04.11.2026

S.L. 4
Ct. No. 8

Mujahid/
Rakib,
A.R.(Ct.)

In the High Court at Calcutta

Civil Appellate Jurisdiction
Appellate Side

Case No.

MAT 1914 of 2026
With
CAN 1 of 2026

In the matter of :

Rachana Mazumder

... Appellant

VS.

The State of West Bengal & Ors.

... Respondents

For the Appellant :
Mr. Rahul Karmakar
Ms. Sayani Gupta
Mr. Atindra Rai

... Advocate

For the State :
Mr. Ajit Kumar Mishra, Ld. AGP
Mr. Madhu Jana
Mr. Bidnod Kumar Singh
Mr. Ankit Kumar Mishra

... Advocate

For the Respondent Nos. 3 & 4 :
Mr. Diganta Das
Ms. Debapriya Saha

... Advocate

1. The present challenge has been preferred against an order whereby the learned Single Judge granted stay of operation of a notice dated July 24, 2026 issued by the respondent/Co-operative Bank under Rule 121B(2) of the West Bengal Co-operative Societies Rules, 2011. While doing so, the learned Single Judge put the writ petitioner to terms, to the effect that such stay would be subject to deposit of an amount Rs. 12,39,918/-, which is the quantum of the alleged debt, with the learned Registrar General of this Court.

2. Learned counsel for the appellant argues that a parallel proceeding under the SARFAESI Act, 2002 has already culminated in an order under Section 14 of the said Act at the behest of the respondent/Bank. In connection with the said proceeding, there is already security available with the Bank in the form of an immovable property, which is the secured asset for the self-same debt, which is the subject matter of both the proceedings.

3. It is contended that in view of the said security being already available with the respondent/Bank, the learned Single Judge erred in law in directing further security to be deposited by the appellant by way of a monetary amount.

4. Learned counsel for the respondent/Bank argues that the provisions of the West Bengal Co-operative Societies Act, 2006 are not contradictory with those of the SARFAESI Act, 2002 inasmuch as parallel proceedings can be levied by the creditor/Bank under both the said statutes. In support of such contention, learned counsel cites the Hon'ble Supreme Court's judgment in the matter of ***Transcore vs. Union of India (UOI) & Anr.*** reported at ***AIR 2007 SC 712*** as well as a co-ordinate Bench judgment of the Delhi High Court in the matter of ***Magnum Steels Ltd. & Ors. vs. Asset Reconstruction Company (India) Ltd. & Anr., 2024 : DHC : 2952-DB***.

5. Learned counsel submits that in view of the two proceedings being independent remedies available for the self-same objective, i.e., recovery of the dues, there is no conflict between the two and the doctrine of election is not applicable at all. Thus, it is submitted that independent security ought to be furnished in respect of both the proceedings in order for the petitioner/appellant to obtain an order of stay.

6. Upon a careful consideration of the cited judgments, we find that the legal proposition is well settled inasmuch as if the two or more co-existent remedies which are available to the litigants are repugnant and inconsistent, only then the doctrine of election is applicable and in the event there is no such repugnancy or inconsistency between the two remedies, the said doctrine has no application.

7. Although the aforesaid judgments were rendered in the context of the SARFAESI Act and the RDDB Act, in principle, there is no distinction in so far as the facts of the present case are concerned.

8. Particular note needs to be taken of Section 37 of the SARFAESI Act, 2002, which categorically provides that the application of other laws are not barred and the provisions of the SARFAESI Act or the Rules made thereunder shall be in addition to, and not in derogation of, any other law for the time

being in force, including the statues specifically mentioned in the said provision.

9. A corresponding rider also finds place in Section 122 of the 2006 Act, which also provides that the provisions and remedies available under the said Act are in addition to any other remedy available to the co-operative Bank.

10. Thus, in the absence of any conflict or repugnancy between the two statutes in so far as recovery of debts are concerned, the principle laid down in ***Transcore*** (supra) as well as in the judgment of ***Magnum Steels*** (supra) issquarely applicable to the present case and the respondent/co-operative Bank is entitled *prima facie* to maintain both the proceedings simultaneously.

11. The appellant's argument that the 2006 Act is a State Act and does not deal specifically with banking activities, which is the subject matter of List I of the Seventh Schedule of the Constitution and is covered by the SARFAESI Act, is not tenable, in the absence of any repugnancy between the two statues. The question of primacy of a Central statute over a State law does not arise at all in the absence of any conflict between the provisions of the two statutes, which act harmoniously and in tandem with each other insofar as recovery of debts is concerned.

12. Moreover, the *vires* of the 2006 Act or the Rules framed thereunder have not been challenged before the Writ Court or before this Court.

13. In such view of the matter, we are only required to examine as to whether the imposition of security for grant of stay was a double jeopardy for the appellant.

14. There is *prima facie* strength in the contention of the appellant that since the amount of debt is already secured by immovable property for the self-same amount, further security ought not have to be directed. However, such contention is balanced out by the respondent/Bank's contention that in view of the two separate remedies being available, the Bank is entitled to the benefit of security in both the actions if the same are sought to be stalled by the appellant by taking out a legal challenge.

15. Be that as it may, we also do not find in the impugned order any independent reason as to the grant of stay of operation of the notice issued under the Co-operative Societies Rules.

16. Since ***Transcore*** (supra) has categorically held that both the similar remedies are available before the creditor, we do not apparently find any reason for the learned Single Judge to have granted stay at all.

17. We take into consideration the latter aspect of the matter by exercise of the powers conferred on the

appellate court by adopting the principles of Order XLI Rule 33 of the Code of Civil Procedure, which are available to an intra-court appeal as well.

18. Accordingly, the matter is to be revisited by the learned Writ Court on both counts – as to whether the writ petition is maintainable and a *prima facie* case has been made out for grant of stay as well as whether, if the writ petitioner/appellant is at all entitled to stay, further security ought to have been imposed as a condition for such grant of stay in view of the secured assets being already available with the Bank.

19. Accordingly, MAT 1914 of 2026 is partially allowed on contest, thereby setting aside the impugned order dated October 15, 2026 passed in WPA 28785 of 2026 and remanding the matter to the learned Single Judge having determination to take up the writ petition for a fresh consideration on merits as to the maintainability of the writ petition, the entitlement of the writ petitioner/appellant to have an order of stay and, if so, as to whether, if so, any further security is required to be imposed as a condition of such stay in view of the availability of the secured assets in the form of immovable property with the respondent/Bank.

20. We request the learned Single Judge, according to the convenience of the said Bench, to re-adjudicate

such issue as expeditiously as the business of the Court permits.

21. Consequentially, CAN 1 of 2026 is also disposed of.

22. There shall no order as to costs.

23. All parties shall act in terms of server copy of this order, downloaded from the official website of this Court.

(Sabyasachi Bhattacharyya, J.)

(Arjun Ray Mukherjee, J.)