



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

TUESDAY, THE 23RD DAY OF SEPTEMBER 2025 / 1ST ASWINA, 1947

W.A.NO.2036 OF 2025

AGAINST THE JUDGMENT DATED 31.07.2025 IN W.P.(C)NO.21496

OF 2025 OF THE HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 KERALA BANK,
(KERALA STATE CO-OPERATIVE BANK), KAKKODI BRANCH, P.O
KAKKODI, KANNUR DISTRICT, REPRESENTED BY ITS MANAGER,
PIN - 673611
- 2 THE AUTHORIZED OFFICER,
KERALA BANK (KERALA STATE CO-OPERATIVE BANK), KAKKODI
BRANCH, P.O KAKKODI, KANNUR DISTRICT, PIN - 673611

BY ADV SHRI.P.C.SASIDHARAN

RESPONDENT/PETITIONER:

JISHITH KUMAR,
AGED 49 YEARS
S/O. KRISHNAKURUP, KILIYAM VALAPPIL, CHELANNUR P.O.,
KOZHIKODE, PIN - 673616

BY ADV SHRI.ANILKUMAR V. (VAZHARAMBIL)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23.09.2025,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**"C.R."****JUDGMENT****Anil K. Narendran, J.**

The appellants, who are the respondents in W.P.(C)No.21496 of 2025, are before this Court in this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 31.07.2025 of the learned Single Judge in that writ petition, which was one filed by the respondent herein-petitioner, who availed a business loan for Rs.16,00,000/- from Kakkodi Branch of the Kerala State Co-operative Bank (erstwhile Kozhikode District Co-operative Bank) on 13.03.2019, by depositing title deed of the property having an extent of 20.5 cents in Chelannur Village. In the said writ petition filed under Article 226 of the Constitution of India, the petitioner sought for a writ of mandamus commanding the 1st appellant Kerala State Co-operative Bank (Kerala Bank) to permit him to clear the entire liability by easy monthly installments, after deducting all interest, penal interest and other penal charges calculated in the loan account; an order directing the 1st appellant Kerala Bank and the 2nd appellant Authorised Officer to release physical possession of the mortgaged property to the petitioner immediately; and stay of



the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

2. On 19.06.2025, when W.P.(C)No.21496 of 2025 came up for admission, the learned Single Judge ordered notice before admission. The learned Standing Counsel for Kerala Bank took notice for the respondents and sought time to file a statement. The interim order passed by the learned Single Judge on 19.06.2025, while posting the writ petition to 21.07.2025, reads thus;

“To consider the prayers sought for in the writ petition seeking installment facility and to defer further coercive steps against the petitioner, as an interim measure, there will be a direction to the petitioner to remit an amount of Rs.5,00,000/- (Rupees Five lakhs only) on or before 18.07.2025. It is made clear that if the above payment is not made, the respondent will be at liberty to proceed further, in accordance with law.”

3. On 31.07.2025, when W.P.(C)No.21496 of 2025 came up for consideration, the learned counsel for the petitioner confined the reliefs sought for in the writ petition to an opportunity to repay the overdue amount in installments and to obtain regularisation of the loan account. The learned Single Judge, by



the judgment dated 31.07.2025 disposed of the writ petition with the directions contained in paragraph 4 of that judgment.

Paragraphs 3 and 4 of the judgment dated 31.07.2025 read thus;

"3. It was submitted on behalf of the respondent Bank that the petitioner committed default in repayment of the loan, and the total overdue amount as on date is Rs.13,06,696/- (Rupees thirteen lakh six thousand six hundred and ninety six only), after giving credit to the amounts paid pursuant to the interim order passed by this Court on 19.06.2025. It was further submitted that though proceedings for recovery have been initiated, as a matter of indulgence, the respondent Bank is willing to accept repayment of the overdue amount in limited instalments and regularise the loan account. This is recorded.

4. Given the above, the petitioner can be granted an opportunity to repay the total overdue amount on the following conditions, and if they are met, to have the loan account regularised.

(i) On the petitioner paying a sum of Rs.4,00,000/- (Rupees four lakhs only) on or before 01.09.2025, the respondent Bank shall return the possession of the secured asset to the petitioner.

(ii) The petitioner shall also give an undertaking to unconditionally vacate the secured assets and hand over possession to the secured creditor, in case there is a single default.

(iii) The balance amount overdue, along with any



accrued interest, costs, and charges, if any, shall be paid in 12 equal monthly instalments starting from 1 October 2025, and subsequent instalments shall be paid on or before the 1st day of every succeeding month.

(iv) Petitioner shall continue to pay the regular EMIs/instalments along with the instalments directed above.

(v) In the event of default of any of the above conditions, the respondent Bank shall be entitled to proceed in accordance with law;

(vi) All coercive proceedings shall be kept in abeyance to enable the petitioner to repay the entire amount directed above.”

4. Challenging the judgment dated 31.07.2025 of the learned Single Judge in W.P.(C)No.21496 of 2025, the appellants-respondents are before this Court in this writ appeal.

5. On 19.08.2025, when this writ appeal came up for admission, this Court admitted the matter on file. Notice was ordered to the respondent-petitioner by speed post, returnable within three weeks. This Court granted an interim stay of the judgment dated 31.07.2025 of the learned Single Judge in W.P.(C)No.21496 of 2025, for a period of one month. The said interim order was extended by two weeks on 18.09.2025.

6. Heard the learned Standing Counsel for Kerala Bank for



the appellants-respondents and the learned counsel for the respondent-petitioner.

7. The learned Standing Counsel for Kerala Bank, for the appellants, would contend that the direction contained in the judgment dated 31.07.2025 of the learned Single Judge in W.P.(C)No.21496 of 2025, whereby the appellants are directed to return the possession of the secured asset to the respondent-petitioner upon remittance of a portion of the overdue amounting to Rs.4,00,000/-, out of the total overdue of Rs.13,06,696/- as on the date of the judgment, and permitting the petitioner to remit the balance amount overdue, along with accrued interest, costs and charges, if any, in 12 equal monthly installments, starting from 01.10.2025, and the subsequent installments on or before the 1st day of every succeeding month, is on the face of it unsustainable and illegal.

8. The learned Standing Counsel for Kerala Bank would point out that pursuant to the directions contained in Ext.P3 judgment dated 04.02.2025 in W.P.(C)No.1609 of 2025, the Bank extended the benefit of One Time Settlement Scheme to the respondent-petitioner and his mother. However, they failed to comply with the directions contained in the said judgment and did



not fulfill the terms and conditions. Therefore, the Bank was constrained to proceed with recovery process in accordance with law and possession of the secured asset was taken on 17.03.2025, much before the filing of the writ petition on 09.06.2025. The total amount outstanding as on 09.08.2025 comes to Rs.26,55,605/- with future expenses and other charges, after giving due credit to the amount already remitted as per the directions of the learned Single Judge. As on 09.08.2025, the overdue amount comes to Rs.18,06,135/-.

9. The learned Standing Counsel for Kerala Bank would submit that, on 31.07.2025 when W.P.(C)No.21496 of 2025 came up for consideration, the submission made before the learned Single Judge, on behalf of the appellants herein, was to the effect that if the respondent-petitioner were to pay the amount in limited installments, an installment facility could be considered for settling the loan account. The total overdue amount as on 31.07.2025 comes to Rs.13,06,696/-. Since the loan account has already been recalled, without clearing the entire overdue amount together, the Bank is neither in a position nor under any legal obligation to return possession of the secured asset to the debtor. Therefore, the direction contained in the judgment of the learned Single



Judge to return possession of the secured asset to the debtor will cause serious prejudice to the Bank.

10. The learned Standing Counsel for Kerala Bank would contend that, as pointed out in the writ appeal, in terms of the provisions contained in Section 14 of the SARFAESI Act, on an application being filed by the secured creditor, the Chief Judicial Magistrate or the District Magistrate has to assist the secured creditor in taking possession of the secured asset. Section 17 of the SARFAESI Act provides for a statutory remedy to any person, including the borrower, who is aggrieved by the action taken by the secured creditor under Section 13(4) of the said Act. As held by the Apex Court in **Punjab National Bank v. O.C. Krishnan [(2001) 6 SCC 569]** and **South Indian Bank Ltd. v. Naveen Mathew Philip [(2023) 17 SCC 311]** the remedy open to the respondent-petitioner is to approach the Debts Recovery Tribunal in an application filed under Section 17 of the SARFAESI Act, instead of invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

11. On the other hand, the learned counsel for the respondent-petitioner would contend that by the impugned judgment dated 31.07.2025 in W.P.(C)No.21496 of 2025, the



learned Single Judge has granted an opportunity to clear the overdue amount in monthly installments. While directing the Bank to return possession of the secured asset to the petitioner, on payment of a sum of Rs.4,00,000/-, the learned Single Judge has directed the petitioner to give an undertaking to unconditionally vacate the secured asset and handover possession to the secured creditor, in case there is a single default in paying the balance overdue amount in 12 equal monthly installments, along with regular installments. In the judgment it was made clear that, in the event of default of any of the conditions stipulated therein, the Bank shall be entitled to proceed in accordance with law. Therefore, the judgment of the learned Single Judge warrants no interference in this writ appeal.

12. As already noticed hereinbefore, the respondent-petitioner, who availed a business loan for Rs.16,00,000/- from the Bank on 13.03.2019 had approached this Court on 09.06.2025, in W.P.(C)No.21496 of 2025 filed invoking the writ jurisdiction under Article 226 of the Constitution of India seeking a writ of mandamus commanding the 1st appellant Kerala Bank to permit him to clear the entire liability by easy monthly installments, after deducting all interest, penal interest and other penal charges



calculated in the loan account; an order directing the 1st appellant Bank and the 2nd appellant Authorised Officer to release physical possession of the mortgaged property to the petitioner immediately; and stay of the proceedings under the SARFAESI Act. The respondent-petitioner and his mother had earlier approached this Court in W.P.(C)No.1609 of 2025, which was disposed of by Ext.P3 judgment dated 04.02.2025. The specific case of the appellants is that pursuant to the directions contained in Ext.P3 judgment, the Bank extended them the benefit of One Time Settlement Scheme. However, they failed to comply with the directions contained in Ext.P3 judgment and did not fulfill the terms and conditions, and therefore, the Bank was constrained to proceed with the recovery process, in accordance with law, and possession of the secured asset was taken on 17.03.2025, much before the filing of the writ petition on 09.06.2025.

13. In **Naveen Mathew Philip [(2023) 17 SCC 311]**, 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.

14. 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.

15. In view of the law laid down by the Apex Court in **Naveen Mathew Philip [(2023) 17 SCC 311]**, if the respondent-petitioner and his mother, who are the borrowers, are aggrieved by the proceedings initiated by the appellants under the provisions of the SARFAESI Act, which had resulted in the Bank



repossessing the secured asset on 17.03.2025, they should have invoke the statutory remedy provided under Section 17 of the SARFAESI Act by approaching the Debts Recovery Tribunal, instead of invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. Neither the possession notice issued under Section 13(4) of the SARFAESI Act nor the order passed by the Chief Judicial Magistrate, Kozhikode in the proceedings initiated under Section 14 of the said Act are under challenge by invoking the provisions under Section 17, before the Debts Recovery Tribunal. The said notice or order are not even placed on record in W.P.(C)No.21496 of 2025. As pointed out by the learned Standing Counsel for Kerala Bank, the notice issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate, Kozhikode in C.M.P.No.2632 of 2024 was under challenge in W.P.(C)No.1609 of 2025, which was disposed of by Ext.P3 judgment dated 04.02.2025. Without raising a valid challenge against the possession notice issued by the Bank under Section 13(4) of the SARFAESI Act, the respondent-petitioner cannot invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India seeking interference with the proceedings initiated by the Bank under the provisions of the



SARFAESI Act, which had resulted in the Bank repossessing the secured asset on 17.03.2025.

16. Admittedly, the Bank has taken possession of the secured asset, under the provisions of the SARFAESI Act, on 17.03.2025, much prior to the filing of W.P.(C)No.21496 of 2025 which was filed only on 09.06.2025. As stated in the memorandum of writ appeal, the total amount outstanding as on 09.08.2025 in the business loan availed by the respondent-petitioner and his mother comes to Rs.26,55,605/- with future expenses and other charges, after giving due credit to the amount already remitted as per the directions of the learned Single Judge. As on 09.08.2025, the overdue amount comes to Rs.18,06,135/-. The submission made by the learned Standing Counsel for Kerala Bank, based on the stand taken by the appellants in the writ appeal, is that on 31.07.2025 when W.P.(C)No.21496 of 2025 came up for consideration, the submission made before the learned Single Judge, on behalf of the appellants herein, was to the effect that if the respondent-petitioner were to pay the amount in limited installments, an installment facility could be considered for settling the loan account.

17. It is not in serious dispute that as on 31.07.2025, the



date of the impugned judgment in W.P.(C)No.21496 of 2025, the total overdue amount in the business loan availed by the respondent-petitioner and his mother comes to Rs.13,06,696/-. Since the loan account has already been recalled, without clearing the entire overdue amount together, the 1st appellant Bank cannot be directed to return possession of the secured asset to the debtor. In the absence of a valid challenge made against the possession notice issued under Section 13(4) of the SARFAESI Act, the learned Single Judge went wrong in directing the Bank to return possession of the secured asset to the debtor on payment of a sum of Rs.4,00,000/-, when the overdue amount as on 09.08.2025 comes to Rs.18,06,135/-, and permitting the debtor to pay the balance overdue amount in 12 equal monthly installments, along with regular installments. When the 1st appellant Bank had taken possession of the secured asset much prior to the filing of the writ petition, the learned Single Judge went wrong in entertaining the writ petition. In view of the law laid down by the Apex Court in the decisions referred to supra, the learned Single Judge ought to have directed the respondent-petitioner to invoke the statutory remedy provided under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal.



In the above circumstances, we find no reason to sustain the judgment dated 31.07.2025 of the learned Single Judge in W.P.(C)No.21496 of 2025. The writ appeal is allowed, by setting aside the said judgment of the learned Single Judge in W.P.(C)No.21496 of 2025 and the writ petition filed on 09.06.2025 is accordingly dismissed as not maintainable; however, without prejudice to the right of the petitioner to invoke the statutory remedy provided under Section 17 of the SARFAESI Act against the coercive steps initiated by the 1st appellant Bank and the 2nd appellant Authorised Officer.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

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