NEUTRAL CITATION NO. 2026:MPHC-IND:28903 VERDICTUM.IN



# IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

&

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

ON THE 7th OF OCTOBER, 2026

WRIT APPEAL No. 3218 of 2026

CNR No.: MPHC020353442026

*VINOD DWIVEDI*

*Versus*

*PRINCIPAL SECRETARY AND OTHERS*

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Appearance:

Shri Anil Kumar Namdev - Advocate for the appellant.

Shri Amit Bhatia - Government Advocate for the respondents State.

Shri Rohit Saboo - Advocate for the respondent No.4.

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ORDER

*Per*: *Justice Jai Kumar Pillai*

The present *intra-court* appeal has been filed by the appellant to challenge the order dated 17/08/2026 passed by the learned Single Judge in Writ Petition No. 32763/2026. Through the impugned order, the learned Single Judge dismissed the petition filed by the appellant. The appellant has approached this Division Bench because his statutory remedy before the Tribunal is currently unavailable due to an administrative vacancy. This Court is called upon to decide whether the appellant is entitled to interim protection under these circumstances.

FACTS OF THE CASE

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2. The appellant runs a transport business and had taken a housing loan of Rs. 13,61,902/- from IIFL Housing Finance Limited on 17/04/2017. He regularly paid the loan installments until the year 2020 due to the national lockdown imposed during the Covid-19 pandemic, his business suffered heavily, which caused a default in the payment of his regular loan installments. The appellant states that he informed the respondent Bank about his financial difficulties and tried to arrange funds to regularize his account.

3. The appellant also faced severe personal and medical emergencies during this period. His wife, late Smt. Ranjana Dwivedi, suffered from cancer and required expensive treatment, eventually passed away on 22/02/2024. The appellant himself suffered heart attack in October 2024 and he is still undergoing medical treatment. Because of the heavy medical expenses and the loss of income, the appellant was unable to maintain the regular repayment schedule for the housing loan despite his best efforts.

4. The respondent bank initiated recovery proceedings under the SARFAESI Act, 2002. An ex-parte order was passed by the Chief Judicial Magistrate, Indore on 16/12/2025, directing the Bank to take possession of the residential property. The appellant claims he never received the demand notice. A notice to vacate was pasted on his house on 27/02/2026. Later, on 28/04/2026, while the appellant was out of station for his daughter's marriage, the Bank locked his residence, without giving him any opportunity to be heard.

5. Aggrieved by the sudden locking of his house, the appellant filed a writ petition before this Court, registered as W.P. No. 18463/2026. This

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Court disposed of the petition on 15/05/2026, directing the appellant to deposit ten percent of the due amount. The Court also directed the Debt Recovery Tribunal, Jabalpur, to hear his application for interim relief without taking any coercive action in the meantime. In compliance, the appellant deposited a total sum of Rs. 1,16,000 in two installments with the respondent bank.

6. The appellant filed his case, registered as S.A. 599/2026, before the Debt Recovery Tribunal, Jabalpur. However, the post of the Presiding Officer at the Tribunal was vacant, and therefore, the case was not heard on multiple scheduled dates. Facing a continuous threat to his residence and lacking a functional Forum, the appellant filed another writ petition ie Writ Petition No. 32763/2026 seeking interim relief. The learned Single Judge dismissed this petition on 17/08/2026, which has led to the filing of the present Writ Appeal.

CONTENTIONS OF APPELLANT

7. Learned counsel for the appellant submits that the Bank obtained the eviction order from the Chief Judicial Magistrate without serving any proper legal notice. It is stated that the appellant was never given an opportunity of hearing, which is against the basic principles of natural justice. The counsel points out that the total outstanding installment amount is only Rs. 2,60,712 and the appellant is fully ready to settle the loan account with the respondent Bank.

8. The counsel further submits that the appellant is facing extreme hardship due to the tragic death of his wife from cancer and his own serious

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heart condition. It is argued that the appellant complied with the earlier directions of this Court by depositing Rs. 1,16,000, but he is still deprived of his only residence. Since the Debt Recovery Tribunal is completely non-functional, the appellant is left without any remedy, and therefore, the locks must be opened immediately to protect his life and livelihood.

CONTENTIONS OF RESPONDENTS

9 . *Per contra*, learned counsel appearing for the respondent bank strongly opposes the appeal and supports the order passed by the learned Single Judge. It is submitted that the Bank followed the proper legal procedure under the SARFAESI Act, 2002, and issued demand notices through registered post. The counsel argues that the appellant failed to clear his dues within the required time, which legally allowed the Bank to take physical possession of the secured property.

10. The respondent further submits that the order of the Chief Judicial Magistrate was perfectly legal and based on the documents provided by the Bank. It is stated that the appellant is a defaulter and the Bank has the legal right to recover public money by auctioning the mortgaged property. The counsel contends that no interference is required by the Division Bench and the present writ appeal should be dismissed as it lacks any legal merit.

ANALYSIS AND CONCLUSION

11. This Court has carefully considered the submissions made by the parties and perused the entire record.

12. It is an admitted position that the appellant deposited the required amount of Rs. 1,16,000 with the respondent Bank. However, when he

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approached the Debt Recovery Tribunal, Jabalpur, the Tribunal could not take up the matter because there was no Presiding Officer. In the present case, the Tribunal has done nothing, and the application for interim relief remains pending without any fault of the appellant. A litigant cannot be made to suffer merely because the Forum created by law is temporarily vacant.

13. This Court finds that the learned Single Judge committed an error by dismissing the writ petition without considering the severe practical difficulty faced by the appellant. The learned Single Judge failed to appreciate that the appellant was rendered completely helpless due to the non-availability of the Presiding Officer. The exceptional medical history of the appellant's family, specifically the fact that his wife suffered from cancer, was also not given due weightage while declining equitable relief.

14. Looking to the peculiar facts and circumstances of the case, this Court is of the considered opinion that the appellant deserves protection till the final order is passed by the Tribunal. The respondent Bank is directed to immediately open the lock of the subject premises and hand over possession to the appellant. This direction is strictly subject to the condition that the appellant shall file a formal written undertaking before the Registry of this Court, within three working days, which shall be filed in the original file of Writ Appeal along with other sets of Writ Appeals.

15. The undertaking must clearly state that in case the interim order is declined by the Tribunal, the protection granted by this Court shall automatically stand vacated. In such an event, the appellant shall be required

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to give vacant possession of the property back to the Bank, without any delay. It is made clear that this order shall not be taken as a precedent in other matters. It is being passed strictly because it is an exceptional case, looking to the fact and circumstances of the case of the appellant as the wife of the appellant expired during her treatment of Cancer.

16. In view of the foregoing discussion, the impugned order dated 17/08/2026 passed by the learned Single Judge cannot be sustained and is accordingly set aside. The appeal is allowed in the above said terms. The Debt Recovery Tribunal is expected to hear and decide the pending interim applications, strictly, in accordance with law, as soon as it becomes functional, without being influenced by any observations made in this order.

Certified copy as per rules.

**(SUBODH ABHYANKAR)**
**JUDGE**

**(JAI KUMAR PILLAI)**
**JUDGE**

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