed above. In particular, the learned Trial Judge came to the conclusion that a *prima facie* case of tenancy has been made out by the plaintiff/respondent no. 1, by completely overlooking the effect of Section 13(13) of the SARFAESI Act, which renders the purported tenancy agreement a nullity.

73. The learned Trial Judge also misconstrued the “as is where is” clauses in the sale certificate and the sale deed, since such expression does not enure to the benefit of the plaintiff. As per the discussion above, the plaintiff neither claimed continuous physical possession (but only intermittent user), nor did it ask for any possessory relief in the suit or the temporary injunction application.

74. Thirdly, the learned Trial Judge proceeded on the premise that the function of the Debts Recovery Tribunal is limited to recovery of debts and proceeded to hold accordingly that Section 34 of the SARFAESI Act was not a bar to the suit, in the process completely overlooking the combined effect of Section 17, read with Sections 13(4) and 34 of the SARFAESI Act.

75. The reliefs claimed in the suit squarely come within the bar under Section 34, since the sale certificate and the sale deed in favour of the appellant were a culmination of measures taken under Section 13(4) of the SARFAESI Act, thus, coming within the scope of challenge by any aggrieved person under Section 17 of the said Act, which, in turn, took the reliefs within the ambit of exclusion of the Civil Courts’ jurisdiction as envisaged in Section 34 of the said Act.

76. Also, the learned Trial Judge granted injunction in respect of possession as well, by overlooking the fact that no such relief was sought, not only in the suit but in the temporary injunction application which was disposed of by the impugned order. Thus, such relief was palpably *de hors* the prayers made in the injunction application itself.

77. Even in respect of the other components of injunction granted in the impugned order, since the suit itself is *prima facie* not maintainable in respect of a challenge to the sale deed and the sale certificate issued in favour of the appellant, no injunction could be granted on such count.

78. The grant of injunction in that regard virtually tantamounts to passing a final decree in the non-maintainable suit, prior to the suit being decided finally on the question as to whether the sale deed or the sale certificate were vitiated by infraction of any law.

79. Lastly, the learned Trial Judge overlooked the contrary injunction granted against respondent no.1 to protect the appellant's possession in respect of the self-same property in the miscellaneous appeal arising out of the appellant's earlier suit. Hence, the grant of such injunction in the teeth of the earlier order is itself a palpable error of law.

CONCLUSION

80. In fine, in view of the observations and findings rendered above, the Court comes to the conclusion that the learned Trial Judge erred in law as well as in facts in passing the impugned order of injunction in favour of the plaintiff/respondent no.1.

81. Accordingly, FMAT/493/2025 is allowed on contest, thereby setting aside the impugned order dated July 19, 2025 passed by the learned Civil Judge (Senior Division), Fourth Court at Alipore, District: South 24 Parganas in Title Suit No. 744 of 2025 and dismissing the temporary injunction application filed by the plaintiff/respondent no.1 under Order 39 Rule 1 and 2, read with Section 151, of the Code of Civil Procedure, filed in connection with the said suit.

82. Consequentially, CAN/2/2025 stands disposed of as well.

83. There will be no order as to costs.

84. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

I agree.

(SUPRATIM BHATTACHARYA, J.)