



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

FRIDAY, THE 18TH DAY OF JULY 2025 / 27TH ASHADHA, 1947

WA NO. 1708 OF 2025

AGAINST THE JUDGMENT DATED 18.06.2025 IN WP(C) NO.18126 OF
2025 OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

- 1 M/S. THIRUVONAM INDUSTRIES,
THROUGH ITS PROPRIETOR MS. SMITHA SHAJI, HAVING ITS
OFFICE AT MAROTTICKAL HOUSE, WARD NO. IV, 17-B, 17-C,
MANAPPURAM, CHERTHALA, ALAPPUZHA, PIN - 688558
- 2 SMITHA SHAJI,
AGED 44 YEARS
RESIDING AT MAROTTICKAL HOUSE, MANAPPURAM P.O,
CHERTHALA, THAIKATTUSSERY, ALAPPUZHA, PIN - 688526
- 3 SHAJI M.K,
AGED 48 YEARS
RESIDING AT MAROTTICKAL HOUSE, MANAPPURAM P.O,
CHERTHALA, THAIKATTUSSERY, ALAPPUZHA, PIN - 688526

BY ADVS.SHRI.E.N.VISHNU NAMBOODIRI
SHRI.P.SANKARAN NAMPOOTHIRI
SHRI.NARAYANAN P POTTY
SRI.M.K.SASEENDRAN (MELEL)

RESPONDENTS/RESPONDENTS:

- 1 HERO FINCORP LTD.,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, 34
COMMUNITY CENTRE, VASANTH VIHAR, NEW DELHI, PIN -
110057



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- 2 THE AUTHORISED OFFICER,
HERO FINCORP LTD., NEAR STELLA MARIS COLLEGE, KAPTER
ROAD, GOPALAPURAM, CHENNAI, PIN - 600086
- 3 THE AUTHORISED OFFICER,
HERO FINCORP LTD., NO. 12, 3RD FLOOR, INCULEX, NEST
VERA, LONG FUND ROAD, BANGALORE, PIN - 560025

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
18.07.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

Anil K. Narendran, J.

The appellants-petitioners have filed W.P.(C)No.18126 of 2025, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking a declaration that Ext.P1 notice dated 16.03.2023 issued by the 2nd respondent Authorised Officer of the 1st respondent Hero Fincorp Limited, which is a private non-banking financial company, invoking the provisions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and all further proceedings and documents issued pursuant thereto, are illegal and to quash the same; a writ of mandamus commanding the 1st respondent Hero Fincorp Limited to permit them to remit the due amount standing in the loan account mentioned in Ext.P1 notice dated 16.03.2023, in 25 instalments and regularise the loan account mentioned in the said notice; and a writ of mandamus commanding the 1st respondent Hero Fincorp Limited to allow them three months' repayment holiday.

2. Going by the averments in the writ petition, the 1st petitioner M/s. Thiruvonam Industries, along with petitioners 2



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and 3, availed financial assistance from the 1st respondent Hero Fincorp Limited for Rs.88,00,000/-. The property having an extent of 75.5 cents comprised in Re-survey No.46/2 and 46/3-2 of Thaikkattussery Village, which is owned by the 3rd petitioner, was offered as security. On account of the default committed by the borrower in remitting the monthly instalments, the 1st respondent initiated proceedings under the SARFAESI Act. The document marked as Ext.P1 is a copy of the notice dated 16.03.2023 issued by the 2nd respondent Authorised Officer, under the provisions of the SARFAESI Act. Thereafter, the 1st respondent approached the Chief Judicial Magistrate, Alappuzha, under Section 14 of the SARFAESI Act. In M.C.No.221 of 2024, the Chief Judicial Magistrate appointed an Advocate Commissioner, who took possession of the secured asset on 23.04.2025, as evident from Ext.P2 inventory.

3. On 13.05.2025, when W.P.(C)No.18126 of 2025 came up for admission, the learned Single Judge issued urgent notice on admission by speed post to respondents 1 to 3 and granted an interim order staying the operation of Exts.P1 and P2, for a period of one month, on condition that the petitioners shall remit



an amount of Rs.10 lakhs, within a period of one month. The petitioners did not comply with the said condition stipulated in the interim order dated 13.05.2025. On 18.06.2025, when the writ petition came up for consideration, the learned Single Judge dismissed the same by the impugned judgment. Paragraphs 2 to 5 of that judgment read thus;

"2. An interim order was passed by this court on 13.05.2025 as follows.

"Issue urgent notice on admission by speed post to respondents 1 to 3. There will be an interim order staying the operation of Exts.P1 and P2 for a period of one month on condition that the petitioners remit an amount of 10 lakhs ₹ within a period of one month."

3. It is not disputed before me that no amount has been paid pursuant to the above order.

4. This Court exercises very limited jurisdiction in matters arising under the SARFAESI Act, as repeatedly held by the Honourable Supreme Court in several judgments, including in **South Indian Bank Ltd. and Ors. v. Naveen Mathew Philip and Ors. [2023 17 SCC 311]** that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific



mechanism for appropriate redressal. When this Court is approached with a prayer to permit the borrowers to clear the liability in instalments, the borrowers must prove bona fides. The non-compliance of the interim order indicates that the petitioners in this case have not shown any bona fides to enable this Court to permit them to clear the liability in instalments.

5. Therefore, I find no reason to grant the reliefs sought for in this writ petition, and the same will stand dismissed without prejudice to the right of the petitioners to challenge the measures taken by the secured creditor as provided under the SARFAESI Act, if so advised.”

4. Challenging the judgment dated 18.06.2025 of the learned Single Judge, the appellants-petitioners are before this Court in this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958.

5. The judgment of the learned Single Judge is one rendered taking note of the law laid down by the Apex Court in **South Indian Bank Ltd. v. Naveen Mathew Philip [(2023) 17 SCC 311]**. In the said decision, in the context of the challenge made against the notices issued under Section 13(4) of the SARFAESI Act, the Apex Court reiterated the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters,



where an effective and efficacious alternative forum has been constituted through a statute. In the said decision, the Apex Court took judicial notice of the fact that certain High Courts continue to interfere in such matters, leading to a regular supply of cases before the Apex Court. The Apex Court reiterated that a writ of certiorari is to be issued over a decision when the court finds that the process does not conform to the law or the statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. The issues governing waiver, acquiescence and estoppel are also primarily within the domain of the Tribunal. The object and reasons behind the SARFAESI Act are very clear as observed in **Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311]**. While it facilitates a faster and smoother mode of



recovery *sans* any interference from the court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range of powers to set aside an illegal order, and thereafter, grant consequential reliefs, including repossession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression 'any person', who could approach the Tribunal.

6. In **Naveen Mathew Philip [(2023) 17 SCC 311]** the Apex Court noticed that, in matters under the SARFAESI Act, approaching the High Court for the consideration of an offer by the borrower is also frowned upon by the Apex Court. A writ of mandamus is a prerogative writ. The court cannot exercise the said power in the absence of any legal right. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent that mode shall not be encouraged by a writ court. A litigant cannot avoid the non-compliance of approaching the Tribunal, which requires the



prescription of fees, and use the constitutional remedy as an alternative. In paragraph 17 of the decision, the Apex Court reiterated the position of law regarding the interference of the High Courts in matters pertaining to the SARFAESI Act by quoting its earlier decisions in **Federal Bank Ltd. v. Sagar Thomas [(2003) 10 SCC 733]**, **United Bank of India v. Satyawati Tondon [(2010) 8 SCC 110]**, **State Bank of Travancore v. Mathew K.C. [(2018) 3 SCC 85]**, **Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir [(2022) 5 SCC 345]** and **Varimadugu Obi Reddy v. B. Sreenivasulu [(2023) 2 SCC 168]** wherein the said practice has been deprecated while requesting the High Courts not to entertain such cases. In paragraph 18 of the said decision, the Apex Court observed that the powers conferred under Article 226 of the Constitution of India are rather wide, but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.



7. The 1st respondent Hero Fincorp Limited is a private non-banking financial company. On the question of maintainability of writ petition seeking interference on the proceedings initiated by a private non-banking financial company under the provisions of SARFAESI Act, the learned counsel for the respondents would place reliance on the decision of the Apex Court in **Sobha S. v. Muthoot Finance Limited [2025 (2) KHC 229 : 2025 SCC OnLine SC 177]**.

8. In **Shobha S. [2025 (2) KHC 229]**, on the question of maintainability of writ petitions under Article 226 of the Constitution of India against a private non-banking financial company/a private company carrying on banking business as a Scheduled bank, the Apex Court laid down as follows;

(1) For issuing a writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.

(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company



which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases, a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a Statute or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.



(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be a public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which performs the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."

9. In view of the law laid down by the Apex Court in **Shobha S. [2025 (2) KHC 229]**, the appellants cannot invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India challenging the proceedings initiated under the provisions of the SARFAESI Act, by the 1st respondent Hero Fincorp Limited, which is a private non-banking financial company, on the grounds raised in W.P.(C)No.18126 of 2025.

10. The learned counsel for the appellants-petitioners would contend that the proceedings initiated by the 1st respondent Hero Fincorp Limited under the provisions of the



SARFAESI Act is not legally maintainable, since the overdue amount is less than 20% of the principal amount and interest thereon. In support of the said contention the learned counsel for the appellants would rely on clause (j) of Section 31 of the SARFAESI Act.

11. Section 31 of the SARFAESI Act provides that the provisions of the said Act shall not apply in certain cases. As per clause (j) of Section 31, the provisions of the SARFAESI Act shall not apply to any case in which the amount due is less than 20% of the principal amount and interest thereon.

12. In **Biju Mathew Abraham v. State Bank of Travancore [(2021) SCC OnLine 2585]**, in the context of clause (j) of Section 31 of the SARFAESI Act, a Division Bench of this Court held that the words 'the amount due is less than 20% of the principal amount and the interest thereon' clearly mean the total amount due after discharging the liability up to 80%. There is no ambiguity to the words used in the statute to have a different interpretation. If this interpretation is not given to clause (j) of Section 31 of the SARFAESI Act, Sections 13(1) and (2) and other measures will become meaningless. In the



said decision the Division Bench has also taken note of clause (b) of the Explanation to the fifth proviso of Section 13(9) of the SARFAESI Act, wherein it is stated that 'amount outstanding' shall include principal, interest and other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

13. Therefore, the contention of the learned counsel for the appellants-petitioners that the proceedings initiated by the 1st respondent Hero Fincorp Limited under the provisions of the SARFAESI Act is not legally maintainable, since the overdue amount is less than 20% of the principal amount and interest thereon, is untenable and the same is hereby repelled.

In the result, this writ appeal fails and the same is accordingly dismissed.

Sd/-

ANIL K. NARENDHAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE



APPENDIX OF WA 1708/2025

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF JUDGMENT DATED 5.10.2018 IN W.P.(C) NO. 23497/2018 OF THIS HON'BLE COURT
Annexure A2	TRUE COPY OF ACCOUNT STATEMENT DATED 29.4.2025 PREPARED BY 1ST RESPONDENT/FINANCIER