

ITEM NO.26

COURT NO.7

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).10761/2026

[Arising out of impugned final judgment and order dated 10-12-2025 in APO No. 112/2023 passed by the High Court at Calcutta]

SWADHA BUILDERS PRIVATE LIMITED & ORS. Petitioner(s)

VERSUS

UNION BANK OF INDIA & ORS. Respondent(s)

FOR ADMISSION.....[TO BE TAKEN UP AT THE TOP OF THE BOARD]

Date : 14-05-2026 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) :Mr. Siddarth Bhatnagar, Sr. Adv.
Mr. Suddhasatva Banerjee, Adv.
Mr. Pranit Bag, Adv.
Mr. Deepak Choudhury, Adv.
Ms. Rituparna Chatterjee, Adv.
Mr. Ashish Choudhury, AOR
Mr. Aditya Sidhra, Adv.
Mr. Abhishek Arora, Adv.
Mr. Akash Agarwal, Adv.
Mr. Anand Kamal, Adv.
Ms. Prachi Grover, Adv.
Ms. Sulekha Agarwal, Adv.
Ms. Ananya Nair, Adv.

For Respondent(s) :Mr. Jishnu Chaudhury, Sr. Adv.
Mr. O. P. Gaggar, AOR
Mr. Ranajit Chaudhury, Adv.
Mr. Sachindra Karn, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. This petition arises from the judgment and order passed by the High Court at Calcutta (Ordinary Original Civil

Jurisdiction Commercial Division) in A.P.O. No.112/2023 by which the A.P.O. preferred by the Bank came to be allowed, thereby set asiding the order passed by a learned Single Judge of the High Court dated 22.03.2026 in I.A. G.A. No.7/2022, I.A. G.A. No.8/2022 in C.S. No.390/2014 respectively. In other words, the injunction which was granted by the learned Single Judge in the suit proceedings instituted by the petitioner before us came to be vacated by the Division Bench in the appeal preferred by the Bank.

2. We take notice of the fact that the petitioner (plaintiff) has instituted Civil Suit No.390/2014 in the High Court at Calcutta on its Ordinary Original Side. In the said suit, the petitioner has prayed for the following reliefs:-

- a) Declaration that the purported creation of equitable mortgage of the Jessore Road property by the defendant Nos. 1 and 2 purporting to act on behalf of the plaintiff No. 1 in favour of the defendant No. 7 and the acceptance of the same by the defendant No. 7 is wrongful, illegal, fraudulent and void;*
- b) Declaration that the purported corporate guarantee given by the defendant Nos. 1 and 2 purporting to act on behalf of the plaintiff No. 1 in favour of the defendant No. 7 and the acceptance of the same by the defendant No. 7 is wrongful, illegal, fraudulent and void;*
- c) Decree directing delivery up and cancellation of the purported equitable mortgage of the Jessore Road Property created by the plaintiff No. 1 in favour of the defendant No.7 upon adjudging the same to be void;*
- d) Decree directing delivery up and cancellation of the purported corporate guarantee given by the plaintiff No.1 in favour of the defendant No.7 upon adjudging the same to be void;*
- e) Decree for perpetual injunction restraining the defendants or any of them from representing or holding out the Jessore Road property as having been mortgaged in favour of the defendant No. 7 or from in any manner giving effect or further effect to or acting in pursuance of such purported mortgage of the said Jessore Road property;*

- f) Decree for perpetual injunction restraining the defendants or any of them from representing or holding out that any corporate guarantee has been given by the plaintiff No.1 to the defendant No. 7 or from in any manner giving effect or further effect to or acting in pursuance of such purported corporate guarantee;
- g) A decree for perpetual injunction be passed restraining the defendant No. 7 from threatening to take or from taking any step to enforce the purported equitable mortgage of the Jessore Road property or the purported corporate guarantee given by the plaintiff No.1 on account of any default in the performance of any repayment obligation undertaken by the defendant No. 3 or the other defendants to it;
- h) A decree for perpetual Injunction restraining the defendant No.7 from disbursing and the defendant No.3 from receiving any further money against the purported creation of equitable mortgage of the Jessore Road property of the plaintiff No. 1 or the purported corporate guarantee given by the said plaintiff in favour of the defendant No.7;
- i) Decree for Rs.9,50,67,840/-, against the defendants jointly or severally on account of loss and damage suffered by the plaintiffs by reason of their breach and violation of the agreement dated 3rd October, 2012 and their fraudulent and wrongful acts and conduct;
- j) Alternatively, an enquiry be made into the loss and damage suffered by the plaintiffs on account of the fraudulent and wrongful acts and conduct of the defendants including the breach of the terms of the agreement dated 3rd October, 2012 by them, and a decree for such sum be passed against the defendants jointly and/or severally as may be found due and payable by them on such enquiry;
- k) Receiver;
- l) Injunction;
- m) Attachment;
- n) Costs;
- o) Further and other reliefs."

3. The learned Single Judge vide order dated 22.03.2023 granted relief to the petitioner (plaintiff) restraining the respondents from giving any further effect to in furtherance of and in pursuance of the purported equitable mortgage of the suit property alleged to have been created in favour of the respondent no.3 (original defendant no.3). The learned Single

Judge also granted few other reliefs in favour of the petitioner (plaintiff).

4. The Bank, being dissatisfied with the grant of reliefs by the learned Single Judge went in appeal before the Division Bench. The Division Bench thought fit to allow the appeal preferred by the Bank and set aside the order passed by the learned Single Judge.

5. In such circumstances referred to above, the petitioner (original plaintiff) is here before us with the present petition.

6. We heard Mr. Siddarth Bhatnagar, the learned senior counsel appearing for the petitioner (plaintiff) and Mr. Jishnu Chaudhury, the learned senior counsel appearing for the respondent no.8- assignee. We also heard Mr. O.P. Gaggar, the learned counsel appearing for the respondent no.1-Bank.

7. The entire debate revolves around the legality and validity of the mortgage said to have been created by the co-Directors of the company in favour of the Bank. To put it in other words, it is the case of the petitioner (plaintiff) that his fellow Directors in collusion with the Bank entered into a mortgage of the suit property which is not binding to him nor to the company.

8. Mr. Bhatnagar, the learned senior counsel has manifold contentions to raise as regards the legality and validity of the impugned order passed by the High Court.

9. We do not propose to enter into the merits of the matter at this stage.

10. We are informed by the learned counsel appearing for the assignee as well as for the Bank that the mortgaged property was put to auction in the past on number of occasions but till this date, all auctions have failed.

11. We are of the view that the ends of justice would be met if we request the High Court to proceed at the earliest with the framing of issues in the suit and then start with the recording of the oral evidence.

12. Let the issues be framed within a period of four weeks from today and the recording of oral evidence shall also commence.

13. We request the High Court to try its best to dispose of the suit within one year from today keeping in mind the fact that the suit is pending past 14 years and there has been no progress in the suit.

14. By any chance, if either of the parties prefer any application to get a preliminary issue framed as regards the maintainability of the suit, the Court may look into it at the earliest in accordance with law.

15. We do not propose to disturb the impugned judgment and order passed by the High Court, however, we would like to make it clear that any action that the assignee may undertake in future shall be subject to the final outcome of the civil suit.

16. The suit shall be decided on its own merits without being influenced in any manner by any of the observations made in the impugned order passed by the High Court.

17. With the aforesaid, the Special Leave Petition stands disposed of.

18. Pending application(s), if any, shall also stand disposed of.

(HARPREET KAUR)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)