

Form No. J.(2)
Item No.18
Court No. 1
PG/KS

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 12.05.2026
DELIVERED ON: 12.05.2026

**CORAM:
THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

**M.A.T. 1472 of 2025
With
I.A. No. CAN 1 of 2026
Shabnam Ara Yesmin
Vs.
The State of West Bengal & Ors.**

Appearance:-

Mr. Swarup Banerjee
Mr. Arindam Chatterjee
Mr. Subham Biswas

.....For the Appellant

Mr. Bhaskar Mukherjee
Mr. D. Dutta

.....For the Respondent No.5/HDFC Bank

Mr. Sukanta Chakraborty
Mr. Anindya Halder
Mr. R. Deyashi
Mr. S. Chakraborty

.....For the Respondent No.6

JUDGMENT (ORAL):

PER, PARTHA SARATHI SEN, J.:-

1. Parties are represented through their respective learned counsels.
2. None appears for the respondent/State.

3. On perusal of the impugned order it appears to us that the instant appeal can be disposed of even in absence of the State and accordingly, we proceeded to take up the instant matter for final hearing, on consent of all the parties.
4. The subject-matter of the instant appeal is the order dated 11.08.2025 as passed by the learned Single Bench of this Court in W.P.A 18540 of 2024 whereby and whereunder learned Single Bench declined to make any interference in respect of a proceeding as initiated by the respondent/bank under the SARFAESI Act.
5. At the time of hearing, learned counsel appearing on behalf of the writ petitioner/appellant took us to the order dated 22.06.2022 as passed by the learned jurisdictional Magistrate, Hooghly in M.C. Case No.102 of 2022 under the P.W.D.V. Act ('D.V. Act', in short) whereby and whereunder, the writ petitioner/appellant was granted protection of residence by way of a restraint order in the house in question as against her husband, who is the private respondent herein.
6. In course of his submission it is submitted on behalf of the writ petitioner/appellant that all on a sudden, the respondent/bank has issued a notice dated 13.06.2024 under the SARFAESI Act in terms of the provision of Section 13(8) of the said Act, which was objected by the writ petitioner by issuing a learned advocate's letter dated 24.07.2023.
7. It is submitted that despite raising objection by the writ petitioner/appellant, the respondent/bank was bent upon to proceed with the SARFAESI proceeding for

recovery of the property in respect of which, the writ petitioner/appellant obtained a favourable order from the learned jurisdictional Magistrate in the D.V. Act proceeding.

8. It is further submitted that accordingly, the writ petitioner approached the police authorities for due protection for implementation of the order dated 22.06.2022 as passed by the said judicial Magistrate, however, on failure of the police authorities to give adequate protection, as prayed for, the writ petitioner approached the learned Single Bench by filing the aforementioned writ petition, which was not entertained for no reason whatsoever.
9. Learned counsel appearing on behalf of the respondent/bank, in course of his submission, draws our attention to page no.66 of the stay application being, I.A. No. CAN 1 of 2026.
10. It is submitted that on perusal of the said page it would reveal that the writ petitioner has already approached the Debts Recovery Tribunal under Section 17(1) of the SARFAESI Act praying for cancellation and/or quashing and/or setting aside the possession notice dated 13.06.2024 as issued by the respondent/bank in terms of the provision of Section 13(4) read with Rule 8 of the relevant Rules.
11. It is further submitted on behalf of the respondent/bank that in the D.V. Act proceeding, however, the respondent/bank was not a party and thus, by no stretch of imagination it can be said that the interim protection order, as granted

by the learned jurisdictional Magistrate has got any binding effect upon the respondent/bank.

12. Mr. Chakraborty, learned counsel appearing on behalf of the private respondent, in course of his argument, contended that taking advantage of the said protection order, the parents of the private respondents have been evicted by the writ petitioner/appellant, which has been strongly denied by the learned counsel for the writ petitioner.
13. On careful perusal of the entire materials, as placed before us, it appears that by an order dated 22.06.2022, the jurisdictional Magistrate in a D.V. Act proceeding passed a restraint order against the private respondent/husband from interfering with the peaceful possession of the writ petitioner/wife in respect of the property in question.
14. As rightly pointed out by the learned advocate for the respondent/Bank that in the said D.V. Act proceeding, the respondent/Bank was not a party.
15. We have meticulously gone through the copy of the notice as issued by the respondent/Bank as a secured creditor for taking possession of the property in question, as has been annexed by way of Annexure-'P/4'.
16. We have also perused the Lawyer's notice dated 24.07.2023, as issued on behalf of the writ petitioner claiming protection over the self-same property by virtue of the order dated 22.06.2022, as passed by the jurisdictional Magistrate in the D.V. Act proceeding.

17. Materials have been placed before us that challenging the said notice, as issued by the respondent/Bank, the writ petitioner has already filed an application under section 17(1) of the SARFAESI Act with a prayer for cancellation/quashing and/or setting aside the purported possession notice dated 13.06.2024, as issued by the respondent/Bank along with ancillary reliefs. In the self-same application, the writ petitioner/ appellant has also prayed for interim protection.
18. On careful consideration of the entire materials, as placed before us, we are satisfied that the writ petitioner/ appellant, for protection of right, her alleged title and interest over the property in question has already approached the Debts Recovery Tribunal for ventilating her grievance and she has duly prayed for cancellation and/or quashing and/or setting aside the notice in question dated 13.06.2024.
19. In view of availing of such alternative remedy, we are of the considered view that the learned Single Bench while disposing the instant writ petition is very much justified in not interfering with the proceeding under the SARFAESI Act, as initiated by the respondent/Bank in respect of the self-same property as against the private respondent.
20. In view of the discussion made hereinabove, we, thus, find no merit at all in the instant appeal and accordingly, the instant appeal is dismissed.

21. Consequently, the interlocutory application being I.A. No. CAN 1 of 2026 is also dismissed.
22. Before parting with, we sincerely expect that the Debts Recovery Tribunal-I at Kolkata before which the application under section 17(1) of the SARFAESI Act at the instance of the appellant is pending, shall give due adherence to the said petition together with the prayer for interim stay, as filed by the writ petitioner/appellant and shall make an endeavour to pass an appropriate order in accordance with law preferably within 30 working days from the date of communication of the server copy of this order.
23. It is made clear that this Court has not expressed any opinion on merits.
24. Since affidavits have not been called for, allegations made in the instant writ petition are deemed to have been denied.
25. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

I Agree.

(SUJOY PAUL, CJ.)

(PARTHA SARATHI SEN, J.)