Form No. J(2)

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

FMAT No. 145 of 2026
+
CAN 1 of 2026
+
CAN 2 of 2026

Axis Bank Limited
Vs.
Tarun Kanti Ghosh

For the appellant : Mr. Sayak Ranjan Ganguly,
Ms. Srijani Ghosh,
Ms. Simrin Hussain,
Ms. PujaliMusahib, Advs.

For the respondent : Mr. Sounak Bhattacharya,
Mr. Lalratan Mondal, Advs.

Heard on : 07.08.2026.

Judgment on : 07.08.2026.

Sabyasachi Bhattacharyya, J.:-

Re: CAN 1 of 2026 (condonation of delay)

1. The affidavit-of-service filed in Court today be kept on record.

2. Learned counsel for the appellant/petitioner submits that the petitioner became aware of the impugned order after some time from the passing

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of the same, when the petitioner's agent went to paste notice on the subject property. Thereafter, the matter took some time to be vetted by the officials upon which the appeal was preferred.

3. Learned counsel for the respondent submits that the respondent, who obtained the ex parte ad interim order in the trial Court, duly complied with the direction of the trial Court to put in due requisites for service of summons as well as copies of the temporary injunction application and its annexures on the present appellant.

4. It is further pointed out that in the order dated February 2, 2026, the Trial Court also recorded that the affidavit-of-service, along with an advocate's letter and the postal receipt, were kept on record, thereby indicating that service was effected on the appellant much prior to the date as claimed in the condonation application.

5. However, even from the order dated February 2, 2026, we do not find mention of any postal acknowledgment card having come back with the endorsement 'received' and/or any clear indication that the notice had actually been served on the appellant on the said date.

6. Thus, we find the ground made out in the condonation application is plausible and we cannot attribute any mala fides to the appellant.

7. Hence, CAN 1 of 2026 is allowed, thereby condoning the delay in preferring FMAT No. 145 of 2026.

8. There will be no order as to costs.

9. In view of arguable questions having been raised, the appeal is admitted, to be heard on the grounds taken in the memorandum of the appeal.

10. The conspectus of the appeal is brief and, as such, we take up the appeal itself for hearing along with the connected application, since both sides are represented through counsel.

11. The primary objection raised by the appellant to the impugned order, which was passed in respect of an immovable property, which is admittedly the security for a loan taken by the plaintiff/respondent, is that the appellant-bank has already issued a notice under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act, 2002").

12. At least prior to the filing of the suit, it is submitted, a notice under Section 13(2) of the SARFAESI Act, 2002 was also issued to the borrower-respondent.

13. Thus, it is contended that the ad interim injunction granted by the learned trial Judge was squarely barred under Section 34 of the SARFAESI Act, 2002.

14. Secondly, it is contended that the learned trial Judge granted injunction without recording any appropriate reasons, merely paying lip-service to the legal yardsticks for the grant of injunction.

15. Thirdly, learned counsel for the appellant contends that by imposing a condition for the injunction to the effect that the respondent will go on depositing Rs. 20,000/- every month in the loan account, the learned trial Judge has virtually re-written the contract between the parties.

16. Moreover, learned counsel submits that in view of the nature of the transaction and the valuation of the suit, the dispute relates to a commercial dispute and, thus, the suit ought to have been filed before a Commercial Court as envisaged under the Commercial Courts Act, 2015.

17. Lastly, learned counsel for the appellant argues that from the plaint itself, it would be evident that the address of the bank is different from that where the Manager of the bank allegedly met the respondent.

18. Thus, it is contended that the suit ought to have been filed not only before the Commercial Court having determination but the appropriate Court having territorial jurisdiction over the concerned Police Station where the concerned branch of the bank is situated.

19. Learned counsel appearing for the respondent submits that the respondent did not receive any notice under Section 13(4) of the SARFAESI Act, 2002 at the relevant juncture when the injunction order was passed.

20. It is next contended that the present impugned order has subsequently been extended, which has not been challenged by separate appeal.

21. Moreover, the element of urgency is entirely absent on the part of the appellant, in view of the delay in preferring the appeal.

22. We proceed to deal with the rival contentions of the parties in the following paragraphs.

23. Insofar as the question of delay is concerned, since we have condoned the delay in preferring the appeal, on being satisfied of the grounds in preferring the appeal late, we cannot reopen such issue we deem that the appellant came within reasonable time after coming to know of the impugned order.

24. Moreover, the mere fact that the impugned ad interim order has subsequently been extended does not make any material difference, since “extension”, by its very definition, means the extension of an order which is already subsisting.

25. Thus, it is the parent ad interim order, which was initially passed, which is being extended subsequently and as such, if the parent order itself is assailed and such challenge is successful, the effect would be that all extensions thereof would automatically go.

26. Regarding the valuation of the suit property and the matter pertaining to a commercial dispute as well as the question of territorial jurisdiction, those comprise of mixed questions of fact and law and we leave it open to the parties to canvass such issues in the suit before the learned trial Judge, since it would be premature to deal with the said issues at length at this stage.

27. However, we find substance in the other contentions raised by the appellant. It is palpable that throughout the plaint and the injunction application, the plaintiff has categorically admitted that the transaction

emanates from a loan, for which the subject property was given as security.

28. Thus, since the bank has already initiated action under Section 13 of the SARFESI Act, 2002, the bar under Section 34 of the SARFAESI Act, 2002 to the jurisdiction of the civil court is squarely attracted.

29. Insofar as the relief of injunction is concerned, the bar extends even beyond the scope of the bar to a suit or proceeding.

30. Whereas a suit or proceeding cannot be instituted if a notice under Section 13(4) of the SARFAESI Act, 2002 has been issued, the bar to grant of injunction by the civil court, as couched in the language in Section 34, is wider and precludes the civil court or other authority from granting injunction in respect of any action taken or “to be taken” in pursuance of any power conferred under the SARFAESI Act, 2002.

31. Thus, the expression “to be taken” also encompasses future course of action under the SARFAESI Act, 2002, if available to the bank/creditor.

32. Keeping in view such bar, we are of the opinion that the learned Trial Judge acted *de hors* jurisdiction and contrary to Section 34 of the SARFAESI Act, 2002 in granting injunction which potentially debars the appellants from taking measures under the SARFAESI Act, 2002.

33. Also, by imposing the condition of payment of an amount of money monthly by the respondent, which is entirely different from the instalments contemplated in the original loan agreement between the parties, the learned Trial Court, even at the ad interim stage, has virtually re-written the contract between the parties.

34. The learned Trial Judge, instead of adverting to the aforementioned germane issues on the basis of the materials on record, mechanically granted injunction, by merely quoting the governing legal yardsticks in respect of passing injunction orders.

35. Thus, the impugned order cannot be sustained due to the reasons discussed above.

36. Accordingly, FMAT No. 145 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order no. 2 dated January 31, 2026 passed by the learned Judge-in-Charge, Tenth Bench, City Civil Court at Calcutta, in Title Suit No. 296 of 2026. Consequentially, all subsequent orders extending the same are automatically denuded of their force and are deemed to stand vacated.

37. We make it clear that nothing in this order shall preclude the plaintiff/respondent from taking recourse to appropriate legal remedy as contemplated under the SARFAESI Act, 2002, if the respondent so deems it fit.

38. Consequentially, CAN 2 of 2026 is disposed of as well.

39. There will be no order as to costs.

40. Urgent certified copies of this judgment and order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)